

ACTS
OF THE
LEGISLATURE
OF
WEST VIRGINIA



Regular Session, 2001
Second Extraordinary Session, 2000
First Extraordinary Session, 2001
Third Extraordinary Session, 2001
Fourth Extraordinary Session, 2001

Volume I
Chapters 1 – 165

**COMPILED AND PUBLISHED
UNDER THE DIRECTION
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*The Printing
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The Printing Press, Ltd. - Charleston, WV

FOREWORD

These volumes contain the Acts of the First Regular Session and the First, Second, Third and Fourth Extraordinary Sessions of the 75th Legislature, 2001, and the Second Extraordinary Session, 2000.

First Regular Session, 2001

The First Regular Session of the 75th Legislature convened on January 10, 2001, and following election of officers of the two houses, the opening and publishing of the returns of the election of state officers at the general election held on the 7th day of November, 2000, all as prescribed by Section 18, Article VI of the Constitution of the State, the adoption of rules to govern the proceedings of the two houses and concurrently and separately acting on certain other matters incident to organization, took an adjournment until February 14, 2001, as provided by the aforesaid section of the Constitution. Reconvening, pursuant to the adjournment, the constitutional sixty-day limit on the duration of the session was midnight, April 14, 2001, at which time the Legislature adjourned *sine die*.

Bills totaling 1994 were introduced in the two houses during the session (1258 House and 736 Senate). The Legislature passed 330 bills, 160 House and 170 Senate.

The Governor vetoed five House bills (H. B. 2222, Penalties for the crime of littering; H. B. 2852, Relating to the consolidated public retirement board; H. B. 2954, Limiting absences of school principals from school duties to attend the principals academy; H. B. 3142, Requiring visible postings of addresses for mobile homes in certain mobile home parks; and H. B. 3216, Clarifying that the Legislature appropriates all accounts in the budget) and eight Senate bills (S. B. 18, Providing funding for benefits for eligible jockeys and dependents; S. B. 129, Relating to imposition of gasoline tax; S. B. 239, Modifying controlled substances monitoring act; S. B. 261, Reducing time for eligibility for expungement of criminal records of certain persons; S. B. 509, Establishing certification of electrical inspectors; S. B. 517, Relating to higher education revenue bonds generally; S. B. 554, Relating to extending time for filing information

returns for commission on fair taxation; and S. B. 646, Creating veterans skilled nursing facilities). The Legislature amended and again passed H. B. 2222, leaving a net total of 318 bills, 156 House and 162 Senate, which became law.

There were 157 Concurrent Resolutions introduced during the session, 93 House and 64 Senate, of which 45 House and 25 Senate were adopted. Twenty-five House Joint Resolutions and 13 Senate Joint Resolutions were introduced, proposing amendments to the State Constitution. The House introduced 34 House Resolutions, and the Senate introduced 47 Senate Resolutions, of which 25 House and 47 Senate were adopted.

The Senate failed to pass 53 House bills passed by the House, and 72 Senate bills failed passage by the House. Three bills died in conference: H. B. 2205, Regulating and allowing the playing of video lottery games in certain restricted access adult-only facilities; H. B. 3176, Allowing a description to replace multiple listings of “no candidate filed” on ballots; and S. B. 550, Relating to certain fees for motor vehicle inspections and stickers; posted notices.

* * * * *

Second Extraordinary Session, 2000

The Proclamation calling the Legislature into Extraordinary Session at 5:00 P.M., September 12, 2000, contained nine items for consideration.

The Legislature passed 8 bills, all of which were House Bills. One concurrent resolution was adopted, H. C. R. 1, Providing for an adjournment of the Legislature until the 14th day of November, 2000, at 4:00 o’clock postmeridian, and for reconvening prior thereto by the Joint Committee on Rules of the Senate and House of Delegates. The Senate adopted four Senate Resolutions.

The Governor vetoed one bill, H. B. 208, Transfer of money from the governor’s civil contingent fund to legislative joint committee, fund 0175. One Senate bill failed passage by the House.

The Legislature adjourned the Extraordinary Session *sine die* on November 14, 2000.

First Extraordinary Session, 2001

The Proclamation calling the Legislature into Extraordinary Session immediately following the conclusion of business and adjournment *sine die* of the Regular Session, April 15, 2001, contained eleven items for consideration.

The Legislature passed 12 bills, 5 House bills and 7 Senate bills. The Senate adopted four Senate Resolutions.

The Legislature adjourned the Extraordinary Session *sine die* on April 23, 2001.

Second Extraordinary Session, 2001

The Proclamation calling the Legislature into Extraordinary Session at 6:00 P.M., May 7, 2001, contained two items for consideration.

The House and Senate each received an Executive Message setting forth revised estimates of revenue.

The Legislature adjourned the Extraordinary Session *sine die* 6:12 P.M. the same day.

Third Extraordinary Session, 2001

The Proclamation calling the Legislature into Extraordinary Session at 6:00 P.M., June 10, 2001, contained six items for consideration.

The Legislature passed 9 bills, 7 House bills and 2 Senate bills. The Senate adopted four Senate Resolutions.

The Legislature adjourned the Extraordinary Session *sine die* June 10, 2001.

* * * * *

Fourth Extraordinary Session, 2001

The Proclamation calling the Legislature into Extraordinary Session at 6:00 P.M., August 8, 2001, contained two items for consideration.

The Legislature passed 3 bills, all of which were House Bills. The Senate adopted four Senate Resolutions.

The Legislature adjourned the Extraordinary Session *sine die* 9:14 P.M. the same day.

* * * * *

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

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

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

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MEMBERS OF THE HOUSE OF DELEGATES

REGULAR SESSION, 2001

OFFICERS

Speaker — Robert S. Kiss, Beckley

Clerk — Gregory M. Gray, Charleston

Sergeant at Arms — Oce Smith, Fairmont

Doorkeeper — John A. Roberts, Hedgesville

District	Name	Address	Legislative Service
First	Joe DeLong (D)	Weirton	75th
	Randy Swartzmiller (D)	New Cumberland	75th
Second	Timothy R. Ennis (D)	Wellsburg	72nd-75th
	Roy E. Givens (D)	Wellsburg	64th-69th;72nd-75th
Third	John Fahey (D)	Wheeling	75th
	L. Gil White (R)	Wheeling	70th-71st;73rd-75th
Fourth	Kenneth D. Tucker (D)	Moundsville	73rd-75th
	Scott G. Varner (D)	Moundsville	71st-75th
Fifth	Dave Pethel (D)	Hundred	69th-71st;74th-75th
Sixth	William Roger Romine (R)	West Union	75th
Seventh	Otis A. Leggett (R)	St. Marys	68th-75th
Eighth	Everette W. Anderson, Jr.(R)	Williamstown	71st-75th
Ninth	Larry W. Border (R)	Davisville	70th-75th
Tenth	Tom Azinger (R)	Vienna	72nd-75th
	J. D. Beane (D)	Parkersburg	70th-75th
Eleventh	John N. Ellem (R)	Parkersburg	75th
	Bob Ashley (R)	Spencer	67th-73rd;75th
Twelfth	Mitch Carmichael (R)	Ripley	75th
Thirteenth	Dale Martin (D)	Poca	75th
Fourteenth	Brady Paxton (D)	Liberty	71st;Appt. 4/22/99, 74th; 75th
	Mike Hall (R)	Hurricane	72nd-75th
Fifteenth	Lisa D. Smith (R)	Scott Depot	74th-75th
	Kevin J. Craig (D)	Huntington	75th
Sixteenth	Margarette R. Leach (D)	Huntington	71st-75th
	James Hanley Morgan	Huntington	69th-70th; Appt. 2/23/01, 75th
Seventeenth	Susan Hubbard (D)	Huntington	72nd-75th
	Jody G. Smirl (R)	Huntington	58th-61st;67th;72nd-75th
Eighteenth	Dale Stephens (D)	Huntington	75th
	Richard Thompson (D)	Lavelette	65th, Resigned 6/81;75th
Nineteenth	Don C. Perdue (D)	Prichard	74th-75th
Twentieth	K. Steven Kominar (D)	Kermit	72nd-75th
	Harry Keith White (D)	Gilbert	Appt. 9/11/92, 70th; 71st; 73rd-75th
Twenty-first	Greg Butcher (D)	Chapmanville	73rd-75th
	Tracy Dempsey (D)	Harts	70th-75th
Twenty-second	Joe C. Ferrell (D)	Logan	66th;68th-70th;74th-75th
	Lidella Wilson Hrutkay (D)	Logan	75th
Twenty-third	Earnest H. Kuhn (D)	Van	72nd-75th
	Lacy Wright, Jr. (D)	Welch	62nd-64th;(Senate 65th-66th); 73rd-75th
Twenty-fourth	Emily Yeager (D)	Welch	Appt. 3/10/93,71st;72nd-75th
	Richard Browning (D)	Oceana	69th-72nd;75th
Twenty-fifth	Rick Staton (D)	Mullens	69th-75th
	Eustace Frederick (D)	Bluefield	Appt. 10/17/93, 71st; 72nd-75th
Twenty-sixth	Richard D. Flanigan (D)	Princeton	66th-71st; 73rd-75th
	Mark Wills (D)	Princeton	74th-75th
Twenty-seventh	Mary Pearl Compton (D)	Union	69th-75th
	Robert S. Kiss (D)	Beckley	69th-75th
Twenty-eighth	Virginia Mahan (D)	Green Sulphur Springs	73rd-75th
	Warren R. McGraw II (D)	Prosperity	71st-75th
Twenty-ninth	Sally Matz Susman (D)	Beckley	74th-75th
	Ron Thompson (D)	Beckley	72nd-75th
Thirtieth	Thomas W. Campbell (D)	Lewisburg	73rd-75th
	Ray Canterbury (R)	Ronceverte	75th
Thirty-first	Tom Louisos (D)	Oak Hill	67th-68th; 70th-75th
	David G. Perry (D)	Oak Hill	75th
Thirty-second	John Pino (D)	Oak Hill	67th-68th; 71st-75th

MEMBERS OF THE HOUSE OF DELEGATES - Continued

District	Name	Address	Legislative Service
Thirtieth	Jon Amores (D)	Charleston	72nd-75th
	Bonnie Brown (D)	South Charleston	66th-68th;70th;75th
	Barbara Burruss Hatfield (D)	South Charleston	68th-70th; 74th-75th
	Ray Keener (D)	Charleston	75th
	Rebecca A. Mathews (D)	Charleston	75th
	Joe Smith (D)	Charleston	71st; 73rd-75th
	Sharon Spencer (D)	Charleston	66th;68th-71st; 73rd-75th
	Carrie Webster (D)	Charleston	75th
	Thirty-first	Tim Armstead (R)	Elkview
Thirty-second	Steve Harrison (R)	Cross Lanes	71st-75th
	Ron Walters (R)	Charleston	71st-73rd;75th
	Charles Rusty Webb (R)	Cross Lanes	73rd-75th
Thirty-third	William F. Stemple (D)	Arnoldsburg	73rd-75th
Thirty-fourth	Brent Boggs (D)	Gassaway	73rd-75th
Thirty-fifth	John W. Shelton (D)	Summersville	73rd-75th
Thirty-sixth	C. Randy White (D)	Webster Springs	73rd-75th
Thirty-seventh	² James R. Fox (D)	Elkins	Appt. 2/20/01, 75th
	Bill Proudfoot (D)	Elkins	70th-75th
Thirty-eighth	Doug Stalnaker (R)	Weston	72nd-75th
Thirty-ninth	Dale F. Riggs (R)	Buckhannon	69th-75th
Fortieth	Mary M. Poling (D)	Moatsville	75th
Forty-first	Frank T. Angotti, Jr. (D)	Clarksburg	74th-75th
	Samuel J. Cann (D)	Clarksburg	72nd-75th
	Ron Fragale (D)	Clarksburg	70th-73rd;75th
	Barbara A. Warner (D)	Bridgeport	69th-75th
Forty-second	Tom Coleman (D)	Grafton	73rd-75th
Forty-third	Michael Caputo (D)	Fairmont	73rd-75th
	A. James Manchin (D)	Farmington	50th; 74th-75th
	Paul Edward Prunty (D)	Fairmont	61st;63rd-65th;67th-68th; 70th; 72nd-75th
Forty-fourth	Robert D. Beach (D)	Morgantown	Appt. 5/98 served 7 months,73rd; 75th
	Barbara Evans Fleischauer (D)	Morgantown	72nd-75th
	Sheirl L. Fletcher (R)	Morgantown	74th-75th
	Charlene J. Marshall (D)	Morgantown	74th-75th
Forty-fifth	Larry A. Williams (D)	Tunnelton	Appt. 10/08/93,71st; 72nd-75th
Forty-sixth	Stanley E. Shaver (D)	Tunnelton	75th
Forty-seventh	Harold K. Michael (D)	Moorefield	69th-75th
Forty-eighth	Allen V. Evans (R)	Dorcas	70th-75th
Forty-ninth	Robert A. Schadler (R)	Keyser	69th-71st; 74th-75th
Fiftieth	Jerry L. Mezzatesta (D)	Romney	68th-75th
Fifty-first	Charles S. Trump IV (R)	Berkeley Springs	71st-75th
Fifty-second	Vicki V. Douglas (D)	Martinsburg	70th-75th
Fifty-third	Larry V. Faircloth (R)	Inwood	65th-75th
Fifty-fourth	John Overington (R)	Martinsburg	67th-75th
Fifty-fifth	John Doyle (D)	Shepherdstown	66th; 71st-75th
Fifty-sixth	Dale Manuel (D)	Charles Town	69th-75th

(D) Democrats	75
(R) Republicans	25
TOTAL	100

¹ Appointed Feb. 23, 2001, to fill the vacancy created by the resignation of Arley Johnson.

² Appointed Feb. 20, 2001, to fill the vacancy created by the resignation of Joe Martin.

MEMBERS OF THE SENATE

REGULAR SESSION, 2001

OFFICERS

President — Earl Ray Tomblin, Chapmanville

Clerk — Darrell E. Holmes, Charleston

Sergeant at Arms — Tony DeRaimo, St. Albans

Doorkeeper — Andrew J. Trail, Charleston

District	Name	Address	Legislative Service
First	Edwin J. Bowman (D)	Weirton	72nd-75th
	Andy McKenzie (R)	Wheeling	73rd-75th
Second	Larry J. Edgell (D)	New Martinsville	74th-75th
	Jeffrey V. Kessler (D)	Glen Dale	Appt. 11/97,73rd;74th-75th
Third	Donna J. Boley (R)	St. Marys	Appt. 5/14/85,67th;68th-75th
	J. Frank Deem (R)	Vienna	(House 52nd-56th);57th-62nd; 64th-65th; (House 69th); 72nd-75th
Fourth	Oshel B. Craigo (D)	Winfield	(House 65th);66th-75th
	Karen L. Facemyer (R)	Ripley	(House 71st-74th); 75th
Fifth	Robert H. Plymale (D)	Ceredo	71st-75th
	Marie E. Redd (D)	Huntington	74th-75th
Sixth	H. Truman Chafin (D)	Williamson	66th-75th
	John Pat Fanning (D)	Jaeger	58th-64th;67th-68th;73rd-75th
Seventh	Lloyd G. Jackson II (D)	Hamlin	68th-69th;72nd-75th
	Earl Ray Tomblin (D)	Chapmanville	(House 62nd-64th);65th-75th
Eighth	John R. Mitchell, Jr. (D)	Charleston	74th-75th
	Vic Sprouse (R)	South Charleston	(House 72nd);73rd-75th
Ninth	Billy Wayne Bailey, Jr. (D)	Pineville	Appt. 1/9/91,70th;71st-75th
	William R. Wooton (D)	Beckley	(House 63rd-67th;69th);70th-75th
Tenth	Leonard W. Anderson (D)	Hinton	70th-75th
	Anita Skeens Caldwell (D)	Princeton	75th
Eleventh	Mark Burnette (D)	Lewisburg	75th
	Shirley Love (D)	Oak Hill	72nd-75th
Twelfth	Joseph M. Minard (D)	Clarksburg	(House Appt. 1/10/83,66th; 67th-69th);70th-71st;74th-75th
	William R. Sharpe, Jr. (D)	Weston	55th-64th;67th-75th
Thirteenth	Michael A. Oliverio, II (D)	Morgantown	(House 71st);72nd-75th
	Roman W. Prezioso, Jr. (D)	Fairmont	(House 69th-72nd);73rd-75th
Fourteenth	Jon Blair Hunter (D)	Clarksburg	73rd-75th
	Sarah M. Minear (R)	Davis	72nd-75th
Fifteenth	Walt Helmick (D)	Marlinton	(House 1 yr.,69th);Appt.9/13/89, 69th;70th-75th
	Mike Ross (D)	Coalton	71st-75th
Sixteenth	Herbert S. Snyder (D)	Shenandoah Junction	73rd-75th
	John R. Unger II (D)	Martinsburg	74th-75th
Seventeenth	Brooks F. McCabe, Jr. (D)	Charleston	74th-75th
	Larry L. Rowe (D)	Malden	(House 73rd-74th); 75th

(D) Democrats	28
(R) Republicans	6
TOTAL	34

COMMITTEES OF THE HOUSE OF DELEGATES
Regular Session, 2001

STANDING

AGRICULTURE AND NATURAL RESOURCES

Stemple (*Chair of Agriculture*), Boggs (*Vice Chair of Agriculture*), Yeager (*Chair of Natural Resources*), Ennis (*Vice Chair of Natural Resources*), Butcher, DeLong, Dempsey, Flanigan, Fox, Manuel, McGraw, Paxton, Pethtel, Poling, Prunty, Shaver, Swartzmiller, R. Thompson, Williams, Anderson, Border, Evans, Leggett, Overington and Riggs.

BANKING AND INSURANCE

R. M. Thompson (*Chair of Banking*), H. White (*Vice Chair of Banking*), Beane (*Chair of Insurance*), Pethtel (*Vice Chair of Insurance*), Angotti, Beach, Butcher, Cann, Craig, Flanigan, Hatfield, Paxton, Perdue, Pino, J. Smith, Spencer, Webster, Azinger, Carmichael, Faircloth, Harrison, Trump, Walters, Webb and G. White.

CONSTITUTIONAL REVISION

Fleischauer (*Chair*), Susman (*Vice Chair*), Fox, Fragale, Givens, Hrutkay, Kominar, Louisos, Mathews, McGraw, Morgan, Pethtel, Pino, Varner, Webster, H. White, Wills, Wright, Anderson, Armstead, Ellem, Harrison, Overington and Webb.

EDUCATION

Mezzatesta (*Chair*), Williams (*Vice Chair*), Beach, Dempsey, Fragale, Hubbard, Fahey, Fox, Louisos, Mathews, Morgan, Paxton, Perry, Poling, Shaver, Shelton, Stemple, Susman, Swartzmiller, Canterbury, Carmichael, Harrison, Overington, Romine and L. Smith.

FINANCE

Michael (*Chair*), Doyle (*Vice Chair*), Beane, Boggs, Browning, Campbell, Cann, Compton, Frederick, Keener, Kominar, Leach, Mezzatesta, Proudfoot, R. M. Thompson, Varner, Warner, H. White, Anderson, Ashley, Evans, Fletcher, Hall, Stalnaker and G. White.

GOVERNMENT ORGANIZATION

Douglas (*Chair*), Kuhn (*Vice Chair*), Angotti, Brown, Butcher, DeLong, Ennis, Flanigan, Hatfield, Manchin, Martin, Marshall, McGraw, Perdue, Prunty, Stephens, Tucker, Varner, Yeager, Azinger, Border, Ellem, Leggett, Overington and Walters.

HEALTH AND HUMAN RESOURCES

Compton (*Chair*), Perdue (*Vice Chair*), Angotti, Brown, Fahey, Dempsey, Fleischauer, Frederick, Hatfield, Hubbard, Leach, Mahan, Marshall, Mathews, J. Smith, Spencer, Stemple, Susman, Warner, Ashley, Carmichael, Hall, Romine, Schadler and L. Smith.

**INDUSTRY AND LABOR, ECONOMIC DEVELOPMENT
AND SMALL BUSINESS**

Hubbard (*Chair of Industry & Labor*), Tucker (*Vice Chair of Industry & Labor*), Cann (*Chair of Economic Development & Small Business*), Frederick (*Vice Chair of Economic Development & Small Business*), Caputo, Coleman, Fahey, Fragale, Keener, Louisos, Mahan, Manchin, Martin, Perry, Poling, Prunty, Stephens, C. White, Williams, Canterbury, Carmichael, Ellem, Fletcher, Overington and Walters.

JUDICIARY

Amores (*Chair*), Manuel (*Vice Chair*), Caputo, Craig, Ferrell, Fleischauer, Givens, Hrutkay, Mahan, Pethtel, Pino, J. Smith, Spencer, Stemple, R. Thompson, Webster, C. White, Wills, Coleman, Armstead, Faircloth, Riggs, Schadler, Smirl and Webb.

POLITICAL SUBDIVISIONS

Proudfoot (*Chair*), Marshall (*Vice Chair*), Brown, Browning, Campbell, Ennis, Fahey, Ferrell, Kuhn, Martin, Mathews, Morgan, Perry, Shaver, Swartzmiller, C. White, Wills, Yeager, Armstead, Azinger, Schadler, Smirl, Stalnaker, Trump and G. White.

ROADS AND TRANSPORTATION

Warner (*Chair*), Shelton (*Vice Chair*), Beach, Boggs, Butcher, Coleman, Craig, Ennis, Hubbard, Kominar, Manchin, Marshall, Stephens, Susman, R. Thompson, R. M. Thompson, C. White, Yeager, Border, Canterbury, Evans, Leggett, Riggs, Romine and Stalnaker.

RULES

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

VETERANS AFFAIRS

Givens (*Chair*), Flanigan (*Vice Chair*), Coleman, Craig, DeLong, Doyle, Hrutkay, Kuhn, Manchin, Manuel, Proudfoot, Shelton, Stemple, Stephens, R. M. Thompson, Tucker, H. White, Wright, Yeager, Ashley, Azinger, Ellem, Fletcher, Smirl and L. Smith.

SELECT

REDISTRICTING

Kiss (*Chair*), Kominar (*Vice Chair*), Amores, Beane, Boggs, Butcher, Campbell, Caputo, Doyle, Fleischauer, Frederick, Givens, Leach, Mezzatesta, Pino, J. Smith, Staton, Stemple, Varner, Warner, Williams, Anderson, Overington, Schadler, Smirl, Stalnaker, Trump and Walters.

JOINT

ENROLLED BILLS

Manchin (*Chair*), Dempsey (*Vice Chair*), Butcher and Overington.

GOVERNMENT AND FINANCE

Kiss (*Chair*), Amores, Mezzatesta, Michael, Staton, Hall and Trump.

GOVERNMENT OPERATIONS

Douglas (*Chair*), Kuhn (*Vice Chair*), Varner, Border and Leggett.

LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

Mahan (*Chair*), Wills (*Vice Chair*), Cann, Kominar, Faircloth and Riggs.

PENSIONS AND RETIREMENT

Campbell (*Chair*), J. Smith (*Vice Chair*), Keener, Browning, Hubbard, Hall and Harrison.

RULES

Kiss (*Chair*), Staton and Trump.

STATUTORY LEGISLATIVE COMMISSIONS

JOINT COMMISSION ON ECONOMIC DEVELOPMENT

Cann (*Chair*), Amores, Browning, Craig, Kominar, Mezzatesta, Michael and Stalnaker.

FOREST MANAGEMENT REVIEW

Stemple (*Chair*), Butcher (*Vice Chair*), Pino, Proudfoot, Williams and Canterbury.

INTERSTATE COOPERATION

Caputo (*Chair*), J. Smith, Doyle, Frederick, Yeager, Leggett and Overington.

**OVERSIGHT COMMISSION ON EDUCATION
ACCOUNTABILITY**

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

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

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

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

Manuel (*Chair*), Leach, Warner, C. White and Faircloth.

SPECIAL INVESTIGATIONS

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

COMMITTEES OF THE SENATE
Regular Session, 2001

STANDING

AGRICULTURE

Anderson (*Chair*), Love (*Vice Chair*), Edgell, Helmick, Hunter, Mitchell, Ross, Unger, Facemyer and Minear.

BANKING AND INSURANCE

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

CONFIRMATIONS

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

ECONOMIC DEVELOPMENT

McCabe (*Chair*), Kessler (*Vice Chair*), Anderson, Bowman, Craigo, Fanning, Helmick, Jackson, Plymale, Unger, Wooton, McKenzie and Sprouse.

EDUCATION

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

ENERGY, INDUSTRY AND MINING

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

FINANCE

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

GOVERNMENT ORGANIZATION

Bowman (*Chair*), Bailey (*Vice Chair*), Burnette, Chafin, Jackson, Kessler, McCabe, Minard, Redd, Rowe, Snyder, Wooton, Boley, Minear and Sprouse.

HEALTH AND HUMAN RESOURCES

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

INTERSTATE COOPERATION

Snyder (*Chair*), Caldwell (*Vice Chair*), Fanning, Minard, Rowe, Unger and Minear.

JUDICIARY

Wooton (*Chair*), Snyder (*Vice Chair*), Burnette, Caldwell, Fanning, Hunter, Kessler, Minard, Mitchell, Oliverio, Redd, Ross, Rowe, Deem, Facemyer and McKenzie.

LABOR

Fanning (*Chair*), Rowe (*Vice Chair*), Burnette, Edgell, Hunter, Love, Mitchell, Prezioso, Facemyer and McKenzie.

MILITARY

Hunter (*Chair*), Edgell (*Vice Chair*), Bailey, Caldwell, Minard, Oliverio, Prezioso, Boley and Deem.

NATURAL RESOURCES

Helmick (*Chair*), Mitchell (*Vice Chair*), Anderson, Bowman, Craigo, Love, Minard, Plymale, Prezioso, Ross, Rowe, Snyder, Deem and Minear.

PENSIONS

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

RULES

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

SMALL BUSINESS

Oliverio (*Chair*), Unger (*Vice Chair*), Anderson, Burnette, Craigo, Kessler, McCabe, Redd, Ross, Sharpe, Boley and Deem.

TRANSPORTATION

Ross (*Chair*), Redd (*Vice Chair*), Caldwell, Kessler, Love, Oliverio, Rowe, Facemyer and McKenzie.

SELECT

REDISTRICTING

***Clerk's Note:** The entire membership of the Senate serves as a Committee of the Whole in matters relating to redistricting.

JOINT

ENROLLED BILLS

Rowe (*Chair*), Bailey, Caldwell, Mitchell and Facemyer.

GOVERNMENT AND FINANCE

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

GOVERNMENT OPERATIONS

Bowman (*Chair*), Bailey (*Vice Chair*), Craigo, Minear and Sprouse.

LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

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

PENSIONS AND RETIREMENT

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

RULES

Tomblin (*Chair*), Chafin and Sprouse.

STATUTORY LEGISLATIVE COMMISSIONS

JOINT COMMISSION ON ECONOMIC DEVELOPMENT

McCabe, (*Chair*), Craigo, Helmick, Jackson, Plymale, Unger, Wooton and Sprouse.

FOREST MANAGEMENT REVIEW COMMISSION

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

INTERSTATE COOPERATION

Snyder (*Chair*), Caldwell (*Vice Chair*), Fanning, Minard, Rowe, Unger and Minear.

**OVERSIGHT COMMISSION ON EDUCATION
ACCOUNTABILITY**

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

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

Prezioso (*Chair*), Craigo, Hunter, Plymale, Sharpe and Boley.

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

Love (*Chair*), Bailey, Craigo, Helmick and McKenzie.

SPECIAL INVESTIGATIONS

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

LEGISLATURE OF WEST VIRGINIA

ACTS

FIRST REGULAR SESSION, 2001

CHAPTER 1

**(S. B. 721 — By Senators Wooton, Snyder, Burnette,
Caldwell, Fanning, Mitchell, Ross and Rowe)**

[Passed April 14, 2001; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections six and seven, article twenty-four, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section sixteen, article ten, chapter seventeen-a of said code, all relating to the waste tire remediation/environmental cleanup fund; renaming the waste tire remediation/environmental cleanup fund the A. James Manchin fund; and authorizing the use of the fund for the tire disposal program.

Be it enacted by the Legislature of West Virginia:

That sections six and seven, article twenty-four, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section sixteen, article ten, chapter seventeen-a be amended and reenacted, all to read as follows:

CHAPTER 17. ROADS AND HIGHWAYS.

ARTICLE 24. WASTE TIRE REMEDIATION.

§17-24-6. Creation of the A. James Manchin fund; proceeds from sale of waste tires; fee on issuance of certificate of title; performance review.

§17-24-7. Remediation; liability for remediation and court costs.

§17-24-6. Creation of the A. James Manchin fund; proceeds from sale of waste tires; fee on issuance of certificate of title; performance review.

1 (a) There is hereby created in the state treasury a special
2 revenue fund known as the “A. James Manchin Fund”. All
3 moneys appropriated, deposited or accrued in this fund shall be
4 used exclusively for remediation of waste tire piles as required
5 by this article for the tire disposal program established under
6 section four of this article or for the purposes of subsection (c),
7 section five of this article. The fund shall consist of the pro-
8 ceeds from the sale of waste tires; fees collected by the division
9 of motor vehicles as provided for in section sixteen, article ten,
10 chapter seventeen-a of this code; any federal, state or private
11 grants; legislative appropriations; loans and any other funding
12 source available for waste tire remediation. Any balance
13 remaining in the fund at the end of any state fiscal year shall not
14 revert to the state treasury but shall remain in this fund and be
15 used only in a manner consistent with the requirements of this
16 article.

17 (b) No further collections or deposits shall be made after
18 the commissioner certifies to the governor and the Legislature
19 that the remediation of all waste tire piles that were determined

20 by the commissioner to exist on the first day of June, two
21 thousand one, has been completed.

22 (c) The joint committee on government operations shall,
23 pursuant to authority granted in article ten, chapter four of this
24 code, conduct a preliminary performance review of the divi-
25 sion's compliance with the waste tire remediation mandated in
26 this article; whether the purposes of this article have been met;
27 and whether it is appropriate to terminate this program. In
28 conducting such preliminary performance review, the commit-
29 tee shall follow the guidelines established in this article. A
30 preliminary review shall be completed on or before the first day
31 of January, two thousand three.

§17-24-7. Remediation; liability for remediation and court costs.

1 (a) Any person who has prior or subsequent to the effective
2 date of this act illegally disposed of waste tires or has waste
3 tires illegally disposed on his or her property shall be liable for:

4 (1) All costs of removal or remedial action incurred by the
5 division;

6 (2) Any other necessary costs of remediation, including
7 properly disposing of waste tires and damage to adjacent
8 property owners; and

9 (3) All costs incurred in bringing civil actions under this
10 article.

11 (b) The division shall notify any person who owns real
12 property or rights to property where a waste tire pile is located
13 that remediation of the waste tire pile is necessary. The division
14 shall make and enter an order directing such person or persons
15 to remove and properly dispose of the waste tires. The division
16 shall set a time limit for completion of the remediation. The

17 order shall be served by registered or certified mail, return
18 receipt requested, or by a county sheriff or deputy sheriff.

19 (c) If the remediation is not completed within the time limit
20 or the person cannot be located or the person notifies the
21 division that he or she is unable to comply with the order, the
22 division may expend funds, as provided herein, to complete the
23 remediation. Any amounts so expended shall be promptly
24 repaid by the person or persons responsible for the waste tire
25 pile. Any person owing remediation costs and or damages shall
26 be liable at law until such time as all costs and or damages are
27 fully paid.

28 (d) Authorized representatives of the division have the
29 right, upon presentation of proper identification, to enter upon
30 any property for the purpose of conducting studies or explor-
31 atory work to determine the existence of adverse effects of a
32 waste tire pile, to determine the feasibility of the remediation or
33 prevention of such adverse effects and to conduct remediation
34 activities provided for herein. Such entry is an exercise of the
35 police power of the state and for the protection of public health,
36 safety and general welfare and is not an act of condemnation of
37 property or trespass thereon. Nothing contained in this section
38 eliminates any obligation to follow any process that may be
39 required by law.

40 (e) There is hereby created a statutory lien upon all real
41 property and rights to the property from which a waste tire pile
42 was remediated for all reclamation costs and damages incurred
43 by the division. The lien created by this section shall arise at the
44 later of the following:

45 (1) The time costs are first incurred by the division; or

46 (2) The time the person is provided, by certified or regis-
47 tered mail, or personal service, written notice as required by
48 this section.

49 The lien shall continue until the liability for the costs or
50 judgment against the property is satisfied.

51 (f) Liens created by this section shall be duly recorded in
52 the office of the clerk of the county commission in the county
53 where the real property is located, be liens of equal dignity,
54 rank and priority with the lien on such premises of state,
55 county, school and municipal taxes for the amount thereof upon
56 the real property served. The division shall have the power and
57 authority to enforce such liens in a civil action to recover the
58 money due for remediation costs and damages plus court fees
59 and costs and reasonable attorney's fees.

60 (g) The division may foreclose upon the premises by
61 bringing a civil action, in the circuit court of the county where
62 the property is located, for foreclosure and an order to sell the
63 property to satisfy the lien.

64 (h) Any proceeds from any sale of property obtained as a
65 result of execution of a lien or judgment under this section for
66 remediation costs, excluding costs of obtaining judgment and
67 perfecting the lien, shall be deposited into the A. James
68 Manchin fund of the state treasury.

69 (i) The provisions of this section do not apply and no lien
70 may attach to the right-of-way, easement or other property
71 interest of a utility, whether electric, gas, water, sewer, tele-
72 phone, television cable or other public service unless the utility
73 contributed to the illegal tire pile.

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

ARTICLE 10. FEES FOR REGISTRATION, LICENSING, ETC.

§17A-10-16. Fee for the A. James Manchin fund.

1 In addition to each fee provided for in this article, an
2 additional five-dollar fee shall be imposed on the issuance of
3 each certificate of title issued pursuant to article three of this
4 chapter. All money collected under this section shall be
5 deposited in the state treasury and credited to the A. James
6 Manchin fund to be established within the department of
7 highways for waste tire remediation in accordance to the
8 provisions of article twenty-four, chapter seventeen of this
9 code. The additional fee provided herein shall be imposed for
10 each application for certificate and renewal thereof made on or
11 after the first day of July, two thousand: *Provided*, That no
12 further collections or deposits shall be made after the commis-
13 sioner certifies to the governor and the Legislature that the
14 remediation of all waste tire piles that were determined by the
15 commissioner to exist on the first day of June, two thousand
16 one, has been completed.



CHAPTER 2

(Com. Sub. for H. B. 2782 — By Delegates Staton, Amores,
McGraw, Beane, Wills, Keener and R. Thompson)

[Passed April 14, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eighteen, article two, chapter fifty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to actions and suits at law; and providing that an action dismissed as a result of process not having been served is not a dismissal on the merits.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. LIMITATION OF ACTIONS AND SUITS.

§55-2-18. Extension of period for new action after dismissal or reversal where the action is timely filed.

1 (a) For a period of one year from the date of an order
2 dismissing an action or reversing a judgment, a party may re-
3 file the action if the initial pleading was timely filed and (i) the
4 action was involuntarily dismissed for any reason not based
5 upon the merits of the action or (ii) the judgment was reversed
6 on a ground which does not preclude a filing of new action for
7 the same cause.

8 (b) For purposes of subsection (a) of this section, a dis-
9 missal not based upon the merits of the action includes, but is
10 not limited to:

11 (1) A dismissal for failure to post an appropriate bond;

12 (2) A dismissal for loss or destruction of records in a former
13 action; or

14 (3) A dismissal for failure to have process timely served,
15 whether or not the party is notified by the court of the pending
16 dismissal.

CHAPTER 3

(S. B. 460 — By Senators Wooton and Chafin)

[Passed April 13, 2001; 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 twenty-four-e, relating to forming a statewide addressing and mapping board; establishing a temporary board; and providing the rural areas of the state with city-type addressing.

Be it enacted by the Legislature of West Virginia:

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

CHAPTER 24E. STATEWIDE ADDRESSING AND MAPPING.

ARTICLE 1. WEST VIRGINIA STATEWIDE ADDRESSING AND MAPPING BOARD.

- §24E-1-1. Legislative findings; purpose.
- §24E-1-2. Definitions.
- §24E-1-3. West Virginia statewide addressing and mapping board created; appointment of board members; submission of recommendations by certain organizations; term of office; compensation and expenses of board members.
- §24E-1-4. Powers and duties of the West Virginia statewide addressing and mapping board.
- §24E-1-5. West Virginia statewide addressing and mapping fund.
- §24E-1-6. Legislative and emergency rules governing addressing and mapping standards.
- §24E-1-7. Request for proposals; title to works; disbursements to vendors and public agencies; legislative and emergency rules.
- §24E-1-8. Liability limitation.
- §24E-1-9. Standard fees for maps, compilations or other works.
- §24E-1-10. Use of facilities of public service commission.
- §24E-1-11. Termination of board; transfer of duties and title to works to counties and public service commission; legislative and emergency rules for standards; legislative and emergency rules for standard fees to be charged by counties for digital or other maps, compilations or other works.
- §24E-1-12. Liberal construction.

§24E-1-1. Legislative findings; purpose.

- 1 (a) The Legislature finds and declares:

2 (1) That large areas of the state remain without city-type
3 addressing, despite the best efforts of local officials;

4 (2) That city-type addressing is essential to the prompt and
5 accurate dispatch of emergency service providers;

6 (3) That citizens of rural areas of the state that are not city-
7 type addressed should enjoy the same security, safety and peace
8 of mind as citizens in those areas that have been city-type
9 addressed;

10 (4) That a statewide system for city-type addressing would
11 provide citizens of rural areas throughout the state with
12 security, safety and peace of mind;

13 (5) That, despite progress in certain areas, a statewide
14 addressing system cannot be achieved without action by the
15 Legislature;

16 (6) That certain counties and municipalities in the state
17 have, nonetheless, made progress in achieving city-type
18 addressing in their respective jurisdictions and their accom-
19 plishments ought to be respected;

20 (7) That a statewide mapping system, utilizing digital
21 mapping systems, geographic information systems, global
22 positioning systems or other appropriate systems, would further
23 aid the dispatch of emergency service providers, thereby further
24 increasing the security, safety and peace of mind of the citizens
25 of the state;

26 (8) That a temporary board, consisting of qualified persons
27 representing the disciplines most affected by an integrated
28 statewide addressing and mapping system, is the best means to
29 achieve a system; and

30 (9) That certain entities have shown interest in providing
31 for a source of funding for accomplishing a system and should
32 be encouraged to do so.

33 (b) It is, therefore, the purpose of this article to achieve a
34 statewide addressing and mapping system that will be as
35 uniform as possible while respecting the past accomplishments
36 of local officials, that will be achieved quickly and cost
37 effectively, that will be accomplished at a minimal cost, if any,
38 to the taxpayer and that will use sound and recognized methods
39 and standards.

§24E-1-2. Definitions.

1 (a) “Board” means the West Virginia statewide addressing
2 and mapping board.

3 (b) “Emergency service provider” means any emergency
4 services organization or public safety unit.

5 (c) “Fund” means the West Virginia statewide addressing
6 and mapping fund.

7 (d) “Local exchange telephone company” means any public
8 utility that is engaged in the provision of local exchange
9 telephone service in this state and that operates and maintains
10 an automatic location identification database of addresses of
11 subscribers for use with enhanced emergency telephone
12 systems.

13 (e) “Public agency” means any municipality, county, public
14 district or public authority that provides or has the authority to
15 provide firefighting, police, ambulance, medical rescue or other
16 emergency services.

**§24E-1-3. West Virginia statewide addressing and mapping
board created; appointment of board members;**

submission of recommendations by certain organizations; term of office; compensation and expenses of board members.

1 (a) There is hereby created the West Virginia statewide
2 addressing and mapping board. The board is to be composed of
3 eleven members appointed by the governor, one of whom is to
4 be a public service commissioner or a member of the staff of
5 the public service commission, one of whom is to be an official
6 or employee of the state geological and economic survey,
7 established and continued under section four, article two,
8 chapter twenty-nine of this code, qualified in the field of
9 geographic information systems, one of whom is to be an
10 official or employee of the department of military affairs and
11 public safety, one of whom is to be an official or employee of
12 the division of highways, one of whom is to be a county
13 commissioner, one of whom is to be a county assessor, one of
14 whom is to be a mayor of a municipality or a municipal official,
15 one of whom is to be a director of an enhanced emergency
16 telephone system from a county with a population of thirty
17 thousand or less as shown by the last federal census, one of
18 whom is to be a director of an enhanced emergency telephone
19 system from a county with a population of greater than thirty
20 thousand as shown by the last federal census, one of whom is
21 to be a representative of a local exchange telephone company,
22 and one of whom is to be a member of the public at-large but
23 may be affiliated with any of the above entities. In making
24 appointments to the board, the governor shall, to the extent
25 possible, ensure representation on the board, by one or more
26 members, of any entity providing twenty-five percent or more
27 of funding to the statewide addressing and mapping fund
28 created by section five of this article.

29 (b) The governor shall designate a member to preside at the
30 first meeting of the board until a chairman is elected. At the
31 first meeting of the board, it shall elect a chairman from its

32 members. The member so elected is to hold the office of
33 chairman at the will and pleasure of the majority of the total
34 membership of the board.

35 (c) The public service commission, the director of the state
36 geological and economic survey, the secretary of the depart-
37 ment of military affairs and public safety, the commissioner of
38 the division of highways, the association of counties, the West
39 Virginia county commissioners' association and the West
40 Virginia municipal league, the West Virginia enhanced 911
41 council and each local exchange telephone company shall
42 submit two names of recommended persons to the governor for
43 each appointment representing its respective discipline. The
44 governor is not limited in his or her appointments, however, to
45 the names so recommended.

46 (d) The term of office for members of the board is six years.

47 (e) Members of the board are entitled to the same expense
48 reimbursement paid to members of the Legislature for their
49 interim duties as recommended by the citizens legislative
50 compensation commission and authorized by law for each day
51 or substantial portion thereof engaged in the performance of
52 official duties. Their expense reimbursement is to be paid from
53 the West Virginia statewide addressing and mapping fund
54 created by section five of this article.

**§24E-1-4. Powers and duties of the West Virginia statewide
addressing and mapping board.**

1 The board may exercise all powers necessary or appropriate
2 to effectuate the purposes of this article, including, without
3 limitation, the powers:

4 (1) To adopt statewide addressing and mapping standards
5 and requirements in accordance with sections six and seven of
6 this article;

7 (2) To enter into any agreements or other transactions in
8 order to accomplish the addressing and mapping, in order to
9 secure funding for the statewide addressing and mapping fund
10 created by section five of this article or otherwise in order to
11 accomplish the purposes of the article;

12 (3) To manage and use the West Virginia statewide
13 addressing and mapping fund created by section five of this
14 article in order to pay for the costs of statewide addressing and
15 mapping;

16 (4) To accept any private, federal or other funding that may
17 be available to effectuate the purposes of this article and to
18 deposit any funding in the West Virginia statewide addressing
19 and mapping fund created by section five of this article; and

20 (5) To do all other acts necessary and proper to carry out its
21 powers and the purposes of this article.

§24E-1-5. West Virginia statewide addressing and mapping fund.

1 (a) There is hereby created a special fund that is designated
2 as the “West Virginia Statewide Addressing and Mapping
3 Fund”. The fund shall be treated by the auditor and treasurer as
4 a special revenue fund and not as part of the general revenue of
5 the state: *Provided*, That nothing in this article can be construed
6 to require any appropriation by the Legislature to the fund.

7 (b) The board shall hold the proceeds of the fund in trust
8 and shall manage the proceeds of the fund solely to accomplish
9 the purposes of this article.

10 (c) Disbursements from the fund may be made only upon
11 the written requisition of the chairman accompanied by a
12 certified resolution of the board and may be made solely to
13 accomplish the purposes of this article.

14 (d) Any amount remaining in the fund upon the termination
15 of the board is to be transferred to county commissions of the
16 state and may be used by them solely for the purposes of
17 maintaining and updating the statewide addressing and mapping
18 to be accomplished by this article. No later than the first day of
19 January, two thousand five, the board shall propose rules for
20 governing the distribution of any amount among the various
21 county commissions for legislative approval in accordance with
22 the provisions of article three, chapter twenty-nine-a of this
23 code. The rules may not be filed as emergency rules.

**§24E-1-6. Legislative and emergency rules governing addressing
and mapping standards.**

1 (a) The board is hereby authorized to propose rules govern-
2 ing statewide addressing and mapping standards for legislative
3 approval in accordance with the provisions of article three,
4 chapter twenty-nine-a of this code. Emergency rules are
5 specifically authorized for this purpose.

6 (b) Any rules proposed by the board must exempt from the
7 statewide addressing and mapping standards any county or
8 municipality that has completed city-type addressing under the
9 authority granted in section three, article one, chapter seven of
10 this code or otherwise.

11 (c) In proposing any rules, the board shall consider all
12 relevant factors, including, but not limited to, the following:

13 (1) The system and costs of administering a city-type
14 addressing system;

15 (2) The system and costs of separately naming or renaming
16 roads and streets;

17 (3) The desirability of standard road and street suffixes;

- 18 (4) The desirability of standards for driveways and private
19 roads;
- 20 (5) The desirability of standard address numbering incre-
21 ments;
- 22 (6) The system and costs of assigning address numbers;
- 23 (7) The system and costs for road naming and numbering
24 for neighboring localities;
- 25 (8) The desirability of standards using digital mapping,
26 geographic information systems and global positioning sys-
27 tems;
- 28 (9) The desirability of standards applicable to road signs;
- 29 (10) The desirability for requirements for displaying
30 address numbers; and
- 31 (11) The desirability of the adoption of national emergency
32 number association standards.

§24E-1-7. Request for proposals; title to works; disbursements to vendors and public agencies; legislative and emergency rules.

- 1 (a) The board shall, no later than the first day of January,
2 two thousand two, issue a request or requests for proposals for
3 statewide addressing and mapping. The request for proposal
4 must include requirements that each map, compilation or other
5 work created as a result of the statewide addressing and
6 mapping intended to be accomplished by this article must be a
7 “work made for hire” within the meaning of the copyright laws
8 of the United States, 17 U. S. C. §101, *et seq.*, and that all right,
9 title and interest to each map, compilation or other work must
10 vest in the board. The request or requests for proposal may

11 include any standards or requirements the board finds necessary
12 or proper, including, without limitation, compliance with any
13 applicable emergency or legislative rules. The board shall select
14 a qualified vendor or vendors in accordance with the applicable
15 provisions of article three, chapter five-a of this code. Disburse-
16 ments from the West Virginia statewide addressing and
17 mapping fund established by section five of this article are
18 specifically authorized in order to pay the selected vendor or
19 vendors.

20 (b) The board may also consider applications of public
21 agencies, including, without limitation, county commissions
22 and municipalities, to participate in the statewide addressing
23 and mapping to be accomplished by this article. Disbursements
24 from the West Virginia statewide addressing and mapping fund
25 are specifically authorized in order to reimburse such public
26 agencies, in whole or in part, for the costs incurred by them in
27 participating in the addressing and mapping to be accomplished
28 by this article, in the amount, if any, determined by the board.

29 (c) No later than the first day of January, two thousand two,
30 the board shall propose legislative rules to accomplish the
31 purposes of this section in accordance with the provisions of
32 article three, chapter twenty-nine-a of this code. The rules may
33 require public agencies that apply for reimbursement under this
34 section, but that are exempt from statewide standards under
35 section six of this article, to comply with acceptable standards
36 to be specified in those rules as a condition of receiving
37 reimbursement. The standards, however, are not necessarily
38 required to be the statewide standards to be proposed by the
39 board in legislative rules under section six of this article.
40 Emergency rules are specifically authorized for the purposes of
41 this section.

§24E-1-8. Liability limitation.

1 No person is liable for damages for injury, death or loss to
2 persons or property arising from any act or omission, except
3 willful or wanton misconduct, in connection with developing or
4 implementing the statewide addressing and mapping to be
5 accomplished by this article or in connection with providing
6 information or assistance related to the addressing and mapping
7 or as a result of providing funding to the statewide addressing
8 and mapping fund created by section five of this article.

§24E-1-9. Standard fees for maps, compilations or other works.

1 (a) The board is hereby authorized to propose rules for
2 legislative approval, in accordance with the provisions of article
3 three, chapter twenty-nine-a of this code, to establish standard
4 fees for copies or use of any maps, compilations or other works
5 that may be created as a result of the statewide addressing and
6 mapping intended to be accomplished by this article. Those
7 rules must exempt from the payment of fees, however, any
8 entity providing twenty-five percent or more of the funding to
9 the statewide addressing and mapping fund created by section
10 five of this article. Those rules also must exempt from the
11 payment of the fees county commissions obtaining the maps,
12 compilations or other works for use in its enhanced emergency
13 telephone system established under article six, chapter twenty-
14 four of this code. The board may propose other exemptions in
15 such rules. The otherwise payable standard fees must be
16 reasonable and must, to the extent possible, be based on cost.
17 Until the termination of the board in accordance with section
18 eleven of this article, any fees are to be payable to the board and
19 the board shall deposit those fees in the West Virginia statewide
20 addressing and mapping fund created by section five of this
21 article. Emergency rules are specifically authorized for the
22 purposes of this section.

23 (b) Prior to the distribution or use of any maps, compila-
24 tions or other works created as a result of the statewide address-

25 ing and mapping intended to be accomplished by this article,
26 the board shall propose rules for legislative approval, in
27 accordance with the provisions of article three, chapter twenty-
28 nine-a of this code, establishing the conditions and require-
29 ments governing the distribution of those works, including
30 provisions ensuring the effective distribution of those works to
31 persons with a legitimate need to know, but respecting, where
32 possible, any reasonable expectations of privacy of the informa-
33 tion contained in those works, such as the names, addresses and
34 locations of the citizens of the state. The rules proposed for this
35 purpose must be consistent with the West Virginia freedom of
36 information act, article one, chapter twenty-nine-b of this code.
37 Emergency rules are specifically authorized for this purpose.

§24E-1-10. Use of facilities of public service commission.

1 The board may, with the permission of, and under the
2 supervision of, the public service commission, use the facilities,
3 staff or other resources of the public service commission in
4 connection with accomplishing the purposes of this article.

**§24E-1-11. Termination of board; transfer of duties and title to
works to counties and public service commission;
legislative and emergency rules for standards;
legislative and emergency rules for standard fees
to be charged by counties for digital or other
maps, compilations or other works.**

1 (a) The board shall terminate the first day of April, two
2 thousand seven, pursuant to the provisions of article ten,
3 chapter four of this code, unless sooner terminated, continued
4 or reestablished pursuant to the provisions of that article. The
5 board shall, as its last official act prior to its termination,
6 transfer all right, title and interest to any maps, compilations or
7 other works that may be created as a result of the statewide

8 addressing and mapping intended to be accomplished by this
9 article to the respective county commissions.

10 (b) Upon the termination of the board, county commissions
11 shall maintain and update the addressing and mapping systems
12 within their respective jurisdictions under the standards
13 established by the board, as updated thereafter by the public
14 service commission under this section.

15 (c) Upon termination of the board, the public service
16 commission shall, from time to time as it finds reasonable and
17 in the public interest, maintain and update the standards for
18 statewide addressing and mapping in accordance with the
19 procedures for rulemaking under section seven, article one,
20 chapter twenty-four of this code.

21 (d) The public service commission is hereby authorized to
22 prescribe rules, in accordance with the procedures for
23 rulemaking under section seven, article one, chapter twenty-
24 four of this code and effective upon termination of the board,
25 for standard fees to be charged by county commissions for
26 copies or use of any maps, compilations or other works created
27 as a result of the statewide addressing and mapping to be
28 accomplished by this article and to be maintained and updated
29 by the county commissions after the termination of the board.
30 The rules must include the exemptions provided under section
31 nine of this article. The fees established by the rules must be
32 reasonable and must, to the extent possible, be based on cost.
33 The public service commission shall, from time to time as it
34 finds reasonable and in the public interest, revise and update
35 these rules, including, without limitation, the standard fees to be
36 charged.

§24E-1-12. Liberal construction.

1 This article is remedial and is to be construed liberally in
2 order to effectuate its purposes.

CHAPTER 4

(Com. Sub. for H. B. 2870 — By Delegates R. M. Thompson,
Craig, Frederick and Flanigan)

[Passed April 14, 2001; in effect ninety days from passage.]

AN ACT to amend and reenact section four, article one-a, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend article one-b of said chapter by adding thereto a new section, designated section twenty-five, all relating to authorizing the adjutant general to appoint an assistant adjutant general and other general officer positions; and to provide a two thousand dollar bonus to those members who accept a commission upon graduation from officer candidate school.

Be it enacted by the Legislature of West Virginia:

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

Article

1A. Adjutant General.

1B. National Guard.

ARTICLE 1A. ADJUTANT GENERAL.

§15-1A-4. Assistant adjutants general and other authorized general officers.

1 The governor shall appoint an assistant adjutant general for
2 air and an assistant adjutant general for army, each with the
3 rank of brigadier general, or any other rank recognized by
4 federal authority, who shall be the deputy commander of the air
5 national guard and the deputy commander of the army national
6 guard, respectively. The adjutant general may appoint an
7 assistant adjutant general for the West Virginia national guard,
8 and any other general officer positions that are federally
9 authorized by tables of distribution and allowance, modified
10 tables of organization and equipment, and joint manning
11 documents, each with the rank of brigadier general, or any other
12 rank recognized by federal authority. The adjutant general may
13 also appoint an assistant adjutant general with the rank of
14 colonel or any other rank recognized by the federal authority,
15 who shall be the executive officer and administrative assistant
16 to assist the adjutant general in the administration of the
17 adjutant general's department (or department of military
18 affairs). The assistant adjutant general serving as the executive
19 officer and the administrative assistant may also be the deputy
20 commander of the army or air national guard. The assistant
21 adjutants general shall be upon appointment, federally recog-
22 nized officers of the air national guard and the army national
23 guard, respectively.

ARTICLE 1B. NATIONAL GUARD.

§15-1B-25. Commissioning bonus.

1 Upon graduation from the officer candidate school con-
2 ducted at the regional training institute, Camp Dawson, each
3 member of the West Virginia army national guard who accepts
4 a commission shall be entitled to a commissioning bonus of two
5 thousand dollars.

CHAPTER 5

(Com. Sub. for H. B. 2119 — By Delegate Warner)

[Passed April 13, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article one, chapter fifty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to updating financial reporting requirements of the auditor, supreme court of appeals and the secretary of state to recognize the electronic accounting control system.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. FEES AND ALLOWANCES.

§59-1-4. Fees collected by secretary of state, auditor and clerk of supreme court of appeals to be paid into state treasury; accounts; reports.

1 The fees to be charged by the auditor, secretary of state and
2 clerk of the supreme court of appeals, by virtue of this article or
3 any other law, shall be the property of the state of West
4 Virginia, and they and each of them shall account for and pay
5 into the state treasury at least once every thirty days all fees, by
6 any of them collected, or appearing to be due to the state, to the
7 credit of the general state fund or other fund as provided by
8 law. The auditor, secretary of state and clerk of the supreme
9 court of appeals shall each keep a complete and accurate

10 account by items of all fees collected by them, and the nature of
11 the services rendered for which all fees were charged and
12 collected, in accordance with generally accepted accounting
13 principles, as provided in article two, chapter five-a of this
14 code, and all accounts shall be open to inspection and audit as
15 provided in article two, chapter four of this code.

CHAPTER 6

(H. B. 2803 — By Delegates Warner and Michael)

[Passed April 14, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article two-a, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the qualifications of the director of the state aeronautics commission.

Be it enacted by the Legislature of West Virginia:

That section five, article two-a, 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 2A. STATE AERONAUTICS COMMISSION.

§29-2A-5. Director of aeronautics; appointment, qualifications, compensation, powers and duties; administrative and other assistants.

1 A director of aeronautics shall be appointed by the commis-
2 sion, who shall serve for an indefinite term at the pleasure of
3 the commission. The director shall be appointed with due
4 regard to his or her fitness, by aeronautical education and by

5 knowledge of and recent practical experience in aeronautics, for
6 the efficient dispatch of the powers and duties vested in and
7 imposed upon him by this article. The director shall devote his
8 or her time to the duties of his or her office as required and
9 prescribed by this article and shall not have any pecuniary
10 interest in, or any stock in, or bonds of, any civil aeronautical
11 enterprise. The director shall receive such compensation as the
12 commission may determine, which said compensation shall,
13 however, conform in general to the compensation received by
14 persons occupying positions of similar importance and respon-
15 sibility with other agencies of this state. The director shall be
16 reimbursed for all traveling and other expenses incurred by him
17 or her in the discharge of his or her official duties in accordance
18 with state travel rules. The director shall be the executive
19 officer of the commission and under its supervision shall
20 administer the provisions of this article and the rules and orders
21 established thereunder and all other laws of the state relative to
22 aeronautics. The director shall attend, but not vote, at all
23 meetings of the commission. The director shall act as secretary
24 of the commission and shall be in charge of its offices and
25 responsible to the commission for the preparation of reports and
26 the collection and dissemination of data and other public
27 information relating to aeronautics. At the direction of the
28 commission the director shall, together with the chairman of the
29 commission, execute all contracts entered into by the commis-
30 sion which are legally authorized and for which funds are
31 provided in any appropriations act. The commission may, by
32 written order filed in its office, delegate to the director any of
33 the powers or duties vested or imposed upon it by this article.
34 Such delegated powers and duties may be exercised by such
35 director in the name of the commission. The commission may
36 also employ such administrative, engineering, technical and
37 clerical assistance as may be required. The director and such
38 other assistants may, under the supervision of the commission,
39 insofar as is reasonably possible, make available the engineer-

40 ing and other technical services of the commission, without
41 charge to any municipality, and with or without charge to any
42 other person desiring them, in connection with the construction,
43 maintenance or operation, or proposed construction, mainte-
44 nance or operation of any airport.



CHAPTER 7

(Com. Sub. for H. B. 2744 — By Delegates Williams,
Stemple, Butcher and Boggs)

[Passed April 10, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article nineteen, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section six, relating to liability for certain damage or destruction of a silvicultural or agricultural field test crop and damages recoverable.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 19. PRESERVATION OF AGRICULTURAL PRODUCTION.

§19-19-6. Liability for damage or destruction of silvicultural or agricultural field test crop; damages.

- 1 (a) Any person or legal entity who willfully and knowingly
- 2 damages or destroys, or allows an instrumentality within his or

3 her control to damage or destroy a silvicultural or agricultural
4 field test crop that is grown for personal purposes, commercial
5 purposes, or for testing or research purposes in the context of a
6 product development program in conjunction or coordination
7 with a private research facility or a university or any federal,
8 state or local government agency, shall be liable for twice the
9 market value of the crop damaged or destroyed prior to damage
10 or destruction, as determined by a court of competent jurisdic-
11 tion, plus interest and reasonable court costs. Where the
12 damaged or destroyed crops are grown for testing or research
13 purposes, damages shall also include twice the actual damages
14 relating to production, research, testing, replacement and crop
15 development costs directly related to the crop that has been
16 damaged or destroyed.

17 (b) The rights and remedies available under this section are
18 in addition to any other rights or remedies otherwise available
19 in law or statute.

20 (c) For the purpose of this section, the term “person” means
21 an individual or any nongovernmental group, association,
22 corporation or any other nongovernmental entity.



CHAPTER 8

**(Com. Sub. for H. B. 2555 — By Delegates R. M. Thompson,
Amores, Staton, Mahan, Manuel, Warner and Bean)**

[Passed April 6, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections four and five, article ten,
chapter seven of the code of West Virginia, one thousand nine

hundred thirty-one, as amended; and to amend and reenact section eight, article twenty, chapter nineteen of said code, all relating to humane destruction of animals by humane officers, animal shelters and dog wardens; adding situations in which a humane officer may seize animals; defining the term humanely destroyed; providing for humane destruction of certain animals; permitting the shooting of animals in emergencies; providing guidelines for the shooting of animals; eliminating requirement that seized animals be kept pending disposition of criminal proceedings; clarifying liability of certain persons for costs of maintenance of confiscated animals; providing civil and criminal immunity to certified animal euthanasia technicians; and providing that humane officers may shelter animals at places other than shelters.

Be it enacted by the Legislature of West Virginia:

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

Chapter

7. County Commissions and Officers.

19. Agriculture.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 10. HUMANE OFFICERS.

§7-10-4. Custody and care of animals abandoned, neglected or cruelly treated; hearing; liability for costs; exclusions.

§7-10-5. Destruction of animals.

§7-10-4. Custody and care of animals abandoned, neglected or cruelly treated; hearing; liability for costs; exclusions.

1 (a) Subject to the provisions of subsection (h) of this
2 section, a humane officer shall take possession of any animal,
3 including birds or wildlife in captivity, known or believed to be
4 abandoned, neglected, deprived of necessary sustenance,
5 shelter, medical care or reasonable protection from fatal
6 freezing or heat exhaustion, or cruelly treated or used, as
7 defined in sections nineteen and nineteen-a, article eight,
8 chapter sixty-one of this code.

9 (b) The owner or person in possession, if his or her identity
10 and residence is known, of any animal seized pursuant to
11 subsection (a) of this section, shall be provided written notice
12 of the seizure, his or her liability for the cost and care of the
13 animal seized as provided in this section, and the right to
14 request a hearing before a magistrate in the county where the
15 animal was seized. The magistrate court shall schedule any
16 hearing requested within ten working days of the receipt of the
17 request. The failure of an owner or person in possession to
18 request a hearing within five working days of the seizure is
19 prima facie evidence of the abandonment of the animal. At the
20 hearing, if requested, the magistrate shall determine if probable
21 cause exists to believe that the animal was abandoned, ne-
22 glected or deprived of necessary sustenance, shelter, medical
23 care or reasonable protection from fatal freezing or heat
24 exhaustion, or otherwise treated or used cruelly as set forth in
25 this section.

26 (c) Upon finding of probable cause, or if no hearing is
27 requested and the magistrate finds probable cause based upon
28 the affidavit of the humane officer, the magistrate shall enter an
29 order authorizing any humane officer to maintain possession of
30 the animal pending further proceedings. During this period the
31 humane officer is authorized to place the animal in a safe
32 private home or other safe private setting in lieu of retaining the

33 animal in an animal shelter. The person whose animal is seized
34 is liable for all costs of the care of the seized animal.

35 (d) Any person whose animal is seized and against whom
36 a finding of probable cause is rendered pursuant to this section
37 is liable for the costs of the care, medical treatment and
38 provisions for the animal during any period it remains in the
39 possession of the humane officer. The magistrate may require
40 the person liable for these costs to post bond to provide for the
41 maintenance of the seized animal.

42 (e) If, after the humane officer takes possession of the
43 animal pursuant to the finding of probable cause, a licensed
44 veterinarian determines that the animal should be humanely
45 destroyed to end its suffering, the veterinarian may order the
46 animal to be humanely destroyed and neither the humane
47 officer, animal euthanasia technician, nor the veterinarian is
48 subject to any civil or criminal liability as a result of such
49 action.

50 (f) The term “humanely destroyed” as used in this section
51 means:

52 (1) Humane euthanasia of an animal by hypodermic
53 injection by a licensed veterinarian or by an animal euthanasia
54 technician certified in accordance with the provisions of article
55 ten-a, chapter thirty of this code; or

56 (2) any other humane euthanasia procedure approved by the
57 American veterinary medical association, the humane society
58 of the United States, or the American humane association.

59 (g) In case of an emergency in which an animal cannot be
60 humanely destroyed in an expeditious manner, an animal may
61 be destroyed by shooting if:

62 (1) The shooting is performed by someone trained in the
63 use of firearms with a weapon and ammunition of suitable
64 caliber and other characteristics designed to produce instanta-
65 neous death by a single shot; and

66 (2) Maximum precaution is taken to minimize the animal's
67 suffering and to protect other persons and animals.

68 (h) The provisions of this section do not apply to farm
69 livestock, poultry, gaming fowl or wildlife kept in private or
70 licensed game farms if kept and maintained according to usual
71 and accepted standards of livestock, poultry, gaming fowl,
72 wildlife or game farm production and management, nor to the
73 humane use of animals or activities regulated under and in
74 conformity with the provisions of 7 U.S.C. §2131 et seq. and
75 the regulations promulgated thereunder.

§7-10-5. Destruction of animals.

1 Any humane officer or animal shelter lawfully may
2 humanely destroy or cause to be humanely destroyed any
3 animal in a manner consistent with the provisions of section
4 four of this article when, in the judgment of the humane officer
5 or director or supervisor of an animal shelter and upon the
6 written certificate of a regularly licensed veterinary surgeon, the
7 animal appears to be injured, disabled or diseased past recovery
8 or the animal is unclaimed.

CHAPTER 19. AGRICULTURE.

ARTICLE 20. DOGS AND CATS.

§19-20-8. Impounding and disposition of dogs; costs and fees.

1 (a) All dogs seized and impounded as provided in this
2 article, except dogs taken into custody under section two of this
3 article, shall be kept housed and fed in the county dog pound for
4 five days after notice of seizure and impounding has been given

5 or posted as required by this article, at the expiration of which
6 time all dogs which have not previously been redeemed by their
7 owners as provided in this article, shall be sold or humanely
8 destroyed. No dog sold as provided in this section may be
9 discharged from the pound until the dog has been registered and
10 provided with a valid registration tag.

11 (b) The term “humanely destroyed” as used in this section
12 means:

13 (1) Humane euthanasia of an animal by hypodermic
14 injection by a licensed veterinarian or by an animal euthanasia
15 technician certified in accordance with the provisions of article
16 ten-a, chapter thirty of this code; or

17 (2) Any other humane euthanasia procedure approved by the
18 American veterinary medical association, the humane society
19 of the united states, or the American humane association.

20 (c) In an emergency or in a situation in which a dog cannot
21 be humanely destroyed in an expeditious manner, a dog may be
22 destroyed by shooting if:

23 (1) The shooting is performed by someone trained in the
24 use of firearms with a weapon and ammunition of suitable
25 caliber and other characteristics designed to produce instantane-
26 ous death by a single shot; and

27 (2) Maximum precaution is taken to minimize the dog’s
28 suffering and to protect other persons and animals.

29 (d) The owner, keeper or harbinger of any dog seized and
30 impounded under the provisions of this article may, at any time
31 prior to the expiration of five days from the time that notice of
32 the seizure and impounding of the dog has been given or posted
33 as required by this article, redeem the dog by paying to the dog
34 warden or his or her authorized agent or deputy all of the costs

35 assessed against the dog, and by providing a valid certificate of
36 registration and registration tag for the dog.

37 (e) Reasonable costs and fees, in an amount to be deter-
38 mined from time to time by the county commission, shall be
39 assessed against every dog seized and impounded under the
40 provisions of this article, except dogs taken into custody under
41 section two of this article. The cost shall be a valid claim in
42 favor of the county against the owner, keeper or harborer of any
43 dog seized and impounded under the provisions of this article
44 and not redeemed or sold as provided in this section, and the
45 costs shall be recovered by the sheriff in a civil action against
46 the owner, keeper or harborer.

47 (f) A record of all dogs impounded, the disposition of the
48 dogs and a statement of costs assessed against each dog shall be
49 kept by the dog warden and a transcript thereof shall be
50 furnished to the sheriff quarterly.



CHAPTER 9

(S. B. 58 — By Senator Bailey)



[Passed April 12, 2001; in effect ninety days from passage. Approved by the Governor.]



AN ACT to amend article one, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-three; and to amend and reenact section twenty, article one, chapter five of said code, all relating to annual reports; and requiring that annual reports to be submitted by agencies, commissions and boards to the Legislature, legislative manager, legislative auditor, president of the Senate and speaker of the House of Delegates or the joint

committee on government and finance be sent to the legislative librarian.

Be it enacted by the Legislature of West Virginia:

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

Chapter

4. The Legislature.

- 5. General powers and authority of the governor, secretary of state and attorney general; board of public works; miscellaneous agencies, commissions, offices, programs, etc.**

CHAPTER 4. THE LEGISLATURE.

ARTICLE 1. OFFICERS, MEMBERS AND EMPLOYEES; APPROPRIATIONS; INVESTIGATIONS; DISPLAY OF FLAGS; RECORDS; USE OF CAPITOL BUILDING; PREFILING OF BILLS AND RESOLUTIONS; STANDING COMMITTEES; INTERIM MEETINGS; NEXT MEETING OF THE SENATE.

§4-1-23. Annual reports to be sent to the legislative librarian.

1 Any office, agency, commission or board required by any
2 section of this code to provide an annual report to the Legisla-
3 ture, legislative manager, legislative auditor, the president of
4 the Senate and the speaker of the House of Delegates or the
5 joint committee on government and finance shall submit the
6 report to the legislative librarian. All audit reports shall be
7 submitted to the legislative manager.

**CHAPTER 5. GENERAL POWERS AND AUTHORITY OF
THE GOVERNOR, SECRETARY OF STATE AND ATTOR-
NEY GENERAL; BOARD OF PUBLIC WORKS;
MISCELLANEOUS AGENCIES, COMMISSIONS,
OFFICES, PROGRAMS, ETC.**

ARTICLE 1. THE GOVERNOR.

**§5-1-20. Reports to the governor; form and contents; transmis-
sion to the Legislature; special reports.**

1 The subordinate officers of the executive department and
2 the officers of all public institutions of the state shall make an
3 annual report to the governor as soon as possible after the close
4 of each fiscal year, notwithstanding any other provision of law
5 to the contrary. All state officers, boards, commissions,
6 departments and institutions required by law to make reports to
7 the governor, the Legislature or any administrative board or
8 state official shall cover fiscal year periods and such reports
9 shall be submitted in typewritten form or any legible form
10 produced by mechanical means.

11 The governor shall by executive order prescribe the general
12 contents of the reports to be submitted to him. The form and
13 format of the reports shall be as prescribed in section twenty-
14 eight, article three, chapter five-a of this code.

15 The governor shall transmit copies of the report to the
16 Legislature and lodge a copy of all such reports with the
17 department of archives and history where the same shall be kept
18 as permanent records. All annual reports to the Legislature shall
19 be submitted to the legislative librarian.

20 The governor may at any time require information in
21 writing, under oath, from any officer, board, department or
22 commission of the executive department or the principal officer
23 or manager of any state institution, upon any subject relating to
24 the condition, management and expense of their respective
25 offices or institutions.

CHAPTER 10

(H. B. 2385 — By Delegates Michael, Doyle, Mezzatesta,
Varner, Warner, Leach and Ashley)

[Passed February 23, 2001; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, title one, chapter ten, acts of the Legislature, regular session, two thousand, relating to making appropriations of public money out of the treasury in accordance with section fifty-one, article six of the constitution and removing the authority of the auditor to transfer within the general revenue fund certain amounts.

Be it enacted by the Legislature of West Virginia:

That section three, title one, chapter ten, acts of the Legislature, regular session, two thousand, be amended and reenacted to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CHAPTER 11

**(H. B. 2996 — By Delegates Michael, Doyle, Browning,
Keener, Anderson, Ashley and Fletcher)**

[Passed April 12, 2001; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public moneys out of the treasury from the balance of moneys remaining as an unappropriated surplus balance in the state fund, general revenue, to the governor's office, fund 0101, fiscal year 2001, organization 0100, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand one.

WHEREAS, The governor submitted to the Legislature the executive budget document, dated February 14, 2001, which included a statement of the state fund, general revenue, setting forth therein the cash balance and investments as of July 1, 2000, and further included the estimate of revenues for the fiscal year 2001, less net appropriation balances forwarded and regular appropriations for the fiscal year 2001; and

WHEREAS, It appears from the governor's executive budget document there now remains an unappropriated surplus balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, two thousand one; 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 one, to fund 0101, fiscal year 2001, organization 0100, be supplemented and amended by increasing the total appropriation by two hundred fifty thousand dollars as follows:

1 TITLE II — APPROPRIATIONS.

2 **Section 1. Appropriations from general revenue.**3 **EXECUTIVE**4 *5—Governor's Office*

5 (WV Code Chapter 5)

6 Fund 0101 FY 2001 Org 0100

7			General
8		Act-	Revenue
9		ivity	Funds
10	15a	Publication of Papers and	
11	15b	Transition Expenses - Surplus . .	359 \$ 250,000

12 Any unexpended balance remaining in the appropriation for
 13 publication of papers and transition expenses - surplus (fund
 14 0101, activity 359) at the close of fiscal year 2001 is hereby
 15 reappropriated for expenditure during the fiscal year 2002.

16 The purpose of this bill is to supplement this account in the
 17 budget act for the fiscal year ending the thirtieth day of June,
 18 two thousand one, by adding two hundred fifty thousand dollars
 19 to a new line item for publication of papers and transition
 20 expenses, for expenditure during the fiscal year two thousand
 21 one.

CHAPTER 12

(H. B. 3235 — By Delegates Michael, Boggs, Browning,
 Doyle, Warner, Ashley and Fletcher)

[Passed April 12, 2001; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public moneys out of the treasury from the balance of moneys remaining as an unappropriated surplus balance in the state fund, general revenue, to the governor's office, fund 0101, fiscal year 2001, organization 0100, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand one.

WHEREAS, The governor submitted to the Legislature the executive budget document, dated February 14, 2001, which included a statement of the state fund, general revenue, setting forth therein the cash balance and investments as of July 1, 2000, and further included the estimate of revenues for the fiscal year 2001, less net appropriation balances forwarded and regular appropriations for the fiscal year 2001; and

WHEREAS, It appears from the governor's executive budget document there now remains an unappropriated surplus balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, two thousand one; 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 one, to fund 0101, fiscal year 2001, organization 0100, be supplemented and amended by increasing the total appropriation by eight hundred fifty thousand dollars as follows:

- 1 **TITLE II — APPROPRIATIONS.**
- 2 **Section 1. Appropriations from general revenue.**
- 3 **EXECUTIVE**
- 4 *5—Governor's Office*
- 5 (WV Code Chapter 5)
- 6 Fund 0101 FY 2001 Org 0100

			General
			Revenue
		Act-	Funds
		ivity	
10	1	Personal Services - Surplus	\$ 400,000
11	4	Employee Benefits - Surplus	100,000
12	6	Unclassified - Surplus (R)	350,000

13 Any unexpended balance remaining in the appropriation for
 14 unclassified - surplus (fund 0101, activity 097) at the close of
 15 fiscal year 2001 is hereby reappropriated for expenditure during
 16 the fiscal year 2002.

17 The purpose of this bill is to supplement this account in the
 18 budget act for the fiscal year ending the thirtieth day of June,
 19 two thousand one, by increasing the existing appropriation for
 20 personal services by four hundred thousand dollars, employee
 21 benefits by one hundred thousand dollars, and unclassified by
 22 three hundred fifty thousand dollars, for expenditure during the
 23 fiscal year two thousand one.



CHAPTER 13

**(H. B. 3247 — By Delegates Cann, Frederick, Keener,
 R. M. Thompson, Warner, H. White and Stalnaker)**

[Passed April 13, 2001; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public moneys out of the treasury from the balance of moneys remaining as an unappropriated surplus balance in the state fund, general revenue, to the governor’s office - custodial fund, fund 0102, fiscal year 2001, organization 0100, all supplementing and amending the

appropriation for the fiscal year ending the thirtieth day of June, two thousand one.

WHEREAS, The governor submitted to the Legislature the executive budget document, dated February 14, 2001, which included a statement of the state fund, general revenue, setting forth therein the cash balance and investments as of July 1, 2000, and further included the estimate of revenues for the fiscal year 2001, less net appropriation balances forwarded and regular appropriations for the fiscal year 2001; and

WHEREAS, It appears from the governor’s executive budget document there now remains an unappropriated surplus balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, two thousand one; 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 one, to fund 0102, fiscal year 2001, organization 0100, be supplemented and amended by increasing the total appropriation by fifty thousand dollars as follows:

1 TITLE II — APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 EXECUTIVE

4 6—Governor’s Office—

5 Custodial Fund

6 (WV Code Chapter 5)

7 Fund 0102 FY 2001 Org 0100

8	9	10	11			General
			1		Act-	Revenue
					ivity	Funds
				Unclassified - Total - Surplus	284	\$ 50,000

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 one, by increasing the existing appropriation for
 15 unclassified - total by fifty thousand dollars for expenditure
 16 during the fiscal year two thousand one.



CHAPTER 14

(H. B. 3248 — By Delegates Michael, Boggs, Compton, Doyle,
 Kominar, Proudfoot, Ashley and Fletcher)

 [Passed April 13, 2001; 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 agriculture, fund 0131, fiscal year 2001, organization 1400, as originally appointed by chapter ten, acts of the Legislature, regular session, two thousand, known as the “Budget Bill”.

Be it enacted by the Legislature of West Virginia:

That the items of the total appropriation from the state fund, general revenue, to the department of agriculture, fund 0131, fiscal year 2001, organization 1400, be amended and reduced in the existing line items as follows:

1 TITLE II—APPROPRIATIONS.

2 **Section 1. Appropriations from general revenue.**

3 **EXECUTIVE**

4 *12—Department of Agriculture*

5 (WV Code Chapter 19)

6 Fund 0131 FY 2001 Org 1400

7			General
8		Act-	Revenue
9		ivity	Funds

10	16	Moorefield Agriculture Center (R) .	786	\$ 60,000
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11 And, that the items of the total appropriations from the state
 12 fund, general revenue, to the department of agriculture, fund
 13 0131, fiscal year 2001, organization 1400, be amended and
 14 increased in the existing line item as follows:

15 TITLE II—APPROPRIATIONS.

16 Section 1. Appropriations from general revenue.

17 EXECUTIVE

18 *12—Department of Agriculture*

19 (WV Code Chapter 19)

20 Fund 0131 FY 2001 Org 1400

21			General
22		Act-	Revenue
23		ivity	Funds

24	6	Unclassified (R)	099	\$ 60,000
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25 The purpose of this supplementary appropriation bill is to
 26 supplement, amend, reduce and increase items of existing
 27 appropriations in the aforesaid account for the designated

28 spending unit. The item for Moorefield agriculture center (R)
29 (activity 786) is reduced by sixty thousand dollars. The item for
30 unclassified (R) (activity 099) is increased by sixty thousand
31 dollars. The amounts as itemized for expenditure in the fiscal
32 year ending the thirtieth day of June, two thousand one, shall be
33 available for expenditure immediately upon the effective date
34 of this bill.

CHAPTER 15

**(S. B. 469 — By Senators Tomblin, Mr. President, Anderson,
Bailey, Bowman, Chafin, Craigo, Edgell, Facemyer, Helmick,
Jackson, Love, McCabe, McKenzie, Minear, Mitchell,
Plymale, Prezioso, Sharpe, Snyder and Sprouse)**

[Passed April 3, 2001; in effect from passage. Approved by the Governor.]

AN ACT expiring funds to the unappropriated surplus balance in the state fund, general revenue, for the fiscal year ending the thirtieth day of June, two thousand one, in the amount of three hundred thousand dollars from the secretary of state—ucc account fund, fund 1605, fiscal year 2001, organization 1600, and making a supplementary appropriation of public moneys out of the treasury from the unappropriated surplus balance for the fiscal year ending the thirtieth day of June, two thousand one, to the secretary of state, fund 0155, fiscal year 2001, organization 1600.

WHEREAS, The Legislature finds that the account balance in the secretary of state—ucc account fund, fund 1605, fiscal year 2001, organization 1600, exceeds that which is necessary for the purposes for which the account was established; and

WHEREAS, By the provisions of this legislation, there now remains an unappropriated surplus balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, two thousand one; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of funds in the secretary of state–ucc account fund, fund 1605, fiscal year 2001, organization 1600, be decreased by expiring the amount of three hundred thousand dollars to the unappropriated surplus balance of the state fund, general revenue, and that the total appropriation for the fiscal year ending the thirtieth day of June, two thousand one, to the secretary of state, fund 0155, fiscal year 2001, organization 1600, be supplemented and amended by increasing the total appropriation as follows:

1 TITLE II–APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 17–Secretary of State

4 (WV Code Chapters 3, 5 and 59)

5 Fund 0155 FY 2001 Org 1600

6							General
7							Revenue
8						Act-	Fund
						ivity	

9	6	Unclassified–Surplus	097	\$	300,000		
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10 The purpose of this supplementary appropriation bill is to
11 expire the sum of three hundred thousand dollars from the
12 secretary of state–ucc account fund, fund 1605, fiscal year
13 2001, organization 1600, and to supplement the secretary of
14 state, fund 0155, fiscal year 2001, organization 1600, in the
15 budget act for the fiscal year ending the thirtieth day of June,
16 two thousand one, by adding three hundred thousand dollars to

- 17 the existing appropriation for unclassified for expenditure
18 during fiscal year two thousand one.

CHAPTER 16

**(S. B. 706 — By Senators Craigo, Sharpe, Jackson, Chafin,
Prezioso, Plymale, Love, Helmick, Bowman, Bailey, Anderson,
Edgell, Unger, McCabe, Boley, Minear and Sprouse)**

[Passed April 11, 2001; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary transfer of public moneys out of the treasury from the unappropriated surplus balance in other funds, by transferring an amount not to exceed sixty thousand dollars which has accrued or will accrue from the treasurer's office, tobacco company settlement proceeds, fund 1316, organization 1300, to the department of administration, public employees insurance agency, nonstate health claims fund, fund 2183, organization 0225.

WHEREAS, The money has been recovered from a settlement with the Ligget group, one of the tobacco companies sued by the public employees insurance agency. The lawsuit seeks to recover moneys expended by the public employees insurance agency for treatment of members in its plan for illness related to tobacco use. This money will be used by the public employees insurance agency to pay for medical treatment of public employees insurance agency insureds and legal fees associated with the settlement with the Ligget group; and

WHEREAS, The governor has established that there now remains an unappropriated surplus balance in the treasurer's office, tobacco

company settlement proceeds, fund 1316, organization 1300, available for transfer; therefore

Be it enacted by the Legislature of West Virginia:

1 That an amount not to exceed sixty thousand dollars which
2 has accrued or will accrue in the unappropriated surplus balance
3 of the treasurer's office, tobacco company settlement proceeds,
4 fund 1316, organization 1300, be decreased and expired by
5 transferring an amount not to exceed sixty thousand dollars to
6 the department of administration, public employees insurance
7 agency, nonstate health claims fund, fund 2183, organization
8 0225.

9 The purpose of this bill is to decrease and expire a sum not
10 to exceed sixty thousand dollars which has accrued or will
11 accrue in the unappropriated surplus balance in other funds,
12 fund 1316, organization 1300, by transferring an amount not to
13 exceed sixty thousand dollars to fund 2183, organization 0225,
14 to pay for medical treatment of public employees insurance
15 agency insureds and legal fees associated with the settlement
16 with the Ligget group.

CHAPTER 17

**(S. B. 480 — By Senators Craigo, Sharpe, Jackson, Chafin,
Prezioso, Plymale, Love, Helmick, Bowman, Bailey, Anderson,
Edgell, Unger, McCabe, Boley, Minear and Sprouse)**

[Passed March 29, 2001; in effect from passage. Approved by the Governor.]

AN ACT expiring funds to the balance of the department of administration - office of the secretary - natural gas contract refund fund,

fund 2040, fiscal year 2001, organization 0201, for the fiscal year ending the thirtieth day of June, two thousand one, in the amount of one hundred thousand dollars from the department of administration - division of general services - capitol complex - maintenance, fund 2251, fiscal year 2001, organization 0211.

WHEREAS, The Legislature finds that the account balance in the department of administration - division of general services - capitol complex - maintenance, fund 2251, fiscal year 2001, organization 0211, exceeds that which is necessary for the purposes for which the account was established; therefore

Be it enacted by the Legislature of West Virginia:

1 That the balance of the funds available for expenditure in
2 the fiscal year ending the thirtieth day of June, two thousand
3 one, to the department of administration - division of general
4 services - capitol complex - maintenance, fund 2251, fiscal year
5 2001, organization 0211, be decreased by expiring the amount
6 of one hundred thousand dollars to the balance of the depart-
7 ment of administration - office of the secretary - natural gas
8 contract refund fund, fund 2040, fiscal year 2001, organization
9 0201, during the fiscal year two thousand one.

10 The purpose of this bill is to expire the sum of one hundred
11 thousand dollars from the department of administration -
12 division of general services - capitol complex - maintenance,
13 fund 2251, fiscal year 2001, organization 0211, to the balance
14 of the department of administration - office of the secretary -
15 natural gas contract refund fund, fund 2040, fiscal year 2001,
16 organization 0201, for the fiscal year ending the thirtieth day of
17 June, two thousand one, to be available for expenditure during
18 the fiscal year two thousand one.

CHAPTER 18

**(H. B. 3254 —By Delegates Michael, Doyle, Browning,
Compton, Boggs, Fletcher and G. White)**

[Passed April 13, 2001; in effect from passage. Approved by the Governor.]

AN ACT expiring funds to the unappropriated balance in the state fund, general revenue, for the fiscal year ending the thirtieth day of June, two thousand two, in the amount of one million five hundred thousand dollars from the board of risk and insurance management — premium tax savings fund, fund 2367, fiscal year 2002, organization 0218.

WHEREAS, The Legislature finds that the account balance in the board of risk and insurance management — premium tax savings fund, fund 2367, fiscal year 2002, organization 0218, will exceed that which is necessary for the purposes for which the account was established; therefore

Be it enacted by the Legislature of West Virginia:

1 That the balance of funds available for expenditure in the
2 fiscal year ending the thirtieth day of June, two thousand two,
3 to the board of risk and insurance management — premium tax
4 savings fund, fund 2367, fiscal year 2002, organization 0218,
5 be decreased by expiring the amount of one million five
6 hundred thousand dollars to the unappropriated balance of the
7 state fund, general revenue, to be available for appropriation
8 during the fiscal year two thousand two.

9 The purpose of this bill is to expire the sum of one million
10 five hundred thousand dollars from the board of risk and

11 insurance management — premium tax savings fund, fund
12 2367, fiscal year 2002, organization 0218, to the unappropriated
13 balance in the state fund, general revenue, for the fiscal year
14 ending the thirtieth day of June, two thousand two, to be
15 available for appropriation during the fiscal year two thousand
16 two.

CHAPTER 19

**(S. B. 690 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]**

[Passed April 12, 2001; in effect from passage. Approved by the Governor.]

AN ACT expiring funds to the unappropriated surplus balance in the state fund, general revenue, for the fiscal year ending the thirtieth day of June, two thousand one, in the amount of one million dollars from the bureau of commerce - West Virginia economic development authority - industrial development loans, fund 3148, fiscal year 2001, organization 0307, and making a supplementary appropriation of public moneys out of the treasury from the unappropriated surplus balance for the fiscal year ending the thirtieth day of June, two thousand one, to the governor's office - civil contingent fund, fund 0105, fiscal year 2001, organization 0100.

WHEREAS, The Legislature finds that the account balance in the bureau of commerce - West Virginia economic development authority - industrial development loans, fund 3148, fiscal year 2001, organization 0307, exceeds that which is necessary for the purposes for which the account was established; and

WHEREAS, By the provisions of this legislation there now remains an unappropriated surplus balance in the state treasury which is

available for appropriation during the fiscal year ending the thirtieth day of June, two thousand one; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of funds in the bureau of commerce - West Virginia economic development authority - industrial development loans, fund 3148, fiscal year 2001, organization 0307, be decreased by expiring the amount of one million dollars to the unappropriated surplus balance of the state fund, general revenue, and that the total appropriation for fiscal year ending the thirtieth day of June, two thousand one, to the governor's office - civil contingent fund, fund 0105, fiscal year 2001, organization 0100, be supplemented and amended by increasing the total appropriation by one million dollars in the line item 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 2001 Org 0100

8

General

9

Act-**Revenue**

10

ivity**Fund**

11

1 Civil Contingent Fund-Total-Surplus 238 \$ 1,000,000

12

The purpose of this bill is to expire the sum of one million dollars from the bureau of commerce - West Virginia economic

13

14 development authority - industrial development loans, fund
15 3148, fiscal year 2001, organization 0307, and to supplement
16 the governor's office - civil contingent fund, fund 0105, fiscal
17 year 2001, organization 0100, in the budget act for the fiscal
18 year ending the thirtieth day of June, two thousand one, by
19 adding one million dollars to the existing appropriation for civil
20 contingent fund-total-surplus.

CHAPTER 20

**(S. B. 707 — By Senators Craig, Sharpe, Jackson, Chafin,
Prezioso, Plymale, Love, Helmick, Bowman, Bailey, Anderson,
Edgell, Unger, McCabe, Boley, Minear and Sprouse)**

[Passed April 11, 2001; 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 one, in the bureau of commerce, West Virginia development office - office of coalfield community development, fund 3162, fiscal year 2001, organization 0307, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand one.

WHEREAS, The governor has established that there now remains an unappropriated balance in the bureau of commerce, West Virginia development office - office of coalfield community development, fund 3162, fiscal year 2001, organization 0307, available for expenditure during the fiscal year ending the thirtieth day of June, two thousand one; 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 one, to fund 3162, fiscal year 2001, organization 0307, be supplemented and amended by increasing the total appropriation by fifty thousand dollars as follows:

1 TITLE II—APPROPRIATIONS.

2 **Sec. 3. Appropriations from other funds.**

3 **BUREAU OF COMMERCE**

4 *182-West Virginia Development Office—*

5 *Office of Coalfield Community Development*

6 (WV Code Chapter 5B)

7 Fund 3162 FY 2001 Org 0307

8	9	10	1	Unclassified-Total	Act- ivity	Other Funds	\$ 50,000
					096		

11 The purpose of this supplementary appropriation bill is to
12 supplement this fund in the budget act for the fiscal year ending
13 the thirtieth day of June, two thousand one, by adding fifty
14 thousand dollars to the existing appropriation for unclassified -
15 total for expenditure during the fiscal year two thousand one.



CHAPTER 21

(H. B. 3257 —By Delegates Michael, Browning,
Compton, Doyle, Frederick and Leach)

[Passed April 14, 2001; in effect from passage. Approved by the Governor.]

AN ACT expiring funds to the balance of the family protection services board, domestic violence legal services fund, fund 5455, fiscal year 2001, organization 0511, for the fiscal year ending the thirtieth day of June, two thousand one, in the amount of one hundred fifty thousand dollars from the unappropriated balance in the West Virginia health care authority, fund 5375, fiscal year 2001, organization 0507.

WHEREAS, The Legislature finds that the balance in the West Virginia health care authority, fund 5375, fiscal year 2001, organization 0507, exceeds that which is necessary for the purposes for which the account was established; therefore

Be it enacted by the Legislature of West Virginia:

1 That the balance of the family protection services board,
2 domestic violence legal services fund, fund 5455, fiscal year
3 2001, organization 0511, be increased by expiring to that fund
4 one hundred fifty thousand dollars from the unappropriated
5 balance of the West Virginia health care authority, fund 5375,
6 fiscal year 2001, organization 0507, to be available for expendi-
7 ture during the fiscal year two thousand one.

8 The purpose of this bill is to expire one hundred fifty
9 thousand dollars from the unappropriated balance in the West
10 Virginia health care authority, fund 5375, fiscal year 2001,
11 organization 0507, to the balance of the family protection
12 services board, domestic violence legal services fund, fund
13 5455, fiscal year 2001, organization 0511, for the fiscal year
14 ending the thirtieth day of June, two thousand one, to be
15 available for expenditure during the fiscal year two thousand
16 one.

CHAPTER 22

(S. B. 481 —By Senators Craigo, Sharpe, Jackson, Chafin, Prezioso, Plymale, Love, Helmick, Bowman, Bailey, Anderson, Edgell, Unger, McCabe, Boley, Minear and Sprouse)

[Passed March 29, 2001; 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 one, in the department of military affairs and public safety, West Virginia division of corrections - parolee supervision fees, fund 6362, fiscal year 2001, organization 0608, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand one.

WHEREAS, The governor has established that there now remains an unappropriated balance in the department of military affairs and public safety, West Virginia division of corrections - parolee supervision fees, fund 6362, fiscal year 2001, organization 0608, available for expenditure during the fiscal year ending the thirtieth day of June, two thousand one; 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 one, fund 6362, fiscal year 2001, organization 0608, be supplemented and amended by increasing the total appropriation by fifty-four thousand three hundred eighty-nine dollars as follows:

1 **TITLE II — APPROPRIATIONS.**

2 **Sec. 3. Appropriations from other funds.**

3 **DEPARTMENT OF MILITARY AFFAIRS**
 4 **AND PUBLIC SAFETY**

5 *148—West Virginia Division of Corrections—*

6 *Parolee Supervision Fees*

7 (WV Code Chapter 62)

8 Fund 6362 FY 2001 Org 0608

9		Act-	Other
10		ivity	Funds
11	1 Personal Services	001	\$ 20,356
12	2 Annual Increment	004	266
13	3 Employee Benefits	010	9,294
14	4 Unclassified	099	24,473

15 The purpose of this supplementary appropriation bill is to
 16 supplement this fund in the budget act for the fiscal year ending
 17 the thirtieth day of June, two thousand one, by adding twenty
 18 thousand three hundred fifty-six dollars to the existing appro-
 19 priation for personal services, two hundred sixty-six dollars to
 20 annual increment, nine thousand two hundred ninety-four
 21 dollars to employee benefits and twenty-four thousand four
 22 hundred seventy-three dollars to unclassified for expenditure
 23 during the fiscal year two thousand one.



CHAPTER 23

**(H. B. 3256 —By Delegates Michael, Doyle,
 Leach, Warner, Anderson, Ashley and Hall)**

[Passed April 13, 2001; in effect from passage. Approved by the Governor.]



AN ACT expiring funds to the unappropriated balance in the state fund, general revenue, for the fiscal year ending the thirtieth day of June, two thousand two, in the amount of seven hundred fifty thousand dollars from the insurance commissioner — insurance commission fund, fund 7152, fiscal year 2002, organization 0704.

WHEREAS, The Legislature finds that the account balance in the insurance commissioner — insurance commission fund, fund 7152, fiscal year 2002, organization 0704, will exceed that which is necessary for the purposes for which the account was established; therefore

Be it enacted by the Legislature of West Virginia:

1 That the balance of funds available for expenditure in the
2 fiscal year ending the thirtieth day of June, two thousand two,
3 to the insurance commissioner — insurance commission fund,
4 fund 7152, fiscal year 2002, organization 0704, be decreased by
5 expiring the amount of seven hundred fifty thousand dollars to
6 the unappropriated balance of the state fund, general revenue,
7 to be available for appropriation during the fiscal year two
8 thousand two.

9 The purpose of this bill is to expire the sum of seven
10 hundred fifty thousand dollars from the insurance commissioner
11 — insurance commission fund, fund 7152, fiscal year 2002,
12 organization 0704, to the unappropriated balance in the state
13 fund, general revenue, for the fiscal year ending the thirtieth
14 day of June, two thousand two, to be available for appropriation
15 during the fiscal year two thousand two.

CHAPTER 24

**(S. B. 482 — By Senators Craigo, Sharpe, Jackson, Chafin,
Prezioso, Plymale, Love, Helmick, Bowman, Bailey, Anderson,
Edgell, Unger, McCabe, Boley, Minear and Sprouse)**

[Passed March 30, 2001; 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 one, in alcohol beverage control administration, fund 7352, fiscal year 2001, organization 0708, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand one.

WHEREAS, The governor has established that there now remains an unappropriated balance in the alcohol beverage control administration, fund 7352, fiscal year 2001, organization 0708, available for expenditure during the fiscal year ending the thirtieth day of June, two thousand one; 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 one, fund 7352, fiscal year 2001, organization 0708, be supplemented and amended by increasing the total appropriation by five hundred thousand dollars as follows:

- 1 TITLE II — APPROPRIATIONS.
- 2 **Sec. 3. Appropriations from other funds.**
- 3 *170—Alcohol Beverage Control Administration*

4

(WV Code Chapter 60)

5

Fund 7352 FY 2001 Org 0708

6

Act-

Other

7

ivity

Funds

8

1 Unclassified 099 \$ 500,000

9

The purpose of this supplementary appropriation bill is to supplement this fund in the budget act for the fiscal year ending the thirtieth day of June, two thousand one, by adding five hundred thousand dollars to the existing appropriation for unclassified - total for expenditure during the fiscal year two thousand one.

CHAPTER 25

(S. B. 483 — By Senators Craigo, Sharpe, Jackson, Chafin, Prezioso, Plymale, Love, Helmick, Bowman, Bailey, Anderson, Edgell, Unger, McCabe, Boley, Minear and Sprouse)

[Passed March 29, 2001; 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 one, in the West Virginia state board of examiners for licensed practical nurses, fund 8517, fiscal year 2001, organization 0906, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand one.

WHEREAS, The governor has established that there now remains an unappropriated balance in the West Virginia state board of examiners for licensed practical nurses, fund 8517, fiscal year 2001, organization 0906, available for expenditure during the fiscal year ending the thirtieth day of June, two thousand one; 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 one, fund 8517, fiscal year 2001, organization 0906, be supplemented and amended by increasing the total appropriation by sixteen thousand dollars as follows:

1 TITLE II — APPROPRIATIONS.

2 Sec. 3. Appropriations from other funds.

3 MISCELLANEOUS BOARDS AND COMMISSIONS

4 212—WV State Board of Examiners

5 for Licensed Practical Nurses

6 (WV Code Chapter 30)

7 Fund 8517 FY 2001 Org 0906

8		Act-	
9		ivity	Other
			Funds

10	2	Unclassified	099	\$ 16,000
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11 The purpose of this supplementary appropriation bill is to
12 supplement this fund in the budget act for the fiscal year ending
13 the thirtieth day of June, two thousand one, by adding sixteen
14 thousand dollars to the existing appropriation for unclassified
15 for expenditure during the fiscal year two thousand one.

CHAPTER 26

**(H. B. 3255 — By Delegates Michael, Doyle, Campbell,
Proudfoot, Frederick, Cann and H. White)**

[Passed April 13, 2001; in effect from passage. Approved by the Governor.]

AN ACT expiring funds to the unappropriated balance in the state fund, general revenue, for the fiscal year ending the thirtieth day of June, two thousand two, in the amount of seven hundred fifty thousand dollars from the public service commission, fund 8623, fiscal year 2002, organization 0926.

WHEREAS, The Legislature finds that the account balance in the public service commission, fund 8623, fiscal year 2002, organization 0926, will exceed that which is necessary for the purposes for which the account was established; therefore

Be it enacted by the Legislature of West Virginia:

1 That the balance of funds available for expenditure in the
2 fiscal year ending the thirtieth day of June, two thousand two,
3 to the public service commission, fund 8623, fiscal year 2001,
4 organization 0926, be decreased by expiring the amount of
5 seven hundred fifty thousand dollars to the unappropriated
6 balance of the state fund, general revenue, to be available for
7 appropriation during the fiscal year two thousand two.

8 The purpose of this bill is to expire the sum of seven
9 hundred fifty thousand dollars from the public service commis-
10 sion, fund 8623, fiscal year 2002, organization 0926, to the
11 unappropriated balance in the state fund, general revenue, for
12 the fiscal year ending the thirtieth day of June, two thousand
13 two, to be available for appropriation during the fiscal year two
14 thousand two.



CHAPTER 27

(S. B. 484 — By Senators Craigo, Sharpe, Jackson, Chafin, Prezioso, Plymale, Love, Helmick, Bowman, Bailey, Anderson, Edgell, Unger, McCabe, Boley, Minear and Sprouse)

[Passed March 29, 2001; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending and reducing items of the existing appropriation to the public service commission, fund 8623, fiscal year 2001, organization 0926, as originally appropriated by chapter ten, acts of the Legislature, regular session, two thousand, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

That the items of the total appropriation to the public service commission, fund 8623, fiscal year 2001, organization 0926, be amended and reduced in the line item as follows:

1	TITLE II — APPROPRIATIONS.		
2	Sec. 3. Appropriations from other funds.		
3	MISCELLANEOUS BOARDS AND COMMISSIONS		
4	<i>214—Public Service Commission</i>		
5	(WV Code Chapter 24)		
6	Fund <u>8623</u> FY <u>2001</u> Org <u>0926</u>		
7		Act-	Other
8		ivity	Funds
9	5	Unclassified 099	\$ 495,000

10 The purpose of this supplementary appropriation bill is to
11 supplement, amend and reduce existing items in the aforesaid
12 account for the designated spending unit. The item for unclassi-
13 fied is reduced by four hundred ninety-five thousand dollars.

CHAPTER 28

**(S. B. 485 — By Senators Craigo, Sharpe, Jackson, Chafin,
Prezioso, Plymale, Love, Helmick, Bowman, Bailey, Anderson,
Edgell, Unger, McCabe, Boley, Minear and Sprouse)**

[Passed March 29, 2001; 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 one, in the West Virginia board of examiners for speech-language pathology and audiology, fund 8646, fiscal year 2001, organization 0930, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand one.

WHEREAS, The governor has established that there now remains an unappropriated balance in the West Virginia board of examiners for speech-language pathology and audiology, fund 8646, fiscal year 2001, organization 0930, available for expenditure during the fiscal year ending the thirtieth day of June, two thousand one; 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 one, fund 8646, fiscal year 2001, organization 0930, be supplemented and amended by increasing the total

appropriation by seven thousand one hundred thirty-five dollars as follows:

1	TITLE II — APPROPRIATIONS.		
2	Sec. 3. Appropriations from other funds.		
3	MISCELLANEOUS BOARDS AND COMMISSIONS		
4	<i>219—WV Board of Examiners for Speech-Language</i>		
5	<i>Pathology and Audiology</i>		
6	(WV Code Chapter 30)		
7	Fund <u>8646</u> FY <u>2001</u> Org <u>0930</u>		
8		Act-	Other
9		ivity	Funds
10	1	Unclassified - Total 096	\$ 7,135

11 The purpose of this supplementary appropriation bill is to
 12 supplement this fund in the budget act for the fiscal year ending
 13 the thirtieth day of June, two thousand one, by adding seven
 14 thousand one hundred thirty-five dollars to the existing appro-
 15 priation for unclassified - total for expenditure during the fiscal
 16 year two thousand one.

CHAPTER 29

(S. B. 486 — By Senators Craigo, Sharpe, Jackson, Chafin, Prezioso,
 Plymale, Love, Helmick, Bowman, Bailey, Anderson, Edgell, Unger,
 McCabe, Boley, Minear and Sprouse)

[Passed March 29; 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 one, in the massage therapy licensure board, fund 8671, fiscal year 2001, organization 0938, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand one.

WHEREAS, The governor has established that there now remains an unappropriated balance in the massage therapy licensure board, fund 8671, fiscal year 2001, organization 0938, available for expenditure during the fiscal year ending the thirtieth day of June, two thousand one; 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 one, fund 8671, fiscal year 2001, organization 0938, be supplemented and amended by increasing the total appropriation by ten thousand dollars as follows:

1 TITLE II — APPROPRIATIONS.

2 Sec. 3. Appropriations from other funds.

3 MISCELLANEOUS BOARDS AND COMMISSIONS

4 222—*Massage Therapy Licensure Board*

5 (WV Code Chapter 30)

6 Fund 8671 FY 2001 Org 0938

7		Act-	Other
8		ivity	Funds
9	1 Unclassified - Total	096	\$ 10,000

10 The purpose of this supplementary appropriation bill is to
11 supplement this fund in the budget act for the fiscal year ending
12 the thirtieth day of June, two thousand one, by adding ten
13 thousand dollars to the existing appropriation for unclassified -
14 total for expenditure during the fiscal year two thousand one.

CHAPTER 30

**(S. B. 429 — By Senators Craigo, Sharpe, Jackson, Chafin,
Prezioso, Plymale, Love, Helmick, Bowman, Bailey, Anderson,
Edgell, Unger, McCabe, Boley, Minear and Sprouse)**

[Passed March 29, 2001; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of federal moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, two thousand one, to the bureau of commerce - West Virginia development office, fund 8705, fiscal year 2001, organization 0307, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand one.

WHEREAS, The governor has established the availability of federal funds for continuing programs now available for expenditure in the fiscal year ending the thirtieth day of June, two thousand one, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand one, to fund 8705, fiscal year 2001, organization 0307, be supplemented and amended by increasing the

total appropriation by four hundred twenty-six thousand one hundred forty-seven dollars as follows:

1 TITLE II - APPROPRIATIONS.

2 Section 5. Appropriations of federal funds.

3 BUREAU OF COMMERCE

4 272-West Virginia Development Office

5 (WV Code Chapter 5B)

6 Fund 8705 FY 2001 Org 0307

7	8	9	1	Unclassified-Total	096	\$ 426,147
					Act-	Federal
					ivity	Funds

10 The purpose of this supplementary appropriation bill is to
11 supplement this account in the budget act for the fiscal year
12 ending the thirtieth day of June, two thousand one, by increas-
13 ing the existing appropriation for unclassified-total by four
14 hundred twenty-six thousand one hundred forty-seven dollars
15 for expenditure during fiscal year two thousand one.



CHAPTER 31

(S. B. 430 — By Senators Craigo, Sharpe, Jackson, Chafin, Prezioso, Plymale, Love, Helmick, Bowman, Bailey, Anderson, Edgell, Unger, McCabe, Boley, Minear and Sprouse)

[Passed March 29, 2001; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of federal moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, two thousand one, to the bureau of commerce - division of labor, fund 8706, fiscal year 2001, organization 0308, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand one.

WHEREAS, The governor has established the availability of federal funds for continuing programs now available for expenditure in the fiscal year ending the thirtieth day of June, two thousand one, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand one, to fund 8706, fiscal year 2001, organization 0308, be supplemented and amended by increasing the total appropriation by sixty-five thousand dollars as follows:

1 TITLE II - APPROPRIATIONS.

2 Section 5. Appropriations of federal funds.

3 BUREAU OF COMMERCE

4 273-Division of Labor

5 (WV Code Chapters 21 and 47)

6 Fund 8706 FY 2001 Org 0308

7		Act-	Federal
8		ivity	Funds
9	1	Unclassified-Total	096 \$ 65,000

10 The purpose of this supplementary appropriation bill is to
11 supplement this account in the budget act for the fiscal year
12 ending the thirtieth day of June, two thousand one, by increas-
13 ing the existing appropriation for unclassified-total by sixty-five
14 thousand dollars for expenditure during fiscal year two thou-
15 sand one.

CHAPTER 32

**(S. B. 431 —By Senators Craigo, Sharpe, Jackson, Chafin,
Prezioso, Plymale, Love, Helmick, Bowman, Bailey, Anderson, Edgell,
Unger, McCabe, Boley, Minear and Sprouse)**

[Passed April 3, 2001; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of federal moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, two thousand one, to the department of military affairs and public safety - division of veterans' affairs - veterans' home, fund 8728, fiscal year 2001, organization 0618, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand one.

WHEREAS, The governor has established the availability of federal funds for continuing programs now available for expenditure in the fiscal year ending the thirtieth day of June, two thousand one, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand one, to fund 8728, fiscal year 2001, organization 0618, be supplemented and amended by increasing the

total appropriation by one hundred twenty-five thousand dollars in the line item as follows:

1	TITLE II — APPROPRIATIONS.		
2	Sec. 5. Appropriations of federal funds.		
3	DEPARTMENT OF MILITARY AFFAIRS		
4	AND PUBLIC SAFETY		
5	262— <i>Division of Veterans' Affairs—</i>		
6	<i>Veterans' Home</i>		
7	(WV Code Chapter 9A)		
8	Fund <u>8728</u> FY <u>2001</u> Org <u>0618</u>		
9		Act-	Federal
10		ivity	Funds
11	1	Unclassified-Total 096	\$ 125,000

12 The purpose of this supplementary appropriation bill is to
13 supplement this account in the budget act for the fiscal year
14 ending the thirtieth day of June, two thousand one, by increas-
15 ing the existing appropriation for unclassified-total by one
16 hundred twenty-five thousand dollars for expenditure during
17 fiscal year two thousand one.

CHAPTER 33

(S. B. 432 — By Senators Craigo, Sharpe, Jackson, Chafin, Prezioso, Plymale, Love, Helmick, Bowman, Bailey, Anderson, Edgell, Unger, McCabe, Boley, Minear and Sprouse)

[Passed March 30, 2001; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of federal moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, two thousand one, to the department of agriculture, fund 8736, fiscal year 2001, organization 1400, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand one.

WHEREAS, The governor has established the availability of federal funds for a new program and a continuing program now available for expenditure in the fiscal year ending the thirtieth day of June, two thousand one, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand one, to fund 8736, fiscal year 2001, organization 1400, be supplemented and amended by increasing the total appropriation by two million nine hundred fifty-four thousand dollars as follows:

1 **TITLE II - APPROPRIATIONS.**

2 **Sec. 5. Appropriations of federal funds.**

3 **EXECUTIVE**

4 *240-Department of Agriculture*

5 (WV Code Chapter 19)

6 Fund 8736 FY 2001 Org 1400

7	8	Act-	Federal
8	9	ivity	Funds
9	1	Unclassified-Total	096 \$2,954,000

10 The purpose of this supplementary appropriation bill is to
11 supplement this account in the budget act for the fiscal year
12 ending the thirtieth day of June, two thousand one, by increas-
13 ing the existing appropriation for unclassified-total by two
14 million nine hundred fifty-four thousand dollars for expenditure
15 during fiscal year two thousand one.

CHAPTER 34

**(S. B. 433 — By Senators Craigo, Sharpe, Jackson, Chafin,
Prezioso, Plymale, Love, Helmick, Bowman, Bailey, Anderson,
Edgell, Unger, McCabe, Boley, Minear and Sprouse)**

[Passed March 29, 2001; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of federal moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, two thousand one, to the department of agriculture - meat inspection, fund 8737, fiscal year 2001, organization 1400, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand one.

WHEREAS, The governor has established the availability of federal funds for continuing programs now available for expenditure in the fiscal year ending the thirtieth day of June, two thousand one, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand one, to fund 8737, fiscal year 2001, organization 1400, be supplemented and amended by increasing the

total appropriation by eleven thousand seven hundred dollars in the line item as follows:

1 TITLE II - APPROPRIATIONS.

2 Section 5. Appropriations of federal funds.

3 EXECUTIVE

4 241-Department of Agriculture-

5 Meat Inspection

6 (WV Code Chapter 19)

7 Fund 8737 FY 2001 Org 1400

8		Act-		Federal
9		ivity		Funds

10	1	Unclassified-Total	096	\$	11,700
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11 The purpose of this supplementary appropriation bill is to
12 supplement this account in the budget act the for fiscal year
13 ending the thirtieth day of June, two thousand one, by increas-
14 ing the existing appropriation for unclassified-total by eleven
15 thousand seven hundred dollars for expenditure during fiscal
16 year two thousand one.

CHAPTER 35

(S. B. 434 — By Senators Craigo, Sharpe, Jackson, Chafin,
Prezioso, Plymale, Love, Helmick, Bowman, Bailey, Anderson, Edgell,
Unger, McCabe, Boley, Minear and Sprouse)

[Passed March 29, 2001; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of federal moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, two thousand one, to the department of military affairs and public safety - West Virginia state police, fund 8741, fiscal year 2001, organization 0612, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand one.

WHEREAS, The governor has established the availability of federal funds for continuing programs now available for expenditure in the fiscal year ending the thirtieth day of June, two thousand one, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand one, to fund 8741, fiscal year 2001, organization 0612, be supplemented and amended by increasing the total appropriation by four hundred twenty-three thousand eight hundred seven dollars in the line item as follows:

1	TITLE II - APPROPRIATIONS.		
2	Section 5. Appropriations of federal funds.		
3	DEPARTMENT OF MILITARY		
4	AFFAIRS AND PUBLIC SAFETY		
5	<i>261-West Virginia State Police</i>		
6	(WV Code Chapter 15)		
7	Fund <u>8741</u> FY <u>2001</u> Org <u>0612</u>		
8		Act-	Federal
9		ivity	Funds
10	1	Unclassified-Total 096	\$ 423,807

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 one, by increas-
14 ing the existing appropriation for unclassified-total by four
15 hundred twenty-three thousand eight hundred seven dollars for
16 expenditure during fiscal year two thousand one.

CHAPTER 36

**(S. B. 435 — By Senators Craigo, Sharpe, Jackson, Chafin,
Prezioso, Plymale, Love, Helmick, Bowman, Bailey, Anderson, Edgell,
Unger, McCabe, Boley, Minear and Sprouse)**

[Passed March 30, 2001; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of federal moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, two thousand one, to the public service commission - motor carrier division, fund 8743, fiscal year 2001, organization 0926, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand one.

WHEREAS, The governor has established the availability of federal funds for continuing programs now available for expenditure in the fiscal year ending the thirtieth day of June, two thousand one, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand one, to fund 8743, fiscal year 2001, organization 0926, be supplemented and amended by increasing the total appropriation by five hundred fifty thousand two hundred seventy dollars as follows:

1

TITLE II - APPROPRIATIONS.

2

Sec. 5. Appropriations of federal funds.

3

MISCELLANEOUS BOARDS AND COMMISSIONS

4

279-Public Service Commission—

5

Motor Carrier Division

6

(WV Code Chapter 24A)

7

Fund 8743 FY 2001 Org 0926

8

Act-

Federal

9

ivity

Funds

10

1

Unclassified-Total 096 \$ 550,270

11

The purpose of this supplementary appropriation bill is to supplement this account in the budget act for the fiscal year ending the thirtieth day of June, two thousand one, by increasing the existing appropriation for unclassified-total by five hundred fifty thousand two hundred seventy dollars for expenditure during fiscal year two thousand one.



CHAPTER 37

(S. B. 701 — By Senators Craigo, Sharpe, Jackson, Chafin, Prezioso, Plymale, Love, Helmick, Bowman, Bailey, Anderson, Edgell, Unger, McCabe, Boley, Minear and Sprouse)



[Passed April 11, 2001; in effect from passage. Approved by the Governor.]



AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of federal moneys remaining

unappropriated for the fiscal year ending the thirtieth day of June, two thousand one, to the West Virginia development office - community development, fund 8746, fiscal year 2001, organization 0307, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand one.

WHEREAS, The governor has established the availability of federal funds for continuing programs now available for expenditure in the fiscal year ending the thirtieth day of June, two thousand one, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand one, to fund 8746, fiscal year 2001, organization 0307, be supplemented and amended by increasing the total appropriation by three million dollars as follows:

1 TITLE II - APPROPRIATIONS.

2 **Sec. 6. Appropriations of federal block grants.**

3 *282-West Virginia Development Office—*

4 *Community Development*

5 Fund 8746 FY 2001 Org 0307

6	7		Act- ivity	Federal Funds
8	1	Unclassified-Total	096	\$ 3,000,000

9 The purpose of this supplementary appropriation bill is to
10 supplement this account in the budget act for fiscal year ending
11 the thirtieth day of June, two thousand one, by increasing the

- 12 existing appropriation for unclassified-total by three million
13 dollars for expenditure during fiscal year two thousand one.



CHAPTER 38

(S. B. 487 — By Senators Craigo, Sharpe, Jackson, Chafin, Prezioso, Plymale, Love, Helmick, Bowman, Bailey, Anderson, Edgell, Unger, McCabe, Boley, Minear and Sprouse)

[Passed March 29, 2001; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of federal moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, two thousand one, to the department of transportation - division of motor vehicles, fund 8787, fiscal year 2001, organization 0802, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand one.

WHEREAS, The governor has established the availability of federal funds for continuing programs now available for expenditure in the fiscal year ending the thirtieth day of June, two thousand one, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand one, to fund 8787, fiscal year 2001, organization 0802, be supplemented and amended by increasing the total appropriation by three million five hundred sixty-six thousand dollars as follows:

1 TITLE II — APPROPRIATIONS.

2 **Sec. 5. Appropriations of federal funds.**

3 **DEPARTMENT OF TRANSPORTATION**

4 *267—Division of Motor Vehicles*

5 (WV Code Chapter 17B)

6 Fund 8787 FY 2001 Org 0802

7		Act-	Federal
8		ivity	Funds
9	1 Unclassified-Total	096	\$ 3,566,000

10 The purpose of this supplementary appropriation bill is to
 11 supplement this account in the budget act for fiscal year ending
 12 the thirtieth day of June, two thousand one, by increasing the
 13 existing appropriation for unclassified-total by three million
 14 five hundred sixty-six thousand dollars for expenditure during
 15 fiscal year two thousand one.

CHAPTER 39

(S. B. 488 — By Senators Craig, Sharpe, Jackson, Chafin,
 Prezioso, Plymale, Love, Helmick, Bowman, Bailey, Anderson,
 Edgell, Unger, McCabe, Boley, Minear and Sprouse)

[Passed March 30, 2001; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of federal funds out
of the treasury from the balance of federal moneys remaining

unappropriated for the fiscal year ending the thirtieth day of June, two thousand one, to the auditor's office - national white collar crime center, fund 8807, fiscal year 2001, organization 1200, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand one.

WHEREAS, The governor has established the availability of federal funds for continuing programs now available for expenditure in the fiscal year ending the thirtieth day of June, two thousand one, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand one, to fund 8807, fiscal year 2001, organization 1200, be supplemented and amended by increasing the total appropriation by three million eight thousand dollars as follows:

1 TITLE II—APPROPRIATIONS.

2 **Sec. 5. Appropriations of federal funds.**

3 **EXECUTIVE**

4 *239—Auditor's Office—*

5 *National White Collar Crime Center*

6 (WV Code Chapter 12)

7 Fund 8807 FY 2001 Org 1200

8		Act-	Federal
9		ivity	Funds

10	1	Unclassified-Total	096	\$ 3,008,000
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11 The purpose of this supplementary appropriation bill is to
12 supplement this account in the budget act for fiscal year ending
13 the thirtieth day of June, two thousand one, by increasing the
14 existing appropriation for unclassified-total by three million
15 eight thousand dollars for expenditure during fiscal year two
16 thousand one.

CHAPTER 40

**(S. B. 489 — By Senators Craig, Sharpe, Jackson, Chafin,
Prezioso, Plymale, Love, Helmick, Bowman, Bailey, Anderson, Edgell,
Unger, McCabe, Boley, Minear and Sprouse)**

[Passed March 29, 2001; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of federal moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, two thousand one, to a new item of appropriation designated to the department of education and the arts - office of the secretary, fund 8841, fiscal year 2001, organization 0431, supplementing and amending chapter ten, acts of the Legislature, regular session, two thousand, known as the budget bill.

WHEREAS, The governor has established the availability of federal funds for a new program now available for expenditure in the fiscal year ending the thirtieth day of June, two thousand one, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That chapter ten, acts of the Legislature, regular session, two thousand, known as the budget bill, be supplemented and amended by adding to Title II, section five thereof the following:

1 TITLE II — APPROPRIATIONS.

2 Sec. 5. Appropriations of federal funds.

3 DEPARTMENT OF EDUCATION AND THE ARTS

4 248a—Office of the Secretary

5 (WV Code Chapter 5F)

6 Fund 8841 FY 2001 Org 0431

7	Act-	Federal
8	ivity	Funds
9	1 Unclassified - Total 096	\$ 270,556

10 The purpose of this supplementary appropriation bill is to
11 supplement this account in the budget act for fiscal year ending
12 the thirtieth day of June, two thousand one, by providing for a
13 new item of appropriation to be established therein to appropri-
14 ate federal funds in the amount of two hundred seventy thou-
15 sand five hundred fifty-six dollars to unclassified - total for
16 expenditure during fiscal year two thousand one.



CHAPTER 41

(S. B. 458 — By Senators Craigo, Sharpe, Jackson, Chafin, Prezioso, Plymale, Love, Helmick, Bowman, Bailey, Anderson, Edgell, Unger, McCabe, Boley, Minear and Sprouse)

[Passed March 29, 2001; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending, reducing and increasing items of the existing appropriations in the state road fund to the department of transportation, division of highways, fund 9017, fiscal year 2001, organization 0803, as originally appropriated by chapter ten, acts of the Legislature, regular session, two thousand, known as the budget bill.

WHEREAS, The governor submitted to the Legislature the executive budget document, dated February 14, 2001, which included the statement of the state road fund setting forth therein the cash balances and investments as of July 1, 2000, and further included the estimate of revenues for the fiscal year 2001, less net appropriation balances forwarded and regular appropriations for fiscal year 2001.

WHEREAS, It thus appears from the governor's executive budget document there now remains an unappropriated balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, two thousand one; therefore

Be it enacted by the Legislature of West Virginia:

That the items of the total appropriations from the state road fund, fund 9017, fiscal year 2001, organization 0803, be amended and reduced in the line items as follows:

- 1 TITLE II – APPROPRIATIONS.
- 2 **Sec. 2. Appropriations from state road fund.**
- 3 **DEPARTMENT OF TRANSPORTATION**
- 4 *94 – Division of Highways*
- 5 (WV Code Chapters 17 and 17C)
- 6 Fund 9017 FY 2001 Org 0803

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7					State
8			Act-		Road
9			ivity		Fund
10	1	Debt Service	040	\$ 4,889,000	
11	10	Bridge Repair and Replacement	273	4,000,000	
12	12	Equipment Revolving	276	5,000,000	
13	15	Other Federal Aid Programs	279	12,500,000	

14 And, that the items of the total appropriations from the state
15 road fund, fund 9017, fiscal year 2001, organization 0803, be
16 amended and increased in the line items as follows:

17 TITLE II – APPROPRIATIONS.

18 **Sec. 2. Appropriations from state road fund.**

19 **DEPARTMENT OF TRANSPORTATION**

20 *94 – Division of Highways*

21 (WV Code Chapters 17 and 17C)

22 Fund 9017 FY 2001 Org 0803

23					State
24			Act-		Road
25			ivity		Fund
26	6	Maintenance	237	\$12,100,000	
27	7	Maintenance, Contract Paving			
28	8	and Secondary Road			
29	9	Maintenance	272	5,000,000	
30	16	Appalachian Programs	280	12,500,000	
31	17	Nonfederal Aid Construction	281	5,000,000	
32	18	Highway Litter Control	282	110,000	

33 The purpose of this supplementary appropriation bill is to
34 supplement, amend, reduce and increase existing items in the
35 aforesaid account for the designated spending unit. The item
36 Debt Service is reduced by four million eight hundred eighty-
37 nine thousand dollars, Bridge Repair and Replacement is
38 reduced by four million dollars, Equipment Revolving is
39 reduced by five million dollars and Other Federal Aid Programs
40 is reduced by twelve million five hundred thousand dollars. The
41 item Maintenance is increased by twelve million one hundred
42 thousand dollars, Maintenance, Contract Paving and Secondary
43 Road Maintenance is increased by five million dollars, Appala-
44 chian Programs is increased by twelve million five hundred
45 thousand dollars, Nonfederal Aid Construction is increased by
46 five million dollars, and Highway Litter Control is increased by
47 one hundred ten thousand dollars. The amounts as itemized for
48 expenditure in the fiscal year ending the thirtieth day of June,
49 two thousand one shall be available for expenditure immedi-
50 ately upon the effective date of this bill.

CHAPTER 42

(H. B. 2772 —By Delegates Manuel, Spencer, Pino, Givens and Wills)

[Passed April 3, 2001; in effect July 1, 2001. Approved by the Governor.]

AN ACT to amend and reenact section thirty-four, article three, chapter eleven-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the appointment powers of the auditor.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. SALE OF TAX LIENS AND NONENTERED, ESCHEATED AND WASTE AND UNAPPROPRIATED LANDS.

§11A-3-34. Deputy commissioners of delinquent and nonentered lands; bond.

1 The auditor shall appoint for each county in the state a
2 deputy commissioner of delinquent and nonentered lands.
3 Persons serving in that capacity when this article takes effect
4 shall continue to serve, subject to the provisions of this article.
5 The auditor shall make new appointments from time to time
6 thereafter whenever vacancies occur, or when in the auditor's
7 judgment it is deemed advisable. The auditor may promulgate
8 rules respecting the tenure of deputy commissioners. In the
9 absence of such rules, the deputy commissioner for each county
10 shall, so long as he satisfies the requirements of this section in
11 respect to professional qualifications and bonding, continue to
12 act without reappointment until the auditor designates his
13 successor.

14 The auditor shall appoint deputy commissioners in such
15 numbers and to serve such counties as the auditor deems
16 advisable to effect the purposes of this article. Appointments,
17 other than an employee of the auditor's office, shall be limited
18 to persons duly licensed to practice law in this state. Any person
19 appointed as deputy commissioner for a single county shall
20 reside in said county. Any person appointed as deputy commis-
21 sioner for more than one county shall reside in one of the
22 counties for which he has been appointed.

23 Whenever in respect to any land the deputy commissioner, in
24 his own judgment or in the opinion of the auditor, is disquali-
25 fied or otherwise unable to serve, because of his personal

26 interest, or because of his representation of clients in matters
27 affecting such land, or because of vacancies or failure to act, the
28 auditor may appoint an employee of his office to assume all of
29 the disqualified deputy commissioner's rights, duties, responsi-
30 bilities and liabilities relating to such land.

31 The deputy commissioner shall be subject to the orders and
32 control of the auditor, shall be accountable to him, and shall
33 serve as his local agent within the county. It shall be his duty to
34 do whatever is required of him by the auditor or by the provi-
35 sions of this article. The deputy commissioner before entering
36 upon his duties shall give a bond, with satisfactory corporate
37 surety, conditioned upon the faithful performance of his duties
38 and the payment of any forfeitures incurred. The penalty of
39 such bond shall be not less than twenty-five thousand dollars
40 nor more than one hundred thousand dollars, as the auditor may
41 direct. The premium therefor shall be paid by the auditor out of
42 the operating fund for the land department in his office.

CHAPTER 43

(Com. Sub. for S. B. 418 — Senators McCabe and Kessler)

[Passed April 13, 2001; to take effect July 1, 2001. Approved by the Governor.]

AN ACT to amend and reenact sections one, two, four, five, six, seven, eight, nine, twelve and fourteen, article seventeen, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the regulation of residential mortgage lenders, brokers and servicers; defining terms; amending licensure exemptions; providing that licensee

bonds are for the benefit of consumers; extending the time to pass upon a license application to ninety days; allowing the commissioner to retain fees to cover administrative costs in the event an application is denied; increasing license fee; imposing a per-loan fee; increasing bond for certain brokers; requiring certain disclosures and recordkeeping; requiring continuing education for loan originators employed by licensed brokers; requiring applicants to pay the cost of fingerprint processing; and authorizing the commissioner to impose fines and waive certain license application requirements for nonprofits.

Be it enacted by the Legislature of West Virginia:

That sections one, two, four, five, six, seven, eight, nine, twelve and fourteen, article seventeen, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

**ARTICLE 17. WEST VIRGINIA RESIDENTIAL MORTGAGE LENDER,
BROKER AND SERVICER ACT.**

§31-17-1. Definitions and general provisions.

§31-17-2. License required for lender or broker; exemptions.

§31-17-4. Applications for licenses; requirements; bonds; fees; renewals; waivers and reductions; per-loan fee.

§31-17-5. Refusal or issuance of license.

§31-17-6. Minimum net worth to be maintained; bond to be kept in full force and effect; foreign corporation to remain qualified to do business in this state.

§31-17-7. Form of license; posting required; license not transferable or assignable; license may not be franchised; renewal of license.

§31-17-8. Maximum interest rate on subordinate loans; prepayment rebate; maximum points, fees and charges; overriding of federal limitations; limitations on lien documents; prohibitions on primary and subordinate mortgage loans; civil remedy.

§31-17-9. Disclosure; closing statements; other records required; record-keeping requirements.

§31-17-12. Grounds for suspension or revocation of license; suspension and revocation generally; reinstatement or new license.

§31-17-14. Hearing before commissioner; provisions pertaining to hearing.

§31-17-1. Definitions and general provisions.

1 As used in this article:

2 (1) "Primary mortgage loan" means a consumer loan made
3 to an individual which is secured, in whole or in part, by a
4 primary mortgage or deed of trust upon any interest in real
5 property used as an owner-occupied residential dwelling with
6 accommodations for not more than four families;

7 (2) "Subordinate mortgage loan" means a consumer loan
8 made to an individual which is secured, in whole or in part, by
9 a mortgage or deed of trust upon any interest in real property
10 used as an owner-occupied residential dwelling with accommo-
11 dations for not more than four families, which property is
12 subject to the lien of one or more prior recorded mortgages or
13 deeds of trust;

14 (3) "Person" means an individual, partnership, association,
15 trust, corporation or any other legal entity, or any combination
16 thereof;

17 (4) "Lender" means any person who makes or offers to
18 make or accepts or offers to accept or purchases or services any
19 primary or subordinate mortgage loan in the regular course of
20 business. A person is considered to be acting in the regular
21 course of business if he or she makes or accepts, or offers to
22 make or accept, more than five primary or subordinate mort-
23 gage loans in any one calendar year;

24 (5) "Broker" means any person acting in the regular course
25 of business who, for a fee or commission or other consideration,
26 negotiates or arranges, or who offers to negotiate or arrange, or
27 originates, processes or assigns a primary or subordinate
28 mortgage loan between a lender and a borrower. A person is
29 considered to be acting in the regular course of business if he or
30 she negotiates or arranges, or offers to negotiate or arrange, or

31 originates, processes or assigns any primary or subordinate
32 mortgage loans in any one calendar year; or if he or she seeks
33 to charge a borrower or receive from a borrower money or other
34 valuable consideration in any primary or subordinate mortgage
35 transaction before completing performance of all broker
36 services that he or she has agreed to perform for the borrower;

37 (6) "Brokerage fee" means the fee or commission or other
38 consideration charged by a broker for the services described in
39 subdivision (5) of this section;

40 (7) "Additional charges" means every type of charge arising
41 out of the making or acceptance of a primary or subordinate
42 mortgage loan, except finance charges, including, but not
43 limited to, official fees and taxes, reasonable closing costs and
44 certain documentary charges and insurance premiums and other
45 charges which definition is to be read in conjunction with and
46 permitted by section one hundred nine, article three, chapter
47 forty-six-a of this code;

48 (8) "Finance charge" means the sum of all interest and
49 similar charges payable directly or indirectly by the debtor
50 imposed or collected by the lender incident to the extension of
51 credit as coextensive with the definition of "loan finance
52 charge" set forth in section one hundred two, article one,
53 chapter forty-six-a of this code;

54 (9) "Commissioner" means the commissioner of banking of
55 this state;

56 (10) "Applicant" means a person who has applied for a
57 lender's or broker's license;

58 (11) "Licensee" means any person duly licensed by the
59 commissioner under the provisions of this article as a lender or
60 broker;

61 (12) "Amount financed" means the total of the following
62 items to the extent that payment is deferred:

63 (a) The cash price of the goods, services or interest in land,
64 less the amount of any down payment, whether made in cash or
65 in property traded in;

66 (b) The amount actually paid or to be paid by the seller
67 pursuant to an agreement with the buyer to discharge a security
68 interest in or a lien on property traded in; and

69 (c) If not included in the cash price:

70 (i) Any applicable sales, use, privilege, excise or documen-
71 tary stamp taxes;

72 (ii) Amounts actually paid or to be paid by the seller for
73 registration, certificate of title or license fees; and

74 (iii) Additional charges permitted by this article;

75 (13) "Affiliated" means persons under the same ownership
76 or management control. As to corporations, limited liability
77 companies or partnerships, where common owners manage or
78 control a majority of the stock, membership interests or general
79 partnership interests of one or more such corporations, limited
80 liability companies or partnerships, those persons are consid-
81 ered affiliated. In addition, persons under the ownership or
82 management control of the members of an immediate family
83 shall be considered affiliated. For purposes of this section,
84 "immediate family" means mother, stepmother, father, stepfa-
85 ther, sister, stepsister, brother, stepbrother, spouse, child and
86 grandchildren; and

87 (14) "Servicing" or "servicing a residential mortgage loan"
88 means through any medium or mode of communication the
89 collection or remittance for, or the right or obligation to collect

90 or remit for another lender, note owner or noteholder, payments
91 of principal, interest, including sales finance charges in a
92 consumer credit sale, and escrow items as insurance and taxes
93 for property subject to a residential mortgage loan.

§31-17-2. License required for lender or broker; exemptions.

1 (a) No person shall engage in this state in the business of
2 lender or broker unless and until he or she shall first obtain a
3 license to do so from the commissioner, which license remains
4 unexpired, unsuspended and unrevoked, and no foreign
5 corporation shall engage in business in this state unless it is
6 registered with the secretary of state to transact business in this
7 state.

8 (b) The provisions of this article do not apply to loans made
9 by the following:

10 (1) Federally insured depository institutions;

11 (2) Regulated consumer lender licensees;

12 (3) Insurance companies;

13 (4) Any other lender licensed by and under the regular
14 supervision and examination for consumer compliance of any
15 agency of the federal government;

16 (5) Any agency or instrumentality of this state, federal,
17 county or municipal government or on behalf of the agency or
18 instrumentality;

19 (6) By a nonprofit community development organization
20 making mortgage loans to promote home ownership or im-
21 provements for the disadvantaged which loans are subject to
22 federal, state, county or municipal government supervision and
23 oversight; or

24 (7) Habitat for Humanity International, Inc. and its affiliates
25 providing low-income housing within this state.

26 Loans made subject to this exemption may be assigned,
27 transferred, sold or otherwise securitized to any person and
28 shall remain exempt from the provisions of this article, except
29 as to reporting requirements in the discretion of the commis-
30 sioner where the person is a licensee under this article. Nothing
31 herein shall prohibit a broker licensed under this article from
32 acting as broker of an exempt loan and receiving compensation
33 as permitted under the provisions of this article.

34 (c) A person or entity designated in subsection (b) of this
35 section may take assignments of a primary or subordinate
36 mortgage loan from a licensed lender and the assignments of
37 said loans that they themselves could have lawfully made as
38 exempt from the provisions of this article under this section do
39 not make that person or entity subject to the licensing, bonding,
40 reporting or other provisions of this article except as the
41 defense or claim would be preserved pursuant to section one
42 hundred two, article two, chapter forty-six-a of this code.

43 (d) The placement or sale for securitization of a primary or
44 subordinate mortgage loan into a secondary market by a
45 licensee may not subject the warehouse or final securitization
46 holder or trustee to the provisions of this article: *Provided*, That
47 the warehouse, final securitization holder or trustee under an
48 arrangement is either a licensee, or person or entity entitled to
49 make exempt loans of that type under this section, or the loan
50 is held with right of recourse to a licensee.

**§31-17-4. Applications for licenses; requirements; bonds; fees;
renewals; waivers and reductions; per loan fee.**

1 (a) Application for a lender's or broker's license shall each
2 year be submitted in writing under oath, in the form prescribed

3 by the commissioner, and shall contain the full name and
4 address of the applicant and, if the applicant is a partnership,
5 limited liability company or association, of every member
6 thereof, and, if a corporation, of each officer, director and
7 owner of ten percent or more of the capital stock thereof and
8 further information as the commissioner may reasonably
9 require. Any application shall also disclose the location at
10 which the business of lender or broker is to be conducted.

11 (b) At the time of making application for a lender's license,
12 the applicant therefor shall:

13 (1) If a foreign corporation, submit a certificate from the
14 secretary of state certifying that the applicant is registered with
15 the secretary of state to transact business in this state;

16 (2) Submit proof that he or she has available for the
17 operation of the business at the location specified in the
18 application net worth of at least two hundred fifty thousand
19 dollars;

20 (3) File with the commissioner a bond in favor of the state
21 for the benefit of consumers in the amount of one hundred
22 thousand dollars, in a form and with conditions as the commis-
23 sioner may prescribe, and executed by a surety company
24 authorized to do business in this state;

25 (4) Pay to the commissioner a license fee of one thousand
26 two hundred fifty dollars plus the actual cost of fingerprint
27 processing. If the commissioner shall determine that an
28 investigation outside this state is required to ascertain facts or
29 information relative to the applicant or information set forth in
30 the application, the applicant may be required to advance
31 sufficient funds to pay the estimated cost of the investigation.
32 An itemized statement of the actual cost of the investigation
33 outside this state shall be furnished to the applicant by the

34 commissioner and the applicant shall pay or shall have returned
35 to him or her, as the case may be, the difference between his or
36 her payment in advance of the estimated cost and the actual cost
37 of the investigation; and

38 (5) Submit proof that the applicant is a business in good
39 standing in its state of incorporation, or if not a corporation, its
40 state of business registration, and a full and complete disclosure
41 of any litigation or unresolved complaint filed by a government-
42 tal authority or class action lawsuit on behalf of consumers
43 relating to the operation of the license applicant.

44 (c) At the time of making application for a broker's license,
45 the applicant therefor shall:

46 (1) If a foreign corporation, submit a certificate from the
47 secretary of state certifying that the applicant is registered with
48 the secretary of state to transact business in this state;

49 (2) Submit proof that he or she has available for the
50 operation of the business at the location specified in the
51 application net worth of at least ten thousand dollars;

52 (3) File with the commissioner a bond in favor of the state
53 for the benefit of consumers in the amount of twenty-five
54 thousand dollars, in a form and with conditions as the commis-
55 sioner may prescribe, and executed by a surety company
56 authorized to do business in this state: *Provided*, That the bond
57 must be in the amount of fifty thousand dollars before a broker
58 may participate in a table-funded residential mortgage loan;

59 (4) Pay to the commissioner a license fee of three hundred
60 fifty dollars plus the actual cost of fingerprint processing; and

61 (5) Submit proof that the applicant is a business in good
62 standing in its state of incorporation, or if not a corporation, its
63 state of business registration, and a full and complete disclosure

64 of any litigation or unresolved complaint filed by a governmen-
65 tal authority or class action lawsuit on behalf of consumers
66 relating to the operation of the license applicant.

67 (d) The aggregate liability of the surety on any bond given
68 pursuant to the provisions of this section shall in no event
69 exceed the amount of the bond.

70 (e) Nonresident lenders and brokers licensed under this
71 article by their acceptance of the license acknowledge that they
72 are subject to the jurisdiction of the courts of West Virginia and
73 the service of process pursuant to section one hundred
74 thirty-seven, article two, chapter forty-six-a of this code and
75 section thirty-three, article three, chapter fifty-six of this code.

76 (f) The commissioner may elect to reduce or waive the
77 application fees, bond amounts and net worth requirements
78 imposed by this section for nonprofit corporations whose
79 residential mortgage lending or brokering activities provide
80 housing primarily to households or persons below the HUD
81 established median income for their area of residence.

82 (g) Every licensee shall pay a fee of five dollars for each
83 residential mortgage loan originated, made or brokered in a
84 calendar year. This fee shall be paid semiannually to the
85 division of banking and remitted with the report required
86 pursuant to subsection (b), section eleven of this article for
87 loans made, brokered or originated during the last six months
88 of the previous calendar year and with the license renewal
89 application required pursuant to subsection (b), section seven of
90 this article for the loans made, brokered or originated in the first
91 six months of that calendar year. In the event a licensee ceases
92 operation, it shall remit any fees due since the last reporting
93 period when it relinquishes its license.

§31-17-5. Refusal or issuance of license.

1 (a) Upon an applicant's full compliance with the provisions
2 of section four of this article, the commissioner shall investigate
3 the relevant facts with regard to the applicant and his or her
4 application for a lender's or broker's license, as the case may
5 be. Upon the basis of the application and all other information
6 before him or her, the commissioner shall make and enter an
7 order denying the application and refusing the license sought if
8 the commissioner finds that:

9 (1) The applicant does not have available the net worth
10 required by the provisions of section four of this article;

11 (2) The financial responsibility, character, reputation,
12 experience or general fitness of the applicant, including its
13 officers, directors, principals and employees, reasonably
14 warrants the belief that the business will not be operated
15 lawfully and properly in accordance with the provisions of this
16 article;

17 (3) The applicant has done any act or has failed or
18 refused to perform any duty or obligation for which the license
19 sought could be suspended or revoked were it then issued and
20 outstanding.

21 Otherwise, the commissioner shall issue to the applicant a
22 lender's or broker's license which shall entitle the applicant to
23 engage in the business of lender or broker, as the case may be,
24 during the period, unless sooner suspended or revoked, for
25 which the license is issued.

26 (b) Every application for a lender's or broker's license shall
27 be passed upon and the license issued or refused within ninety
28 days after the applicant therefor has fully complied with the
29 provisions of section four of this article. Under no circum-
30 stances whatever shall a person or licensee act as a broker and
31 lender in the same transaction. Whenever an application for a

32 lender's or broker's license is denied and the license sought is
33 refused, which refusal has become final, the commissioner shall
34 retain all fees to cover administrative costs of processing the
35 broker or lender application.

**§31-17-6. Minimum net worth to be maintained; bond to be kept
in full force and effect; foreign corporation to
remain qualified to do business in this state.**

1 At all times, a licensee shall: (1) Have available the net
2 worth required by the provisions of section four of this article;
3 (2) keep the bond required by said section in full force and
4 effect; and (3) if the licensee be a foreign corporation, remain
5 qualified to transact business in this state unless otherwise
6 exempt.

**§31-17-7. Form of license; posting required; license not transfer-
able or assignable; license may not be franchised;
renewal of license.**

1 (a) It shall be stated on the license, whether it is a lender's
2 or broker's license, the location at which the business is to be
3 conducted and the full name of the licensee. A broker's license
4 shall be conspicuously posted in the licensee's place of business
5 in this state and a lender's license shall be conspicuously posted
6 in the licensee's place of business if in this state. No license
7 shall be transferable or assignable. No licensee may offer a
8 franchise under that license to another person. The commis-
9 sioner may allow licensees to have branch offices without
10 requiring additional licenses provided the location of all branch
11 offices is registered with the division of banking by the li-
12 censee. Whenever a licensee changes his or her place of
13 business to a location other than that set forth in his or her
14 license and branch registration, he or she shall give written
15 notice thirty days prior to such change to the commissioner.

16 (b) Every lender's or broker's license shall, unless sooner
17 suspended or revoked, expire on the thirty-first day of Decem-
18 ber of each year and any license may be renewed each year in
19 the same manner, for the same license fee or fees specified
20 above and upon the same basis as an original license is issued
21 in accordance with the provisions of section five of this article.
22 All applications for the renewal of licenses shall be filed with
23 the commissioner at least ninety days before the expiration
24 thereof.

25 (c) The amendments to this article in the year two thousand
26 are effective on and after the first day of July, two thousand.
27 Licenses previously issued and in effect on the first day of July,
28 two thousand, shall be extended for one year and, unless sooner
29 suspended or revoked, shall expire on the thirty-first day of
30 December, two thousand one. Any person, not already licensed,
31 who is operating as a broker or lender on the first day of July,
32 two thousand, and who is registered with the secretary of state
33 to do business in the state, may file an application with the
34 commissioner on or before the first day of August, two thou-
35 sand. If issued, such licenses shall, unless sooner suspended or
36 revoked, expire on the thirty-first day of December, two
37 thousand one.

38 (d) Beginning with renewal applications in the year two
39 thousand two, a broker's license may not be renewed unless that
40 licensee's executive officer certifies to the commissioner on the
41 renewal application that every loan originator employed by that
42 licensed broker has received at least seven hours of continuing
43 education in the prior year. The continuing education must be
44 related to the laws and regulations applicable to residential
45 mortgage loan origination. Both the course of instruction and
46 the entity providing such continuing education must receive
47 prior approval from the commissioner as satisfying the continu-
48 ing education requirement established herein before the
49 commissioner may accept a certification from a licensee. The

50 commissioner shall make available a list of entities and courses
51 that have been approved for continuing education hours.

§31-17-8. Maximum interest rate on subordinate loans; prepayment rebate; maximum points, fees and charges; overriding of federal limitations; limitations on lien documents; prohibitions on primary and subordinate mortgage loans; civil remedy.

1 (a) The maximum rate of finance charges on or in connection with any subordinate mortgage loan may not exceed
2 eighteen percent per year on the unpaid balance of the amount
3 financed.
4

5 (b) A borrower shall have the right to prepay his or her
6 debt, in whole or in part, at any time and shall receive a rebate
7 for any unearned finance charge, exclusive of any points,
8 investigation fees and loan origination fees, which rebate shall
9 be computed under the actuarial method.

10 (c) Except as provided by section one hundred nine, article
11 three, chapter forty-six-a of this code and by subsection (g) of
12 this section, no additional charges may be made, nor may any
13 charge permitted by this section be assessed unless the loan is
14 made.

15 (d) Where loan origination fees, investigation fees or points
16 have been charged by the licensee, the charges may not be
17 imposed again by the same or affiliated licensee in any refinancing of that loan or any additional loan on that property
18 made within twenty-four months thereof, unless the new loan
19 has a reasonable, tangible net benefit to the borrower considering all of the circumstances, including the terms of both the new
20 and the refinanced loans, the cost of the new loan and the
21 borrower's circumstances. The licensee shall document this
22 benefit in writing on a form prescribed by the commissioner
23
24

25 and maintain such documentation in the loan file. To the extent
26 this subdivision overrides the preemption on limiting points and
27 other charges on first lien residential mortgage loans contained
28 in the United States Depository Institutions Deregulation and
29 Monetary Control Act of 1980, 12 U.S.C. §1735f-7a, the state
30 law limitations contained in this section shall apply.

31 (e) Notwithstanding other provisions of this section, a
32 delinquent charge or "late charge" may be charged on any
33 installment made ten or more days after the regularly scheduled
34 due date in accordance with section one hundred twelve or one
35 hundred thirteen, article three, chapter forty-six-a of this code,
36 whichever is applicable. The charge may be made only once on
37 any one installment during the term of the primary or subordi-
38 nate mortgage loan.

39 (f) Hazard insurance may be required by the lender and
40 other types of insurance may be offered as provided in section
41 one hundred nine, article three, chapter forty-six-a of this code.
42 The charges for any insurance shall not exceed the standard rate
43 approved by the insurance commissioner for the insurance.
44 Proof of all insurance in connection with primary and subordi-
45 nate mortgage loans subject to this article shall be furnished to
46 the borrower within thirty days from and after the date of
47 application therefor by the borrower.

48 (g) Except for fees for services provided by unrelated third
49 parties for appraisals, inspections, title searches and credit
50 reports, no application fee may be allowed whether or not the
51 mortgage loan is consummated; however, the borrower may be
52 required to reimburse the licensee for actual expenses incurred
53 by the licensee in a purchase money transaction after accep-
54 tance and approval of a mortgage loan proposal made in
55 accordance with the provisions of this article which is not
56 consummated because of:

57 (1) The borrower's willful failure to close the loan; or

58 (2) The borrower's false or fraudulent representation of a
59 material fact which prevents closing of the loan as proposed.

60 (h) No licensee shall make, offer to make, accept or offer to
61 accept any primary or subordinate mortgage loan except on the
62 terms and conditions authorized in this article.

63 (i) No licensee shall induce or permit any borrower to
64 become obligated to the licensee under this article, directly or
65 contingently, or both, under more than one subordinate mort-
66 gage loan at the same time for the purpose or with the result of
67 obtaining greater charges than would otherwise be permitted
68 under the provisions of this article.

69 (j) No instrument evidencing or securing a primary or
70 subordinate mortgage loan shall contain:

71 (1) Any power of attorney to confess judgment;

72 (2) Any provision whereby the borrower waives any rights
73 accruing to him or her under the provisions of this article;

74 (3) Any requirement that more than one installment be
75 payable in any one installment period, or that the amount of any
76 installment be greater or less than that of any other installment,
77 except for the final installment which may be in a lesser
78 amount, or unless the loan is structured as a revolving line of
79 credit having no set final payment date;

80 (4) Any assignment of or order for the payment of any
81 salary, wages, commissions or other compensation for services,
82 or any part thereof, earned or to be earned;

83 (5) A requirement for compulsory arbitration which does
84 not comply with federal law; or

85 (6) Blank or blanks to be filled in after the consummation
86 of the loan. A borrower must be given a copy of every signed
87 document executed by the borrower at the time of closing.

88 (k) No licensee shall charge a borrower or receive from a
89 borrower money or other valuable consideration as compensa-
90 tion before completing performance of all services the licensee
91 has agreed to perform for the borrower unless the licensee also
92 registers and complies with all requirements set forth for credit
93 service organizations in article six-c, chapter forty-six-a of this
94 code, including all additional bonding requirements as may be
95 established therein.

96 (l) No licensee shall make or broker revolving loans
97 secured by a primary or subordinate mortgage lien for the retail
98 purchase of consumer goods and services by use of a lender
99 credit card.

100 (m) In making any primary or subordinate mortgage loan,
101 no licensee may, and no primary or subordinate mortgage
102 lending transaction may, contain terms which:

103 (1) Collect a fee not disclosed to the borrower; collect any
104 attorney fee at closing in excess of the fee that has been or will
105 be remitted to the attorney; collect a fee for a product or service
106 where the product or service is not actually provided; misrepre-
107 sent the amount charged by or paid to a third party for a product
108 or service; or collect duplicate fee or points to act as both
109 broker and lender for the same mortgage loan, however, fees
110 and points may be divided between the broker and the lender as
111 they agree, but may not exceed the total charges otherwise
112 permitted under this article: *Provided*, That the fact of any fee,
113 point or compensation is disclosed to the borrower consistent
114 with the solicitation representation made to the borrower;

115 (2) Compensate, whether directly or indirectly, coerce or
116 intimidate an appraiser for the purpose of influencing the
117 independent judgment of the appraiser with respect to the value
118 of real estate that is to be covered by a deed of trust or is being
119 offered as security according to an application for a primary or
120 subordinate mortgage loan;

121 (3) Make or assist in making any primary or subordinate
122 mortgage loan with the intent that the loan will not be repaid
123 and that the lender will obtain title to the property through
124 foreclosure: *Provided*, That this subdivision shall not apply to
125 reverse mortgages obtained under the provisions of article
126 twenty-four, chapter forty-seven of this code;

127 (4) Require the borrower to pay, in addition to any periodic
128 interest, combined fees, compensation, yield spread premium
129 or points of any kind to the lender and broker to arrange,
130 originate, evaluate, maintain or service a loan secured by any
131 encumbrance on residential property that exceed, in the
132 aggregate, six percent of the loan amount financed: *Provided*,
133 That reasonable closing costs, as defined in section one hundred
134 two, article one, chapter forty-six-a of this code, payable to
135 unrelated third parties may not be included within this limita-
136 tion: *Provided, however*, That no yield spread premium is
137 permitted for any loan for which the annual percentage rate
138 exceeds eighteen percent per year on the unpaid balance of the
139 amount financed: *Provided further*, That if no yield spread
140 premium is charged, the aggregate of periodic interest, fees,
141 compensation or points can be no greater than five percent of
142 the loan amount financed. The financing of the fees and points
143 are permissible and, where included as part of the finance
144 charge, does not constitute charging interest on interest. To the
145 extent that this section overrides the preemption on limiting
146 points and other charges on first lien residential mortgage loans
147 contained in the United States Depository Institutions Deregula-

148 tion and Monetary Control Act of 1980, 12 U.S.C. §1735f-7a,
149 the state law limitations contained in this section applies;

150 (5) Secure a primary or subordinate mortgage loan by any
151 security interest in personal property unless the personal
152 property is affixed to the residential dwelling or real estate;

153 (6) Allow or require a primary or subordinate mortgage
154 loan to be accelerated because of a decrease in the market value
155 of the residential dwelling that is securing the loan;

156 (7) Require terms of repayment which do not result in
157 continuous monthly reduction of the original principal amount
158 of the loan: *Provided*, That the provisions of this subdivision
159 may not apply to reverse mortgage loans obtained under article
160 twenty-four, chapter forty-seven of this code, home equity,
161 open-end lines of credit, bridge loans used in connection with
162 the purchase or construction of a new residential dwelling or
163 commercial loans for multiple residential purchases;

164 (8) Secure a primary or subordinate mortgage loan in a
165 principal amount that, when added to the aggregate total of the
166 outstanding principal balances of all other primary or subordi-
167 nate mortgage loans secured by the same property, exceeds the
168 fair market value of the property on the date that the latest
169 mortgage loan is made. For purposes of this paragraph, a broker
170 or lender may rely upon a bona fide written appraisal of the
171 property made by an independent third-party appraiser, or other
172 evidence of fair market value, if the broker or lender does not
173 have actual knowledge that the value is incorrect;

174 (9) Advise or recommend that the consumer not make
175 timely payments on an existing loan preceding loan closure of
176 a refinancing transaction; or

177 (10) Knowingly violate any provision of any other applica-
178 ble state or federal law regulating primary or subordinate

179 mortgage loans, including, without limitation, chapter forty-six-
180 a of this code.

**§31-17-9. Disclosure; closing statements; other records required;
record-keeping requirements.**

1 (a) Any licensee or person making on his or her own behalf,
2 or as agent, broker or in other representative capacity on behalf
3 of any other person, a primary or subordinate mortgage loan
4 shall at the time of the closing furnish to the borrower a
5 complete and itemized closing statement which shall show in
6 detail:

7 (1) The amount and date of the note or primary and
8 subordinate mortgage loan contract and the date of maturity;

9 (2) The nature of the security;

10 (3) The finance charge rate per annum and the itemized
11 amount of finance charges and additional charges;

12 (4) The principal and total of payments;

13 (5) Disposition of the principal;

14 (6) A description of the payment schedule;

15 (7) The terms on which additional advances, if any, will be
16 made;

17 (8) The charge to be imposed for past-due installments;

18 (9) A description and the cost of insurance required by the
19 lender or purchased by the borrower in connection with the
20 primary or subordinate mortgage loan;

21 (10) The name and address of the borrower and of the
22 lender; and

23 (11) That the borrower may prepay the primary or subordi-
24 nate mortgage loan, in whole or in part, on any installment date
25 and that the borrower will receive a rebate in full for any
26 unearned finance charge.

27 Such detailed closing statement shall be signed by the
28 broker, lender or closing representative and a completed and
29 signed copy thereof is retained by the broker or lender and
30 made available at all reasonable times to the borrower, the
31 borrower's successor in interest to the residential property or
32 the authorized agent of the borrower or the borrower's succes-
33 sor, until the time as the indebtedness is satisfied in full.
34 Providing a HUD 1 or HUD 1A settlement statement that
35 provides the disclosures required by this subsection and the
36 residential mortgage disclosures required by federal law is
37 considered to meet the requirements of this subsection.

38 The commissioner may, from time to time, by rules
39 prescribe additional information to be included in a closing
40 statement.

41 (b) Upon written request from the borrower, the holder of
42 a primary or subordinate mortgage loan instrument shall deliver
43 to the borrower, within ten business days from and after receipt
44 of the written request, a statement of the borrower's account as
45 required by subsection two, section one hundred fourteen,
46 article two, chapter forty-six-a of this code.

47 (c) Upon satisfaction of a primary or subordinate mortgage
48 loan obligation in full, the holder of the instrument evidencing
49 or securing the obligation shall comply with the requirements
50 of section one, article twelve, chapter thirty-eight of this code
51 in the prompt release of the lien which had secured the primary
52 or subordinate mortgage loan obligation.

53 (d) Upon written request or authorization from the bor-
54 rower, the holder of a primary or subordinate mortgage loan
55 instrument shall send or otherwise provide to the borrower or
56 his or her designee, within three business days after receipt of
57 the written request or authorization, a payoff statement of the
58 borrower's account. Except as provided by this subsection, no
59 charge may be made for providing the payoff statement.
60 Charges for the actual expenses associated with using a third-
61 party courier delivery or expedited mail delivery service may be
62 assessed when this type of delivery is requested and authorized
63 by the borrower following disclosure to the borrower of its cost.
64 The payoff information is provided by mail, telephone, courier,
65 facsimile or other transmission as requested by the borrower or
66 his or her designee.

67 (e) A licensee shall keep and maintain for thirty-six months
68 after the date of final entry the business records regarding
69 residential mortgage loans applied for, brokered, originated or
70 serviced in the course of its business.

**§31-17-12. Grounds for suspension or revocation of license;
suspension and revocation generally; reinstatement or new license.**

1 (a) The commissioner may suspend or revoke any license
2 issued hereunder if he or she finds that the licensee or any
3 owner, director, officer, member, partner, stockholder, em-
4 ployee or agent of the licensee:

5 (1) Has knowingly violated any provision of this article or
6 any order, decision or rule of the commissioner lawfully made
7 pursuant to the authority of this article; or

8 (2) Has knowingly made any material misstatement in the
9 application for the license; or

10 (3) Does not have available the net worth required by the
11 provisions of section four of this article; or

12 (4) Has failed or refused to keep the bond required by
13 section four of this article in full force and effect; or

14 (5) In the case of a foreign corporation, does not remain
15 qualified to do business in this state; or

16 (6) Has committed any fraud or engaged in any dishonest
17 activities with respect to any mortgage loan business in this
18 state or failed to disclose any of the material particulars of any
19 mortgage loan transaction in this state to anyone entitled to the
20 information; or

21 (7) Has otherwise demonstrated bad faith, dishonesty or any
22 other quality indicating that the business of the licensee in this
23 state has not been or will not be conducted honestly or fairly
24 within the purpose of this article. It shall be a demonstration of
25 bad faith and an unfair or deceptive act or practice to engage in
26 a pattern of making loans where the consumer has insufficient
27 sources of income to timely repay the debt and the lender had
28 the primary intent to acquire the property upon default rather
29 than to derive profit from the loan. This section may not limit
30 any right the consumer may have to bring an action for a
31 violation of section one hundred four, article six, chapter forty-
32 six-a of this code in an individual case.

33 The commissioner may also suspend or revoke the license
34 of a licensee if he or she finds the existence of any ground upon
35 which the license could have been refused or any ground which
36 would be cause for refusing a license to the licensee were he or
37 she then applying for the same. The commissioner may also
38 suspend or revoke the license of a licensee pursuant to his or
39 her authority under section thirteen, article two, chapter thirty-
40 one-a of this code.

41 (b) The suspension or revocation of the license of any
42 licensee shall not impair or affect the obligation of any preexist-
43 ing lawful mortgage loan between the licensee and any obligor.

44 (c) The commissioner may reinstate a suspended license, or
45 issue a new license to a licensee whose license has been
46 revoked, if the grounds upon which any license was suspended
47 or revoked have been eliminated or corrected and the commis-
48 sioner is satisfied that the grounds are not likely to recur.

49 (d) In addition to the authority conferred under this section,
50 the commissioner may impose a fine or penalty not exceeding
51 one thousand dollars upon any lender or broker required to be
52 licensed under this chapter who the commissioner determines
53 has violated any of the provisions of this chapter. For the
54 purposes of this section, each separate violation is subject to the
55 fine or penalty herein prescribed and each day after the date of
56 notification, excluding Sundays and holidays, that an unli-
57 censed person engages in the business or holds himself or
58 herself out to the general public as a mortgage lender or broker
59 shall constitute a separate violation.

§31-17-14. Hearing before commissioner; provisions pertaining to hearing.

1 (a) Any applicant or licensee, as the case may be, adversely
2 affected by an order made and entered by the commissioner in
3 accordance with the provisions of section thirteen of this article,
4 if not previously provided the opportunity to a hearing on the
5 matter, may in writing demand a hearing before the commis-
6 sioner. The commissioner may appoint a hearing examiner to
7 conduct the hearing and prepare a recommended decision. The
8 written demand for a hearing must be filed with the commis-
9 sioner within thirty days after the date upon which the applicant
10 or licensee was served with a copy of the order. The timely
11 filing of a written demand for hearing shall stay or suspend

12 execution of the order in question, pending a final determina-
13 tion, except for an order suspending a license for failure of the
14 licensee to maintain the bond required by section four of this
15 article in full force and effect. If a written demand is timely
16 filed as aforesaid, the aggrieved party is entitled to a hearing as
17 a matter of right.

18 (b) All of the pertinent provisions of article five, chapter
19 twenty-nine-a of this code shall apply to and govern the hearing
20 and the administrative procedures in connection with and
21 following such hearing, with like effect as if the provisions of
22 the article were set forth in extenso in this subsection.

23 (c) For the purpose of conducting any such hearing hereun-
24 der, the commissioner or appointed hearing examiner shall have
25 the power and authority to issue subpoenas and subpoenas
26 duces tecum in accordance with the provisions of section one,
27 article five, chapter twenty-nine-a of this code. All subpoenas
28 and subpoenas duces tecum are issued and served in the
29 manner, within the time and for the fees and shall be enforced,
30 as specified in the section, and all of the section provisions
31 dealing with subpoenas and subpoenas duces tecum shall apply
32 to subpoenas and subpoenas duces tecum issued for the purpose
33 of a hearing hereunder.

34 (d) Any hearing shall be held within twenty days after the
35 date upon which the commissioner received the timely written
36 demand therefor unless there is a postponement or continuance.
37 The commissioner or hearing examiner may postpone or
38 continue any hearing on his or her own motion or for good
39 cause shown upon the application of the aggrieved party. At any
40 hearing, the aggrieved party may represent himself or herself or
41 be represented by any attorney-at-law admitted to practice
42 before any circuit court of this state.

43 (e) After the hearing and consideration of all of the testi-
44 mony, evidence and record in the case, the commissioner shall
45 make and enter an order affirming, modifying or vacating his or
46 her earlier order, or shall make and enter an order as is consid-
47 ered appropriate, meet and proper. If the commissioner appoints
48 a hearing examiner then the commissioner must issue his or her
49 final order within fifteen days of receiving the recommended
50 decision of the hearing examiner. The order shall be accompa-
51 nied by findings of fact and conclusions of law as specified in
52 section three, article five, chapter twenty-nine-a of this code
53 and a copy of the order and accompanying findings and
54 conclusions shall be served upon the aggrieved party and his or
55 her attorney of record, if any, in person or by certified mail,
56 return receipt requested, or in any other manner in which
57 process in a civil action in this state may be served. The order
58 of the commissioner is final unless vacated or modified on
59 judicial review thereof in accordance with the provisions of
60 section fifteen of this article.



CHAPTER 44

(S. B. 416 — By Senators Minard and Kessler)



[Passed April 12, 2001; in effect ninety days from passage. Approved by the Governor.]



AN ACT to amend and reenact sections one and two, article two, chapter thirty-two-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the regulation of money transmission services; defining terms; currency transmission; money transmission; and providing that engaging in the business of currency exchange includes making such

services available to West Virginia citizens via an internet website.

Be it enacted by the Legislature of West Virginia:

That sections one and two, article two, chapter thirty-two-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 2. CHECKS AND MONEY ORDER SALES, MONEY TRANSMISSION SERVICES, TRANSPORTATION AND CURRENCY EXCHANGE.

§32A-2-1. Definitions.

§32A-2-2. License required.

§32A-2-1. Definitions.

1 (1) “Commissioner” means the commissioner of banking of
2 this state.

3 (2) “Check” or “payment instrument” means any check,
4 traveler’s check, draft, money order or other instrument for the
5 transmission or payment of money whether or not the instru-
6 ment is negotiable. The term does not include a credit card
7 voucher, a letter of credit or any instrument that is redeemable
8 by the issuer in goods or services.

9 (3) “Currency” means a medium of exchange authorized or
10 adopted by a domestic or foreign government.

11 (4) “Currency exchange” means the conversion of the
12 currency of one government into the currency of another
13 government, but does not include the issuance and sale of
14 travelers checks denominated in a foreign currency. Transac-
15 tions involving the electronic transmission of funds by licensed
16 money transmitters which may permit, but do not require, the
17 recipient to obtain the funds in a foreign currency outside of

18 West Virginia are not currency exchange transactions: *Pro-*
19 *vided*, That they are not reportable as currency exchange
20 transactions under federal laws and regulations.

21 (5) “Currency exchange, transportation, transmission
22 business” means a person who is engaging in currency ex-
23 change, currency transportation or currency transmission as a
24 service or for profit.

25 (6) “Currency transmission” or “money transmission”
26 means engaging in the business of selling or issuing checks or
27 the business of receiving currency or the payment of money by
28 any means for the purpose of transmitting that currency,
29 payment of money or its equivalent by wire, facsimile or other
30 electronic means, or through the use of a financial institution,
31 financial intermediary, the federal reserve system or other funds
32 transfer network. It includes the transmission of funds through
33 the issuance and sale of stored value cards which are intended
34 for general acceptance and used in commercial or consumer
35 transactions.

36 (7) “Currency transportation” means knowingly engaging
37 in the business of physically transporting currency from one
38 location to another in a manner other than by a licensed
39 armored car service exempted under section three of this article.

40 (8) “Licensee” means a person licensed by the commis-
41 sioner under this article.

42 (9) “Money order” means any instrument for the transmis-
43 sion or payment of money in relation to which the purchaser or
44 remitter appoints or purports to appoint the seller thereof as his
45 agent for the receipt, transmission or handling of money,
46 whether the instrument is signed by the seller, the purchaser or
47 remitter, or some other person.

48 (10) "Person" means any individual, partnership, associa-
49 tion, joint stock association, limited liability company, trust or
50 corporation.

51 (11) "Principal" means a licensee's owner, president, senior
52 officer responsible for the licensee's business, chief financial
53 officer or any other person who performs similar functions or
54 who otherwise controls the conduct of the affairs of a licensee.
55 A person controlling ten percent or more of the voting stock of
56 any corporate applicant is a principal under this provision.

57 (12) "Securities" means all bonds, debentures or other
58 evidences of indebtedness: (a) Issued by the United States of
59 America or any agency thereof, or guaranteed by the United
60 States of America, or for which the credit of the United States
61 of America or any agency thereof is pledged for the payment of
62 the principal and interest thereof; and/or (b) which are direct
63 general obligations of this state, or any other state if uncondi-
64 tionally guaranteed as to the principal and interest by the other
65 state and if the other state has the power to levy taxes for the
66 payment of the principal and interest thereof and is not in
67 default in the payment of any part of the principal or interest
68 owing by it upon any part of its funded indebtedness; and/or (c)
69 which are general obligations of any county, school district or
70 municipality in this state, issued pursuant to law and payable
71 from ad valorem taxes levied on all of the taxable property
72 located therein, if the county, school district or municipality is
73 not in default in the payment of any part of the principal or
74 interest on any debt evidenced by its bonds, debentures or other
75 evidences of indebtedness.

§32A-2-2. License required.

1 (a) Except as provided by section three of this article, a
2 person may not engage in the business of currency exchange,
3 transportation or transmission in this state without a license
4 issued under this article. For purposes of this article, a person
5 is considered to be engaging in those businesses in this state if

6 he or she makes available, from a location inside or outside this
7 state, an internet website West Virginia citizens may access in
8 order to enter into those transactions by electronic means.

9 (b) Any person who was previously licensed as a check
10 seller under this chapter who holds a valid license on the
11 effective date of this article shall be issued a provisional license
12 under this article without the need of an additional application
13 and fee. This provisional license shall expire upon six months
14 of its issuance, during which time the licensee may continue to
15 conduct its check selling business, provided that it maintains
16 the net worth and security required under its previous license.
17 The commissioner may require the licensee to obtain expanded
18 bond coverage consistent with this article for the protection of
19 purchasers of money transmission services and currency
20 exchange services, as well as for covered currency transporta-
21 tion services, when the licensee conducts one or more of these
22 businesses. At the expiration of a provisional license granted by
23 this section, any person who wishes to continue to engage in
24 any business regulated in this article shall apply for a license
25 and meet the criteria under the provisions of this article. A
26 provisional license granted by this section may upon hearing be
27 suspended or revoked by the commissioner for good cause
28 shown.

CHAPTER 45

(S. B. 586 — By Senator Tomblin, Mr. President)

[Passed April 14, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section fifteen, article fifteen-a, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to competitive bids; and raising the threshold for bids on infrastructure construction projects.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 15A. WEST VIRGINIA INFRASTRUCTURE AND JOBS DEVELOPMENT COUNCIL.

§31-15A-15. Projects not to be considered public improvements; competitive bid requirements.

1 (a) No project or infrastructure project acquired, con-
2 structed, maintained or financed, in whole or in part, by the
3 water development authority shall be considered to be a “public
4 improvement” within the meaning of the provisions of article
5 five-a, chapter twenty-one of this code as a result of the
6 financing.

7 (b) The state and its subdivisions shall, except as provided
8 in subsection (c) of this section, solicit competitive bids and
9 require the payment of prevailing wage rates as provided in
10 article five-a, chapter twenty-one of this code for every project
11 or infrastructure project funded pursuant to this article exceed-
12 ing twenty-five thousand dollars in total cost.

13 Following the solicitation of the bids, the construction
14 contract shall be awarded to the lowest qualified responsible
15 bidder, who shall furnish a sufficient performance and payment
16 bond: *Provided*, That the state and its subdivisions may reject
17 all bids and solicit new bids on the project.

18 (c) This section does not:

19 (1) Apply to work performed on construction or repair
20 projects not exceeding a total cost of fifty thousand dollars by
21 regular full-time employees of the state or its subdivisions:
22 *Provided*, That no more than fifty thousand dollars shall be
23 expended on an individual project in a single location in a
24 twelve-month period;

25 (2) Prevent students enrolled in vocational educational
26 schools from being used in the construction or repair projects
27 when such use is a part of the students' training program;

28 (3) Apply to emergency repairs to building components and
29 systems: *Provided*, That the term "emergency repairs" means
30 repairs that, if not made immediately, will seriously impair the
31 use of the building components and systems or cause danger to
32 those persons using the building components and systems; or

33 (4) Apply to any situation where the state or a subdivision
34 of the state comes to an agreement with volunteers, or a
35 volunteer group, by which the governmental body will provide
36 construction or repair materials, architectural, engineering,
37 technical or any other professional services and the volunteers
38 will provide the necessary labor without charge to, or liability
39 upon, the governmental body: *Provided*, That the total cost of
40 the construction or repair projects does not exceed fifty
41 thousand dollars.

42 (d) The provisions of subsection (b) of this section do not
43 apply to privately owned projects or infrastructure projects
44 constructed on lands not owned by the state or a subdivision of
45 the state.

CHAPTER 46

(H. B. 2942 — By Delegates R. M. Thompson, Givens,
Staton, Fox, Cann and Coleman)

[Passed April 13, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article one-h, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to broadening the permissive use of the Camp Dawson morale, welfare and recreation facilities to include additional government employees.

Be it enacted by the Legislature of West Virginia:

That section six, article one-h, 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 1H. MORALE, WELFARE AND RECREATION FACILITIES.

§15-1H-6. Limitation on sales.

- 1 Use of the morale, welfare and recreation facilities provided
- 2 for in this article are limited to:
 - 3 (1) Active and reserve component members of the armed
 - 4 forces of the United States;
 - 5 (2) Persons retired from the armed forces of the United
 - 6 States;
 - 7 (3) Dependents of service members or retirees;
 - 8 (4) Civilian employees of the United States; and
 - 9 (5) Employees of the state of West Virginia.

CHAPTER 47

(S. B. 695 — By Senator Prezioso, By Request)

[Passed April 13, 2001; in effect ninety days from passage. Approved by the Governor]

AN ACT to amend and reenact section twelve, article five-d, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section twelve, article five-h of said chapter, all relating to administrative appeals of civil assessments, license limitations, suspensions or revocations concerning personal care homes and residential board and care homes; and providing an informal and formal appeal process.

Be it enacted by the Legislature of West Virginia:

That section twelve, article five-d, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section twelve, article five-h of said chapter be amended and reenacted, all to read as follows:

Article

5D. Personal Care Homes.

5H. Residential Board and Care Homes.

ARTICLE 5D. PERSONAL CARE HOMES.

§16-5D-12. Administrative appeals for civil assessments, license limitation, suspension or revocation.

- 1 (a) Any licensee or applicant aggrieved by an order issued
- 2 pursuant to sections five, six, ten or eleven of this article may
- 3 request a formal or informal hearing with the director or
- 4 program manager in order to contest the order as contrary to

5 law or unwarranted by the facts or both. If the contested matter
6 is not resolved at the informal hearing, the licensee or applicant
7 may request a formal hearing before the director. An informal
8 hearing is not a prerequisite for requesting a formal hearing.

9 (b) Informal hearings shall be held within twenty business
10 days of the director's receipt of timely request for appeal,
11 unless the licensee or applicant consents to a postponement or
12 continuance. In no event may the informal hearing occur more
13 than thirty business days after the director receives a timely
14 request for appeal. Neither the licensee or applicant nor the
15 director may be represented by an attorney at the informal
16 hearing. Within ten business days of the conclusion of the
17 informal hearing the director, program manager or designee
18 shall issue an informal hearing order, including the basis for the
19 decision. If the order is not favorable to the licensee or appli-
20 cant, the licensee or applicant may request an appeal and a
21 formal hearing. The director shall notify the administrative
22 hearing examiner of the request for appeal within five business
23 days of receiving the request for an appeal and a formal
24 hearing.

25 (c) If the applicant or licensee requests a formal hearing
26 without a prior informal hearing, or if an applicant or licensee
27 appeals the order issued as a result of the informal hearing, the
28 director shall proceed in accordance with the department's rules
29 of procedure for contested case hearings and declaratory rulings
30 and the pertinent provisions of article five, chapter twenty-nine-
31 a of this code.

32 (d) Following a formal hearing, the director shall make and
33 enter a written order either dismissing the complaint or taking
34 other action as is authorized in this article. The written order of
35 the director shall be accompanied by findings of fact and
36 conclusions of law as specified in section three, article five,
37 chapter twenty-nine-a of this code and a copy of the order and

38 accompanying findings and conclusions shall be served upon
39 the licensee and his or her attorney of record, if any, by certified
40 mail, return receipt requested. If the director suspends a
41 personal care home's license, the order shall also specify the
42 conditions giving rise to the suspension, to be corrected by the
43 licensee during the period of suspension in order to entitle the
44 licensee to reinstatement of the license. If the director revokes
45 a license, the director may stay the effective date of revocation
46 by not more than ninety days upon a showing that the delay is
47 necessary to assure appropriate placement of residents. The
48 order of the director shall be final unless vacated or modified
49 upon judicial review of the order in accordance with the
50 provisions of section thirteen of this article.

51 (e) In addition to all other powers granted by this chapter,
52 the director may hold the case under advisement and make a
53 recommendation as to requirements to be met by the licensee in
54 order to avoid either suspension or revocation. In such a case,
55 the director shall enter an order accordingly and so notify the
56 licensee and his or her attorney of record, if any, by certified
57 mail, return receipt requested. If the licensee meets the require-
58 ments of the order, the director shall enter an order showing
59 satisfactory compliance and dismissing the complaint and shall
60 so notify the licensee and the licensee's attorney of record, if
61 any, by certified mail, return receipt requested.

ARTICLE 5H. RESIDENTIAL BOARD AND CARE HOMES.

§16-5H-12. Administrative appeals for civil assessments, license limitation, suspension or revocation.

1 (a) Any licensee or applicant aggrieved by an order issued
2 pursuant to sections five, six, ten or eleven of this article may
3 request a formal or informal hearing with the director or the
4 program manager in order to contest the order as contrary to
5 law or unwarranted by the facts or both. If the contested matter
6 is not resolved at the informal hearing, the licensee or applicant

7 may request a formal hearing before the director. An informal
8 hearing is not a prerequisite for requesting a formal hearing.

9 (b) Informal hearings shall be held within twenty business
10 days of the director's receipt of timely request for appeal,
11 unless the licensee or applicant consents to a postponement or
12 continuance. In no event may the informal hearing occur more
13 than thirty business days after the director receives a timely
14 request for appeal. Neither the licensee or applicant nor the
15 director may be represented by an attorney at the informal
16 hearing. Within ten business days of the conclusion of the
17 informal hearing the director, program manager or designee
18 shall issue an informal hearing order, including the basis for the
19 decision. If the order is not favorable to the licensee or appli-
20 cant, the licensee or applicant may request an appeal and a
21 formal hearing. The director shall notify the administrative
22 hearing examiner of the request for appeal within five business
23 days of receiving the request for an appeal and a formal
24 hearing.

25 (c) If the applicant or licensee requests a formal hearing
26 without a prior informal hearing or if an applicant or licensee
27 appeals the order issued as a result of the informal hearing, the
28 director shall proceed in accordance with the department's rules
29 of procedure for contested case hearings and declaratory rulings
30 and the pertinent provisions of article five, chapter twenty-nine-
31 a of this code.

32 (d) Following the formal hearing, the director shall make
33 and enter a written order either dismissing the complaint or
34 taking other action as is authorized in this article. The written
35 order of the director shall be accompanied by findings of fact
36 and conclusions of law as specified in section three, article five,
37 chapter twenty-nine-a of this code and a copy of the order and
38 accompanying findings and conclusions shall be served upon
39 the licensee and his or her attorney of record, if any, by certified

40 mail, return receipt requested. If the director suspends a
41 residential board and care home's license, the order shall also
42 specify the conditions giving rise to the suspension, to be
43 corrected by the licensee during the period of suspension in
44 order to entitle the licensee to reinstatement of the license. If
45 the director revokes a license, the director may stay the effec-
46 tive date of revocation by not more than ninety days upon a
47 showing that the delay is necessary to assure appropriate
48 placement of residents. The order of the director shall be final
49 unless vacated or modified upon judicial review of the order in
50 accordance with the provisions of section thirteen of this article.

51 (e) In addition to all other powers granted by this chapter,
52 the director may hold the case under advisement and make a
53 recommendation as to requirements to be met by the licensee in
54 order to avoid either suspension or revocation. In such a case,
55 the director shall enter an order accordingly and so notify the
56 licensee and his or her attorney of record, if any, by certified
57 mail, return receipt requested. If the licensee meets the require-
58 ments of the order, the director shall enter an order showing
59 satisfactory compliance and dismissing the complaint and shall
60 so notify the licensee and the licensee's attorney of record, if
61 any, by certified mail, return receipt requested.

CHAPTER 48

(Com. Sub. for S. B. 694 — By Senator Prezioso, By Request)

[Passed April 14, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto

a new article, designated article five-t, relating to the establishment of the care home advisory board; report to governor and Legislature; specifying board membership; meetings of the board; members entitled to expenses; and sunset of board in two thousand three.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5T. CARE HOME ADVISORY BOARD.

§16-5T-1. Care home advisory board created; membership; terms; meetings; compensation; termination.

1 (a) The care home advisory board is hereby created to
2 gather information concerning personal care homes, as defined
3 and regulated in article five-d of this chapter, and residential
4 board and care homes, as defined and regulated in article five-h
5 of this chapter, and make its findings and recommendations to
6 the governor and the Legislature.

7 (b) The care home advisory board will have seven mem-
8 bers: The president of the Senate or his or her designee; the
9 speaker of the House of Delegates or his or her designee; the
10 secretary of the department of health and human resources or
11 his or her designee; an operator of a personal care home
12 licensed in this state; an operator of a residential board and care
13 home licensed in this state; and two members of the public at
14 large, one of which shall be an advocate for consumer rights.

15 (c) The governor shall appoint the members to the board, by
16 and with the advice and consent of the Senate. Appointments
17 under the provision of this article shall be for a three-year term
18 or the unexpired term, except in the initial appointments as

19 follows: One citizen member shall be appointed for a two-year
20 term; one citizen member shall be appointed for a three-year
21 term; and the care home operator members shall be appointed
22 for a one-year term. Subsequent appointments to the committee
23 shall be for three year terms. No member shall serve more than
24 two successive terms.

25 (d) The advisory board shall meet at least four times
26 annually at the times and places in the state that it determines.
27 A majority of the members constitutes a quorum for the purpose
28 of conducting business. The secretary of the department of
29 health and human resources or his or her designee shall serve as
30 chair of the advisory board.

31 (e) Members of the advisory board are not entitled to
32 compensation for services performed as members, but are
33 entitled to reimbursement for all reasonable and necessary
34 expenses actually incurred in the performance of their duties,
35 which shall be paid from the funds of the department of health
36 and human resources.

37 (f) Pursuant to the provisions of article ten, chapter four of
38 this code, the care home advisory board shall continue to exist
39 until the first day of July, two thousand three, unless sooner
40 terminated, continued or reestablished by act of the Legislature.

CHAPTER 49

(H. B. 2903 — By Delegates DeLong, Douglas, Cann and Swartzmiller)

[Passed April 12, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, two, three and eight, article two-c, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to including on a central registry those persons who have abused, neglected or committed other crimes against persons who are adults receiving behavioral health services.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2C. CENTRAL ABUSE REGISTRY.

§15-2C-1. Definitions.

§15-2C-2. Central abuse registry; required information; procedures.

§15-2C-3. Reports of certain convictions by prosecuting attorneys.

§15-2C-8. Service provider responsibilities.

***§15-2C-1. Definitions.**

1 The following words when used in this article have mean-
2 ings ascribed to them in this section, except in those instances
3 where the context clearly indicates a different meaning:

4 (a) “Central abuse registry” or “registry” means the registry
5 created by this article which shall contain the names of individ-
6 uals who have been convicted of a felony or a misdemeanor
7 offense constituting abuse, neglect or misappropriation of the
8 property of a child or an incapacitated adult or an adult receiv-
9 ing behavioral health services.

10 (b) “Child abuse and neglect” or “child abuse or neglect”
11 means those terms as defined in section three, article one,
12 chapter forty-nine of this code, and shall include any act with
13 respect to a child which is a crime against the person pursuant

***Clerk’s Note:** This section was also amended by H. B. 3049 (Chapter 50), which passed subsequent to this act.

14 to article two, chapter sixty-one of this code, any act which is
15 unlawful pursuant to article eight-d of chapter sixty-one, and
16 any offense with respect to a child which is enumerated in
17 section three of this article.

18 (c) "Abuse or neglect of an incapacitated adult" means
19 "abuse" "neglect" and "incapacitated adult" as those terms are
20 defined in section one, article six, chapter nine, and shall
21 include any act with respect to an incapacitated adult which is
22 a crime against the person pursuant to article two, chapter sixty-
23 one of this code, and any offense with respect to an incapaci-
24 tated adult which is enumerated in section three of this article.

25 (d) "Adult receiving behavioral health services" means a
26 person over the age of eighteen years who is receiving any
27 behavioral health service from a licensed behavioral health
28 provider or any behavioral health provider whose services are
29 paid for, in whole or in part, by medicaid or medicare.

30 (e) "Conviction" of a felony or a misdemeanor means an
31 adjudication of guilt by a court or jury following a hearing on
32 the merits, or entry of a plea of guilty or nolo contendere.

33 (f) "Residential care facility" means any facility where a
34 child or an incapacitated adult or adult receiving behavioral
35 health services resides which is subject to registration, licensure
36 or certification by the department of health and human re-
37 sources, and shall include nursing homes, personal care homes,
38 residential board and care homes, adult family care homes,
39 group homes, legally unlicensed service providers, residential
40 child care facilities, family based foster care homes, specialized
41 family care homes and intermediate care facilities for the
42 mentally retarded.

43 (g) "Misappropriation of property" means any act which is
44 a crime against property under article three, chapter sixty-one

45 of this code with respect to a child in a residential care facility
46 or an incapacitated adult or an adult receiving behavioral health
47 services in a residential care facility or a child or an incapacitated
48 adult or adult receiving behavioral health services who is
49 a recipient of home care services.

50 (h) "Home care" or "home care services" means services
51 provided to children or incapacitated adults or an adult receiving
52 behavioral health services in the home through a hospice
53 provider, a community care provider, a home health agency,
54 through the medicaid waiver program, or through any person
55 when that service is reimbursable under the state medicaid
56 program.

57 (i) "Requester" means any residential care facility, any state
58 licensed day care center, or any provider of home care services
59 or provider of behavioral health services providing to the
60 central abuse registry the name of an individual and other
61 information necessary to identify that individual, and either: (1)
62 Certifying that the individual is being considered for employment
63 by the requester or for a contractual relationship with the
64 requester wherein the individual will provide services to a child
65 or an incapacitated adult or an adult receiving behavioral health
66 services for compensation; or (2) certifying that an allegation
67 of abuse, neglect or misappropriation of property has been
68 made against the individual.

§15-2C-2. Central abuse registry; required information; procedures.

1 (a) The criminal identification bureau of the West Virginia
2 state police shall establish a central abuse registry, to contain
3 information relating to criminal convictions involving child
4 abuse or neglect, abuse or neglect of an incapacitated adult or
5 an adult receiving behavioral health services and misappropriation
6 of property by individuals specified in subsection (b) of

7 this section and information relating to individuals required to
8 be registered as a sex offender.

9 (b) The central abuse registry shall contain, at a minimum,
10 information relating to: Convictions of a misdemeanor or a
11 felony involving abuse, neglect or misappropriation of property,
12 by an individual performing services for compensation, within
13 the scope of the individual's employment or contract to provide
14 services, in a residential care facility, in a licensed day care
15 center in connection with providing behavioral health services,
16 or in connection with the provision of home care services;
17 information relating to individuals convicted of specific
18 offenses enumerated in subsection (a), section three of this
19 article with respect to a child or an incapacitated adult or an
20 adult receiving behavioral health services; and information
21 relating to all individuals required to register with the West
22 Virginia state police as sex offenders pursuant to the provisions
23 of article twelve, chapter fifteen of this code. The central abuse
24 registry shall contain the following information:

25 (1) The individual's full name;

26 (2) Sufficient information to identify the individual,
27 including date of birth, social security number and fingerprints
28 if available;

29 (3) Identification of the criminal offense constituting abuse,
30 neglect or misappropriation of property of a child or an incapac-
31 itated adult or an adult receiving behavioral health services;

32 (4) For cases involving abuse, neglect or misappropriation
33 of property of a child or an incapacitated adult or an adult
34 receiving behavioral health services in a residential care facility
35 or a day care center, or of a child or an incapacitated adult or an
36 adult receiving behavioral health services receiving home care
37 services, sufficient information to identify the location where
38 the documentation of any investigation by the department of

39 health and human resources is on file and the location of
40 pertinent court files; and

41 (5) Any statement by the individual disputing the convic-
42 tion, if he or she chooses to make and file one.

43 (c) Upon conviction in the criminal courts of this state of a
44 misdemeanor or a felony offense constituting child abuse or
45 neglect or abuse or neglect of an incapacitated adult or an adult
46 receiving behavioral health services, the individual so convicted
47 shall be placed on the central abuse registry.

§15-2C-3. Reports of certain convictions by prosecuting attorneys.

1 (a) The central abuse registry shall maintain information
2 relating to child abuse or neglect, abuse or neglect of an
3 incapacitated adult or adult receiving behavioral health ser-
4 vices, and misappropriation of property with respect to individ-
5 uals convicted of certain offenses pursuant to this code, when
6 the victim of the crime is a child or an incapacitated adult or an
7 adult receiving behavioral health services, to include:

8 (1) First or second degree murder pursuant to section one,
9 article two, chapter sixty-one of this code;

10 (2) Voluntary manslaughter pursuant to section four, article
11 two, chapter sixty-one of this code;

12 (3) Attempt to kill or injure by poison pursuant to section
13 seven, article two, chapter sixty-one of this code;

14 (4) Malicious or unlawful assault pursuant to section nine,
15 article two, chapter sixty-one of this code;

16 (5) Assault during commission of or attempt to commit a
17 felony pursuant to section ten, article two, chapter sixty-one of
18 this code;

19 (6) Extortion by threats pursuant to section thirteen, article
20 two, chapter sixty-one of this code;

21 (7) Abduction of a person or kidnapping or concealing a
22 child pursuant to section fourteen, article two, chapter sixty-one
23 of this code;

24 (8) Enticing away or otherwise kidnapping any person
25 pursuant to section fourteen-a, article two, chapter sixty-one of
26 this code;

27 (9) A misdemeanor or felony sexual offense pursuant to
28 article eight-b, chapter sixty-one of this code;

29 (10) Filming of sexually explicit conduct of minors
30 pursuant to article eight-c, chapter sixty-one of this code;

31 (11) Misdemeanor or felony child abuse pursuant to article
32 eight-d, chapter sixty-one of this code;

33 (12) A violent crime against the elderly which is an offense
34 under the provisions of section nine or ten, article two, chapter
35 sixty-one of this code which is subject to the sentencing
36 provisions of section ten-a of said article two; or

37 (13) A property offense pursuant to article three, chapter
38 sixty-one of this code, with respect to a child in a residential
39 care facility or an incapacitated adult or an adult receiving
40 behavioral health services in a residential care facility or a child
41 or an incapacitated adult or an adult receiving behavioral health
42 services who is a recipient of home care services, when the
43 individual committing the offense was providing services for
44 compensation in the residential care facility or within the home.

45 (b) The prosecuting attorneys in each of the fifty-five
46 counties within the state, upon conviction of a misdemeanor, a
47 felony or a lesser included misdemeanor offense for those

48 specific offenses set forth in subsection (a) of this section, shall
49 report the conviction to the central abuse registry, together with
50 additional information, provided in a form, as may be required
51 by the criminal identification bureau for registry purposes.
52 Reporting procedures shall be developed by the criminal
53 identification bureau in conjunction with the prosecuting
54 attorneys' institute and the office of the administrator of the
55 supreme court of appeals.

56 (c) Information relating to convictions prior to the effective
57 date of this section of a misdemeanor or a felony constituting
58 child abuse or abuse or neglect of an incapacitated adult
59 receiving behavioral health services shall, to the extent which
60 is feasible and practicable, be placed on the central abuse
61 registry. When any requester requests information related to a
62 named individual, the criminal identification bureau may search
63 and release other information maintained by the bureau to
64 determine whether that individual has been convicted of
65 offenses which are subject to inclusion on the registry.

§15-2C-8. Service provider responsibilities.

1 All residential care facilities, day care centers, providers to
2 adults with behavioral health needs and home care service
3 providers authorized to operate in West Virginia shall:

4 (1) Provide notice to current employees of the agency and
5 other persons providing services under a contract with the
6 agency within sixty days of the effective date of this article, and
7 provide notice to any newly hired employee or person at the
8 time an employment or contractual relationship is entered into,
9 which notice shall be in the following form: "NOTICE: All
10 service providers in the state of West Virginia are subject to
11 provisions of law creating a central abuse registry. Any person
12 providing services for compensation to children or to incapacitated
13 adults or to adults receiving behavioral health services,

14 who is convicted of a misdemeanor or felony offense constitut-
15 ing abuse, neglect or misappropriation of property of a child or
16 an incapacitated adult or an adult receiving behavioral health
17 services, is subject to listing on the central abuse registry. The
18 fact that a person is listed on the registry may be disclosed in
19 specific instances provided by law. Listing on the registry may
20 limit future employment opportunities, including opportunities
21 for employment with residential care facilities, day care centers
22 and home care agencies. It is the policy of _____
23 [name of agency] to promptly report all suspected instances of
24 abuse, neglect or misappropriation of property to the proper
25 authorities and to cooperate fully in the prosecution of these
26 offenses.”

27 (2) Cooperate fully with law enforcement, prosecuting
28 attorneys and court personnel in criminal prosecutions of acts
29 of child abuse or neglect or abuse or neglect of an incapacitated
30 adult or adult receiving behavioral health services.

31 (3) Respond promptly to all requests by other service
32 providers for references for former or present employees of the
33 agency, which response may include a subjective assessment as
34 to whether the individual for whom the reference is sought is
35 suited to provide services to children or incapacitated adults or
36 to adults receiving behavioral health services.

CHAPTER 50

**(H. B. 3049 — By Delegates Stemple, Mezzatesta, Williams,
Carmichael, Swartzmiller, Louisos and Harrison)**

[Passed April 14, 2001; in effect July 1, 2001. Approved by the Governor.]

AN ACT to amend and reenact section one, article two-c, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend article three, chapter eighteen-a of said code by adding thereto a new section, designated section ten, all relating to public safety; including on the central abuse registry those persons who have abused, neglected or committed other crimes against persons who are adults, receiving behavioral health services; authorizing the state department of education to request information from the central abuse registry; requiring fingerprinting and criminal record checks of certain applicants with state department of education; and use and disclosure of information obtained from record checks.

Be it enacted by the Legislature of West Virginia:

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

Chapter

15. Public safety.

18A. School Personnel.

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 2C. CENTRAL ABUSE REGISTRY.

***§15-2C-1. Definitions.**

1 The following words when used in this article have
2 meanings ascribed to them in this section, except in those
3 instances where the context clearly indicates a different
4 meaning:

***Clerk's Note:** This section was also amended by H. B. 2903 (Chapter 49), which passed prior to this act.

5 (a) “Central abuse registry” or “registry” means the registry
6 created by this article which shall contain the names of individ-
7 uals who have been convicted of a felony or a misdemeanor
8 offense constituting abuse, neglect or misappropriation of the
9 property of a child or an incapacitated adult or an adult receiv-
10 ing behavioral health services.

11 (b) “Child abuse and neglect” or “child abuse or neglect”
12 means those terms as defined in section three, article one,
13 chapter forty-nine of this code, and shall include any act with
14 respect to a child which is a crime against the person pursuant
15 to article two, chapter sixty-one of this code, any act which is
16 unlawful pursuant to article eight-d of said chapter sixty-one,
17 and any offense with respect to a child which is enumerated in
18 section three of this article.

19 (c) “Abuse or neglect of an incapacitated adult” means
20 “abuse” “neglect” and “incapacitated adult” as those terms are
21 defined in section one, article six, chapter nine, and shall
22 include any act with respect to an incapacitated adult which is
23 a crime against the person pursuant to article two, chapter sixty-
24 one of this code, and any offense with respect to an incapaci-
25 tated adult which is enumerated in section three of this article.

26 (d) “Adult receiving behavioral health services” means a
27 person over the age of eighteen years who is receiving any
28 behavioral health service from a licensed behavioral health
29 provider or any behavioral health provider whose services are
30 paid for, in whole or in part, by medicaid or medicare.

31 (e) “Conviction” of a felony or a misdemeanor means an
32 adjudication of guilt by a court or jury following a hearing on
33 the merits, or entry of a plea of guilty or nolo contendere.

34 (f) “Residential care facility” means any facility where a
35 child or an incapacitated adult or an adult receiving behavioral
36 health services resides which is subject to registration, licensure

37 or certification by the department of health and human re-
38 sources, and shall include nursing homes, personal care homes,
39 residential board and care homes, adult family care homes,
40 group homes, legally unlicensed service providers, residential
41 child care facilities, family based foster care homes, specialized
42 family care homes and intermediate care facilities for the
43 mentally retarded.

44 (g) "Misappropriation of property" means any act which is
45 a crime against property under article three, chapter sixty-one
46 of this code with respect to a child in a residential care facility
47 or an incapacitated adult or an adult receiving behavioral health
48 services in a residential care facility or a child or an incapac-
49 itated adult or an adult receiving behavioral health services who
50 is a recipient of home care services.

51 (h) "Home care" or "home care services" means services
52 provided to children or incapacitated adults or adults receiving
53 behavioral health services in the home through a hospice
54 provider, a community care provider, a home health agency,
55 through the medicaid waiver program, or through any person
56 when that service is reimbursable under the state medicaid
57 program.

58 (i) "Requester" means the West Virginia department of
59 education, any residential care facility, any state licensed day
60 care center, or any provider of home care services or an adult
61 receiving behavioral health services providing to the central
62 abuse registry the name of an individual and other information
63 necessary to identify that individual, and either: (1) Certifying
64 that the individual is being considered for employment by the
65 requester or for a contractual relationship with the requester
66 wherein the individual will provide services to a child or an
67 incapacitated adult or an adult receiving behavioral health
68 services for compensation; or (2) certifying that an allegation
69 of abuse, neglect or misappropriation of property has been
70 made against the individual.

CHAPTER 18A. SCHOOL PERSONNEL.**ARTICLE 3. TRAINING, CERTIFICATION, LICENSING, PROFESSIONAL DEVELOPMENT.****§18A-3-10. Criminal history check of applicants for licensure by the state department of education.**

1 Beginning the first day of January, two thousand two, any
2 applicant for an initial license issued by the West Virginia
3 department of education shall be fingerprinted by the West
4 Virginia state police in accordance with state board policy in
5 order to determine the applicant's suitability for licensure. The
6 fingerprints shall be analyzed by the state police for a state
7 criminal history record check through the central abuse registry
8 and then forwarded to the federal bureau of investigation for a
9 national criminal history record check. Information contained
10 in either the central abuse registry record or the federal bureau
11 of investigation record may form the basis for the denial of a
12 certificate for just cause. The applicant for initial certification
13 pays for the cost of obtaining the central abuse registry record
14 and the federal bureau of investigation record.

15 Upon written consent to the state department by the
16 applicant and within ninety days of the state fingerprint
17 analysis, the results of a state analysis may be provided to a
18 county board with which the applicant is applying for employ-
19 ment without further cost to the applicant.

20 Information maintained by the state department or a county
21 board which was obtained for the purpose of this section is
22 exempt from the disclosure provisions of chapter twenty-nine-b
23 of this code. Nothing in this section prohibits disclosure or
24 publication of information in a statistical or other form which
25 does not identify the individuals involved or provide personal
26 information.

CHAPTER 51

**(S. B. 620 — By Senators Wooton, Hunter,
Sprouse, McCabe and Rowe)**

[Passed April 14, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article six, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section sixteen; and to amend and reenact section nine, article six-a, chapter forty-nine of said code, all relating to abuse and neglect; authorizing the secretary of the department of health and human resources to issue administrative subpoenas in order to locate certain adults and children; providing for service; authorizing circuit courts to issue subpoenas for the secretary; and invoking judicial aid to compel compliance therewith.

Be it enacted by the Legislature of West Virginia:

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

Chapter

9. Human Services.

49. Child Welfare.

CHAPTER 9. HUMAN SERVICES.

ARTICLE 6. SOCIAL SERVICES FOR ADULTS.

§9-6-16. Compelling production of information.

1 (a) (1) In order to obtain information regarding the location
2 of an adult who is the subject of an allegation of abuse or
3 neglect, the secretary of the department of health and human
4 resources may serve, by certified mail, personal service or
5 facsimile, an administrative subpoena on any corporation,
6 partnership, business or organization for production of informa-
7 tion leading to determining the location of the adult. In case of
8 disobedience to the subpoena, adult protective services may
9 petition any circuit court to require the production of informa-
10 tion.

11 (2) In case of disobedience to the subpoena, in compelling
12 the production of information the secretary may invoke the aid
13 of: (A) The circuit court with jurisdiction over the served party,
14 if the entity served is located in this state; or (B) the circuit
15 court of the county in which the local protective services office
16 conducting the investigation is located, if the entity served is a
17 nonresident.

18 (3) A circuit court shall not enforce an administrative
19 subpoena unless it finds that: (A) The investigation is one the
20 division of adult protective services is authorized to make and
21 is being conducted pursuant to a legitimate purpose; (B) the
22 inquiry is relevant to that purpose; (C) the inquiry is not too
23 broad or indefinite; (D) the information sought is not already in
24 the possession of the division of adult protective services; and
25 (E) any administrative steps required by law have been fol-
26 lowed.

27 (4) If circumstances arise where the secretary, or his or her
28 designee, determines it necessary to compel an individual to
29 provide information regarding the location of an adult who is
30 the subject of an allegation of abuse or neglect, the secretary, or
31 his or her designee, may seek a subpoena from the circuit court

32 with jurisdiction over the individual from whom the informa-
33 tion is sought.

CHAPTER 49. CHILD WELFARE.

**ARTICLE 6A. REPORTS OF CHILDREN SUSPECTED TO BE ABUSED OR
NEGLECTED.**

***§49-6A-9. Establishment of child protective services; general
duties and powers; cooperation of other state
agencies.**

1 (a) The state department shall establish or designate in
2 every county a local child protective services office to perform
3 the duties and functions set forth in this article.

4 (b) The local child protective service shall investigate all
5 reports of child abuse or neglect: *Provided*, That under no
6 circumstances shall investigating personnel be relatives of the
7 accused, the child or the families involved. In accordance with
8 the local plan for child protective services, it shall provide
9 protective services to prevent further abuse or neglect of
10 children and provide for or arrange for and coordinate and
11 monitor the provision of those services necessary to ensure the
12 safety of children. The local child protective service shall be
13 organized to maximize the continuity of responsibility, care and
14 service of individual workers for individual children and
15 families: *Provided, however*, That under no circumstances may
16 the secretary or his or her designee promulgate rules or estab-
17 lish any policy which restricts the scope or types of alleged
18 abuse or neglect of minor children which are to be investigated
19 or the provision of appropriate and available services.

20 Each local child protective service office shall:

21 (1) Receive or arrange for the receipt of all reports of
22 children known or suspected to be abused or neglected on a 24-

***Clerk's Note:** This section was also amended by H. B. 2418 (Chapter 57), which passed prior to this act.

23 hour, seven-day-a-week basis and cross-file all such reports
24 under the names of the children, the family and any person
25 substantiated as being an abuser or neglecter by investigation of
26 the department of health and human resources, with use of such
27 cross-filing of such person's name limited to the internal use of
28 the department;

29 (2) Provide or arrange for emergency children's services to
30 be available at all times;

31 (3) Upon notification of suspected child abuse or neglect,
32 commence or cause to be commenced a thorough investigation
33 of the report and the child's environment. As a part of this
34 response, within fourteen days there shall be a face-to-face
35 interview with the child or children and the development of a
36 protection plan, if necessary for the safety or health of the child,
37 which may involve law-enforcement officers or the court;

38 (4) Respond immediately to all allegations of imminent
39 danger to the physical well-being of the child or of serious
40 physical abuse. As a part of this response, within seventy-two
41 hours, there shall be a face-to-face interview with the child or
42 children and the development of a protection plan which may
43 involve law-enforcement officers or the court; and

44 (5) In addition to any other requirements imposed by this
45 section, when any matter regarding child custody is pending the
46 circuit court or family law master may refer allegations of child
47 abuse and neglect to the local child protective service for
48 investigation of the allegations as defined by this chapter and
49 require the local child protective service to submit a written
50 report of the investigation to the referring circuit court or family
51 law master within the time frames set forth by the circuit court
52 or family law master.

53 (c) In those cases in which the local child protective service
54 determines that the best interests of the child require court
55 action, the local child protective service shall initiate the
56 appropriate legal proceeding.

57 (d) The local child protective service shall be responsible
58 for providing, directing or coordinating the appropriate and
59 timely delivery of services to any child suspected or known to
60 be abused or neglected, including services to the child's family
61 and those responsible for the child's care.

62 (e) To carry out the purposes of this article, all departments,
63 boards, bureaus and other agencies of the state or any of its
64 political subdivisions and all agencies providing services under
65 the local child protective service plan shall, upon request,
66 provide to the local child protective service such assistance and
67 information as will enable it to fulfill its responsibilities.

68 (f) (1) In order to obtain information regarding the location
69 of a child who is the subject of an allegation of abuse or
70 neglect, the secretary of the department of health and human
71 resources may serve, by certified mail or personal service, an
72 administrative subpoena on any corporation, partnership,
73 business or organization for the production of information
74 leading to determining the location of the child.

75 (2) In case of disobedience to the subpoena, in compelling
76 the production of documents, the secretary may invoke the aid
77 of: (A) The circuit court with jurisdiction over the served party,
78 if the person served is a resident; or (B) the circuit court of the
79 county in which the local child protective services office
80 conducting the investigation is located, if the person served is
81 a nonresident.

82 (3) A circuit court shall not enforce an administrative
83 subpoena unless it finds that: (A) The investigation is one the
84 division of child protective services is authorized to make and
85 is being conducted pursuant to a legitimate purpose; (B) the
86 inquiry is relevant to that purpose; (C) the inquiry is not too
87 broad or indefinite; (D) the information sought is not already in
88 the possession of the division of child protective services; and
89 (E) any administrative steps required by law have been fol-
90 lowed.

91 (4) If circumstances arise where the secretary, or his or her
92 designee, determines it necessary to compel an individual to
93 provide information regarding the location of a child who is the
94 subject of an allegation of abuse or neglect, the secretary, or his
95 or her designee, may seek a subpoena from the circuit court
96 with jurisdiction over the individual from whom the informa-
97 tion is sought.

CHAPTER 52

(Com. Sub. for S. B. 674 — By Senator Wooton)

[Passed April 12, 2001; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article nine, chapter fifteen 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 three; to amend and reenact sections eight-a and nine-a, article twenty, chapter thirty-one of said code; to amend and reenact sections two and three,

article two-b, chapter forty-nine of said code; and to amend and reenact section two, article six-a of said chapter, all relating to juvenile detention and correctional facilities and child welfare facilities; providing for promulgation of standards by a date certain for the physical plant, structure, operation and maintenance of detention and correctional facilities by the juvenile facility standards commission; authorizing an emergency rule relating to licensing and accreditation of juvenile detention and correctional facilities; providing a grandfather clause mandating inspections to ascertain compliance with said standards by the governor's committee on crime, delinquency and correction; providing for specific application of, and exemption from, the child welfare licensing jurisdiction of the commissioner of human services; authorizing promulgation of an emergency rule relating to ascertaining jurisdiction for licensing purposes; and providing that employees of the division of juvenile services must report child abuse and neglect.

Be it enacted by the Legislature of West Virginia:

That section two, article nine, chapter fifteen 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 three; that sections eight-a and nine-a, article twenty, chapter thirty-one of said code be amended and reenacted; that sections two and three, article two-b, chapter forty-nine of said code be amended and reenacted; and that section two, article six-a of said chapter be amended and reenacted, all to read as follows:

Chapter

15. Public Safety.

31. Corporations.

49. Child Welfare.

CHAPTER 15. PUBLIC SAFETY.

**ARTICLE 9. GOVERNOR'S COMMITTEE ON CRIME, DELINQUENCY
AND CORRECTION.**

§15-9-2. Facility inspection.

§15-9-3. Ascertaining compliance with applicable standards in juvenile detention and correctional facilities.

§15-9-2. Facility inspection.

1 The governor's committee on crime, delinquency and
2 correction shall annually visit and inspect jails, detention
3 facilities, correctional facilities, facilities which may hold
4 juveniles involuntarily or any other juvenile facility which may
5 temporarily house juveniles on a voluntary or involuntary basis
6 for the purpose of compliance with standards promulgated by
7 the juvenile facilities standards commission, pursuant to section
8 nine-a, article twenty, chapter thirty-one of this code and with
9 the Juvenile Justice and Delinquency Prevention Act of 1974,
10 as amended.

**§15-9-3. Ascertaining compliance with applicable standards in
juvenile detention and correctional facilities.**

1 The governor's committee on crime, delinquency and
2 correction shall ascertain the compliance of juvenile detention
3 and juvenile correctional facilities operated by or under contract
4 with the division of juvenile services, created pursuant to
5 section two, article five-e, chapter forty-nine of this code, with
6 standards for the structure, physical plant, operation and
7 maintenance of the facilities, promulgated by the juvenile
8 facility standards commission, pursuant to section nine-a,
9 article twenty, chapter thirty-one of this code: *Provided*, That
10 such review shall not include educational programs in such
11 facilities.

CHAPTER 31. CORPORATIONS.

ARTICLE 20. WEST VIRGINIA REGIONAL JAIL AND CORRECTIONAL FACILITY AUTHORITY.

§31-20-8a. Juvenile facilities standards commission; appointment; compensation; vacancies; quorum.

§31-20-9a. Juvenile facilities standards commission; purpose; powers; and duties.

§31-20-8a. Juvenile facilities standards commission; appointment; compensation; vacancies; quorum.

1 (a) A juvenile facilities standards commission consisting of
2 fourteen members is hereby created. The governor shall appoint
3 two citizen members who are experienced and knowledgeable
4 in the field of law enforcement; two citizen members who are
5 experienced and knowledgeable in the field of juvenile develop-
6 ment; one educator; one health care professional; and one lay
7 member. Each of these appointed members shall serve for a
8 term of three years and be eligible for reappointment. The
9 secretary of the department of military affairs and public safety
10 shall be a nonvoting member, ex officio, and shall serve as the
11 commission's chairman. The state fire marshal, the chairman of
12 the juvenile justice subcommittee of the governor's committee
13 on crime, delinquency and correction, a child care licensing
14 specialist from the department of health and human resources,
15 designated by the secretary thereof, and a representative from
16 the administrative office of the supreme court of appeals,
17 designated by the director of that office, shall be nonvoting
18 members, ex officio. The director of the division of juvenile
19 services and the executive director of the regional jail and
20 correctional facility authority shall be nonvoting members, ex
21 officio, and shall serve in an advisory capacity.

22 (b) Members of the commission shall serve without
23 compensation, but may be reimbursed by the division of
24 juvenile services for reasonable and necessary expenses
25 incurred in the performance of their duties. The division of

26 juvenile services shall provide the commission with secretarial
27 and other necessary services.

28 (c) A vacancy among the appointed members of the
29 commission shall be filled, within thirty days, in the same
30 manner as the original appointment. A quorum consists of four
31 of the seven voting members.

**§31-20-9a. Juvenile facilities standards commission; purpose;
powers; and duties.**

1 The purpose of the commission is to assure that proper
2 minimum standards and procedures are developed for the
3 structure and physical plant of juvenile detention and juvenile
4 correctional facilities and their operation, maintenance and
5 management. To this end, the commission shall:

6 (1) Develop standards for the structure and physical plant,
7 maintenance and operation of juvenile detention and correc-
8 tional facilities. These standards shall include, but not be
9 limited to, requirements assuring adequate space, lighting and
10 ventilation; fire protection equipment and procedures; provision
11 of specific personal hygiene articles; bedding, furnishings and
12 clothing; food services; appropriate staffing and training;
13 sanitation, safety and hygiene; isolation and suicide prevention;
14 appropriate medical, dental, behavioral and other health
15 services; indoor and outdoor exercise; appropriate vocational
16 and educational opportunities; rules and discipline; religious
17 services; vocational programs; library services; visitation, mail
18 and telephone privileges; and other standards necessary to
19 assure proper operation.

20 (2) Propose legislative rules for promulgation pursuant to
21 article three, chapter twenty-nine-a of this code, including,
22 without limitation, the minimum standards for juvenile deten-

23 tion and correctional facilities as provided in subdivision (1) of
24 this section not later than the first day of December, two
25 thousand one.

26 (3) Develop a process for reviewing and updating these
27 rules and standards as necessary to assure that they conform to
28 current law.

29 (4) Report periodically to the authority to advise and
30 recommend actions to be taken by the authority, if necessary,
31 to implement proper standards in the state's juvenile detention
32 and correctional facilities.

33 The commission is hereby directed to promulgate an
34 emergency rule, pursuant to the provisions of article three,
35 chapter twenty-nine-a of this code, relating to licensing and
36 accreditation for juvenile detention facilities and juvenile
37 correctional facilities: *Provided*, That such emergency rule shall
38 make provision for grandfathering existing juvenile detention
39 facilities and juvenile correctional facilities into the licensing
40 and accreditation scheme.

CHAPTER 49. CHILD WELFARE.

Article

2B. Duties of Commissioner of Human Services for Child Welfare.

6A. Reports of Children Suspected to be Abused or Neglected.

ARTICLE 2B. DUTIES OF COMMISSIONER OF HUMAN SERVICES FOR CHILD WELFARE.

§49-2B-2. Definitions.

§49-2B-3. Licensure, certification, approval and registration requirements.

§49-2B-2. Definitions.

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

3 (a) "Approval" means a finding by the commissioner that
4 a facility operated by the state has met the requirements set
5 forth in the rules promulgated pursuant to this article.

6 (b) "Certificate of approval" means a statement of the
7 commissioner that a facility operated by the state has met the
8 requirements set forth in the rules promulgated pursuant to this
9 article.

10 (c) "Certificate of license" means a statement issued by the
11 commissioner authorizing an individual, corporation, partner-
12 ship, voluntary association, municipality or county, or any
13 agency thereof, to provide specified services for a limited
14 period of time in accordance with the terms of the certificate.

15 (d) "Certificate of registration" means a statement issued by
16 the commissioner to a family day care home upon receipt of a
17 self-certification statement of compliance with the rules
18 promulgated pursuant to the provisions of this article.

19 (e) "Certification" means a statement issued by the com-
20 missioner to a family day care facility upon satisfactory
21 inspection, approval and certification that the facility has
22 complied with the applicable rules promulgated by the commis-
23 sioner.

24 (f) "Child" means any person under eighteen years of age.

25 (g) "Child care" means responsibilities assumed and
26 services performed in relation to a child's physical, emotional,
27 psychological, social and personal needs and the consideration
28 of the child's rights and entitlements, but does not include
29 secure detention or incarceration under the jurisdiction of the

30 division of juvenile services, created under section two, article
31 five-e of this chapter.

32 (h) "Child-placing agency" means a child welfare agency
33 organized for the purpose of placing children in private family
34 homes for foster care or for adoption. The function of a child-
35 placing agency may include the investigation and certification
36 of foster family homes and foster family group homes as
37 provided in this chapter. The function of a child-placing agency
38 may also include the supervision of children who are sixteen or
39 seventeen years old and living in unlicensed residences.

40 (i) "Child welfare agency" means any agency or facility
41 maintained by the state or any county or municipality thereof,
42 or any agency or facility maintained by an individual, firm,
43 corporation, association or organization, public or private, to
44 receive children for care and maintenance or for placement in
45 residential care facilities, including, without limitation, private
46 homes, or any facility that provides care for unmarried mothers
47 and their children: *Provided*, That the term does not include
48 juvenile detention facilities or juvenile correctional facilities
49 operated by or under contract with the division of juvenile
50 services, created under section two, article five-e of this
51 chapter, nor any other facility operated by that division for the
52 secure housing or holding of juveniles committed to its custody.

53 (j) "Commissioner" means the commissioner of human
54 services.

55 (k) "Day care center" means a facility operated by a child
56 welfare agency for the care of thirteen or more children on a
57 nonresidential basis.

58 (l) "Department" means the department of health and
59 human resources.

60 (m) "Facility" means a place or residence, including
61 personnel, structures, grounds and equipment, used for the care
62 of a child or children on a residential or other basis for any
63 number of hours a day in any shelter or structure maintained for
64 that purpose: *Provided*, That the term does not include any
65 juvenile detention facility or juvenile correctional facility
66 operated by or under contract with the division of juvenile
67 services, created pursuant to section two, article five-e of this
68 chapter, for the secure housing or holding of juveniles commit-
69 ted to its custody.

70 (n) "Family day care home" means a facility which is used
71 to provide nonresidential child care for compensation in other
72 than the child's own home. The provider may care for four to
73 six children, including children who are living in the household,
74 who are under six years of age. No more than two of the total
75 number of children may be under twenty-four months of age.

76 (o) "Family day care facility" means any facility which is
77 used to provide nonresidential child care for compensation for
78 seven to twelve children, including children who are living in
79 the household, who are under six years of age. No more than
80 four of the total number of children may be under twenty-four
81 months of age.

82 (p) "Foster family group home" means a private residence
83 which is used for the care on a residential basis of six, seven or
84 eight children who are unrelated by blood, marriage or adoption
85 to any adult member of the household.

86 (q) "Foster family home" means a private residence which
87 is used for the care on a residential basis of no more than five
88 children who are unrelated by blood, marriage or adoption to
89 any adult member of the household.

90 (r) "Group home" means any facility, public or private,
91 which is used to provide residential child care for ten or fewer
92 children.

93 (s) "Group home facility" means any facility, public or
94 private, which is used to provide residential care for eleven or
95 more children: *Provided*, That the term does not include any
96 juvenile detention facility or juvenile correctional facility
97 operated by or under contract with the division of juvenile
98 services, created pursuant to section two, article five-e of this
99 chapter, for the secure housing or holding of juveniles commit-
100 ted to its custody.

101 (t) "License" means the grant of official permission to a
102 facility to engage in an activity which would otherwise be
103 prohibited.

104 (u) "Registration" means the process by which a family day
105 care home self-certifies compliance with the rules promulgated
106 pursuant to this article.

107 (v) "Residential child care" or "child care on a residential
108 basis" means child care which includes the provision of
109 nighttime shelter and the personal discipline and supervision of
110 a child by guardians, custodians or other persons or entities on
111 a continuing or temporary basis: *Provided*, That the term does
112 not include or apply to any juvenile detention facility or
113 juvenile correctional facility operated by the division of
114 juvenile services, created pursuant to section two, article five-e
115 of this chapter, for the secure housing or holding of juveniles
116 committed to its custody.

117 (w) "Rule" means a statement issued by the commissioner
118 of the standard to be applied in the various areas of child care.

119 (x) "Variance" means a declaration that a rule may be
120 accomplished in a manner different from the manner set forth
121 in the rule.

122 (y) "Waiver" means a declaration that a certain rule is
123 inapplicable in a particular circumstance.

§49-2B-3. Licensure, certification, approval and registration requirements.

1 (a) Any person, corporation or child welfare agency, other
2 than a state agency, which operates a residential child care
3 facility, a child-placing agency or a day care center shall obtain
4 a license from the department.

5 (b) Any residential child care facility, day care center or
6 any child-placing agency operated by the state shall obtain
7 approval of its operations from the commissioner: *Provided,*
8 That this requirement does not apply to any juvenile detention
9 facility or juvenile correctional facility operated by or under
10 contract with the division of juvenile services, created pursuant
11 to section two, article five-e of this chapter, for the secure
12 housing or holding of juveniles committed to its custody. The
13 facilities and placing agencies shall maintain the same stan-
14 dards of care applicable to licensed facilities, centers or placing
15 agencies of the same category.

16 (c) Any family day care facility which operates in this state,
17 including family day care facilities approved by the department
18 for receipt of funding, shall obtain a statement of certification
19 from the department.

20 (d) Every family day care home which operates in this state,
21 including family day care homes approved by the department

22 for receipt of funding, shall obtain a certificate of registration
23 from the department.

24 (e) This section does not apply to:

25 (1) A kindergarten, preschool or school education program
26 which is operated by a public school or which is accredited by
27 the state department of education, or any other kindergarten,
28 preschool or school programs which operate with sessions not
29 exceeding four hours per day for any child;

30 (2) An individual or facility which offers occasional care of
31 children for brief periods while parents are shopping, engaging
32 in recreational activities, attending religious services or
33 engaging in other business or personal affairs;

34 (3) Summer recreation camps operated for children
35 attending sessions for periods not exceeding thirty days;

36 (4) Hospitals or other medical facilities which are primarily
37 used for temporary residential care of children for treatment,
38 convalescence or testing;

39 (5) Persons providing family day care solely for children
40 related to them; or

41 (6) Any juvenile detention facility or juvenile correctional
42 facility operated by or under contract with the division of
43 juvenile services, created pursuant to section two, article five-e
44 of this chapter, for the secure housing or holding of juveniles
45 committed to its custody.

46 (f) The commissioner is hereby authorized to issue an
47 emergency rule relating to conducting a survey of existing
48 facilities in this state in which children reside on a temporary
49 basis in order to ascertain whether they should be subject to

50 licensing under this article or applicable licensing provisions
51 relating to behavioral health treatment providers.

**ARTICLE 6A. REPORTS OF CHILDREN SUSPECTED TO BE ABUSED OR
NEGLECTED.**

**§49-6A-2. Persons mandated to report suspected abuse and
neglect.**

1 When any medical, dental or mental health professional,
2 christian science practitioner, religious healer, school teacher or
3 other school personnel, social service worker, child care or
4 foster care worker, emergency medical services personnel,
5 peace officer or law-enforcement official, member of the
6 clergy, circuit court judge, family law master, employee of the
7 division of juvenile services or magistrate has reasonable cause
8 to suspect that a child is neglected or abused or observes the
9 child being subjected to conditions that are likely to result in
10 abuse or neglect, such person shall immediately, and not more
11 than forty-eight hours after suspecting this abuse, report the
12 circumstances or cause a report to be made to the state depart-
13 ment of human services: *Provided*, That in any case where the
14 reporter believes that the child suffered serious physical abuse
15 or sexual abuse or sexual assault, the reporter shall also
16 immediately report, or cause a report to be made, to the division
17 of public safety and any law-enforcement agency having
18 jurisdiction to investigate the complaint: *Provided, however*,
19 That any person required to report under this article who is a
20 member of the staff of a public or private institution, school,
21 facility or agency shall immediately notify the person in charge
22 of such institution, school, facility or agency, or a designated
23 agent thereof, who shall report or cause a report to be made.
24 However, nothing in this article is intended to prevent individu-
25 als from reporting on their own behalf.

26 In addition to those persons and officials specifically
27 required to report situations involving suspected abuse or

28 neglect of children, any other person may make a report if such
29 person has reasonable cause to suspect that a child has been
30 abused or neglected in a home or institution or observes the
31 child being subjected to conditions or circumstances that would
32 reasonably result in abuse or neglect.

CHAPTER 53

**(Com. Sub. for S.B. 24 — By Senators Hunter, Minear,
Redd, Kessler, Mitchell and Rowe)**

[Passed April 13, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article twenty-six, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto seven new sections, designated sections one thousand one, one thousand two, one thousand three, one thousand four, one thousand five, one thousand six, and one thousand seven, all relating to establishing children's centers for the monitoring of custodial responsibility; providing exclusions; requiring promulgation of rules; setting standards for centers; requiring certification; requiring contracts for use of centers; authorizing evaluations of centers; authorizing suspension or revocation of certifications; permitting representations upon certification; prohibiting false representation of certification and providing penalties; and allowing courts to order use of centers and to require payment of fees.

Be it enacted by the Legislature of West Virginia:

That article twenty-six, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto seven new sections, designated sections one thousand one, one thousand two, one thousand three, one thousand four, one thousand five, one thousand six and one thousand seven, all to read as follows:

ARTICLE 26. DOMESTIC VIOLENCE ACT.

**PART 10. CHILDREN'S CENTERS FOR THE
MONITORING OF CUSTODIAL RESPONSIBILITY.**

§48-26-1001. Legislative findings.

§48-26-1002. Exclusions.

§48-26-1003. Rules.

§48-26-1004. Contract by persons using center.

§48-26-1005. Certification of children's centers for the monitoring of custodial responsibility; revocation or suspension of certification.

§48-26-1006. Representations regarding certification; misrepresentations; penalties.

§48-26-1007. Court orders; use of centers without court order.

§48-26-1001. Legislative findings.

1 The Legislature finds that increasing numbers of children
2 are living with one parent and that many of these children have
3 been exposed to violence in the home. The Legislature further
4 finds that it is sometimes in the best interests of children that
5 the exercise of custodial responsibility, including the exchange
6 of children, be monitored in order to observe and record the
7 exercise of custodial responsibility and to discourage or prevent
8 inappropriate conduct. For these reasons, the Legislature
9 declares that a program be implemented to foster safe and
10 neutral centers to monitor custodial responsibility, including the
11 exchange of children, through the certification of children's
12 centers for the monitoring of custodial responsibility.

§48-26-1002. Exclusions.

1 The provisions of this part do not apply to therapeutic
2 visitation exchanges or any activity conducted by the state or
3 others in abuse and neglect proceedings pursuant to articles six
4 and six-a, chapter forty-nine of this code in which assessment,
5 evaluation, formulation of a treatment plan, case management,
6 counseling, therapy or similar activities occur.

§48-26-1003. Rules.

1 (a) The board shall propose rules in accordance with the
2 provisions of article three, chapter twenty-nine-a of this code to
3 implement the provisions of this part. The board shall consult
4 with judges, magistrates, law-enforcement officers, licensed
5 batterers intervention programs, the family law committee of
6 the West Virginia state bar, licensed domestic violence pro-
7 grams, trade organizations of licensed domestic violence
8 programs and other individuals and organizations it considers
9 appropriate.

10 (b) At a minimum, the rules are to include:

11 (1) Requirements for the physical facilities in which centers
12 operate, including accommodations for persons with disabili-
13 ties;

14 (2) Requirements for the qualification and training of
15 individuals monitoring custodial responsibility, including the
16 exchange of children;

17 (3) Requirements for qualifications and training of persons
18 authorized to evaluate centers for compliance with the require-
19 ments of this part and rules promulgated pursuant to this
20 section;

21 (4) The period of certification; and

22 (5) Allowable fees for use of the centers.

§48-26-1004. Contract by persons using center.

1 Every center shall require that the parents or other caretak-
2 ers sign a written contract prior to using the center and that the
3 use of the services provided by the center can be terminated by
4 the center for violation of the contract.

**§48-26-1005. Certification of children's centers for the monitor-
ing of custodial responsibility; revocation or
suspension of certification.**

1 (a) The board shall accept applications for certification and
2 grant or deny the applications in an expeditious manner.

3 (b) The board may direct an evaluation to be made of a
4 center that has applied for certification or has been certified to
5 determine the center's ability to monitor custodial responsibil-
6 ity, including the exchange of children, and the center's
7 compliance with the provisions of this article, rules promul-
8 gated pursuant to this article and other law. The evaluation may
9 be done by the appointed members of the board, by designees
10 of the board or by peer evaluation by persons employed at other
11 certified centers.

12 (c) The board may suspend or revoke certification of a
13 center if the board finds that the center has ceased to comply
14 with the provisions of this article, rules promulgated pursuant
15 to this article or other law.

**§48-26-1006. Representations regarding certification; misrep-
sentations; penalties.**

1 (a) Centers that have been certified may represent that they
2 are certified for monitored custodial responsibility, including
3 the exchange of children.

4 (b) No person may represent to the public that a center is
5 certified unless the center has been certified in accordance with
6 the provisions of this article. Any person violating the provi-
7 sions of this subsection is guilty of a misdemeanor and, upon
8 conviction thereof, shall be fined no more than five hundred
9 dollars.

§48-26-1007. Court orders; use of centers without court order.

1 (a) Judges and magistrates may, as a condition of custody,
2 order persons to apply to a certified center for the monitoring of
3 custodial responsibility, including the exchange of children, and
4 to comply with the terms and conditions of those services. A
5 certified center may not be required to perform duties which are
6 beyond the center's capacity or scope of services.

7 (b) Judges and magistrates may require a person to pay a
8 reasonable amount based on ability to pay and other relevant
9 criteria for any fee charged by a center.

10 (c) Certified centers may monitor custodial responsibility
11 or provide other services to persons who are not ordered to seek
12 the services of the center when the adult parties agree to the use
13 of the center.

CHAPTER 54

(H.B. 2959 — By Delegates Amores, Staton, Webster,
R. Thompson, Wills and Faircloth)

[Passed April 12, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article five, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to inadmissibility of certain statements made by juveniles when in custody or in the presence of law-enforcement officers.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. JUVENILE PROCEEDINGS.

§49-5-2. Juvenile jurisdiction of circuit courts, magistrate courts and municipal courts; constitutional guarantees; hearings; evidence and transcripts.

1 (a) The circuit court has original jurisdiction of proceedings
2 brought under this article.

3 (b) If during a criminal proceeding in any court it is
4 ascertained or appears that the defendant is under the age of
5 nineteen years and was under the age of eighteen years at the
6 time of the alleged offense, the matter shall be immediately
7 certified to the juvenile jurisdiction of the circuit court. The
8 circuit court shall assume jurisdiction of the case in the same
9 manner as cases which are originally instituted in the circuit
10 court by petition.

11 (c) Notwithstanding any other provision of this article,
12 magistrate courts have concurrent juvenile jurisdiction with the
13 circuit court for a violation of a traffic law of West Virginia, for
14 a violation of section nine, article six, chapter sixty or section
15 nineteen, article sixteen, chapter eleven of this code, or for any
16 violation of chapter twenty of this code. Juveniles are liable for

17 punishment for violations of these laws in the same manner as
18 adults except that magistrate courts have no jurisdiction to
19 impose a sentence of incarceration for the violation of these
20 laws.

21 (d) Notwithstanding any other provision of this article,
22 municipal courts have concurrent juvenile jurisdiction with the
23 circuit court for a violation of any municipal ordinance regulat-
24 ing traffic, for any municipal curfew ordinance which is
25 enforceable or for any municipal ordinance regulating or
26 prohibiting public intoxication, drinking or possessing alcoholic
27 liquor or nonintoxicating beer in public places, or any other act
28 prohibited by section nine, article six, chapter sixty or section
29 nineteen, article sixteen, chapter eleven of this code. Municipal
30 courts may impose the same punishment for these violations as
31 a circuit court exercising its juvenile jurisdiction could properly
32 impose, except that municipal courts have no jurisdiction to
33 impose a sentence of incarceration for the violation of these
34 laws.

35 (e) A juvenile may be brought before the circuit court for
36 proceedings under this article only by the following means:

37 (1) By a juvenile petition requesting that the juvenile be
38 adjudicated as a status offender or a juvenile delinquent; or

39 (2) By certification or transfer to the juvenile jurisdiction of
40 the circuit court from the criminal jurisdiction of the circuit
41 court, from any foreign court, or from any magistrate court or
42 municipal court in West Virginia.

43 (f) If a juvenile commits an act which would be a crime if
44 committed by an adult, and the juvenile is adjudicated delin-
45 quent for that act, the jurisdiction of the court which adjudged
46 the juvenile delinquent continues until the juvenile becomes
47 twenty-one years of age. The court has the same power over

48 that person that it had before he or she became an adult, and has
49 the further power to sentence that person to a term of incarceration:
50 *Provided*, That any such term of incarceration may not
51 exceed six months. This authority does not preclude the court
52 from exercising criminal jurisdiction over that person if he or
53 she violates the law after becoming an adult or if the proceed-
54 ings have been transferred to the court's criminal jurisdiction
55 pursuant to section ten of this article.

56 (g) A juvenile is entitled to be admitted to bail or recogni-
57 zance in the same manner as an adult and shall be afforded the
58 protection guaranteed by Article III of the West Virginia
59 constitution.

60 (h) A juvenile has the right to be effectively represented by
61 counsel at all stages of proceedings under the provisions of this
62 article. If the juvenile or the juvenile's parent or custodian
63 executes an affidavit showing that the juvenile cannot afford an
64 attorney, the court shall appoint an attorney, who shall be paid
65 in accordance with article twenty-one, chapter twenty-nine of
66 this code.

67 (i) In all proceedings under this article, the juvenile shall be
68 afforded a meaningful opportunity to be heard. This includes
69 the opportunity to testify and to present and cross-examine
70 witnesses. The general public shall be excluded from all
71 proceedings under this article except that persons whose
72 presence is requested by the parties and other persons whom the
73 circuit court determines have a legitimate interest in the
74 proceedings may attend: *Provided*, That in cases in which a
75 juvenile is accused of committing what would be a felony if the
76 juvenile were an adult, an alleged victim or his or her represen-
77 tative may attend any related juvenile proceedings, at the
78 discretion of the presiding judicial officer: *Provided, however*,
79 That in any case in which the alleged victim is a juvenile, he or

80 she may be accompanied by his or her parents or representative,
81 at the discretion of the presiding judicial officer.

82 (j) At all adjudicatory hearings held under this article, all
83 procedural rights afforded to adults in criminal proceedings
84 shall be afforded the juvenile unless specifically provided
85 otherwise in this chapter.

86 (k) At all adjudicatory hearings held under this article, the
87 rules of evidence applicable in criminal cases apply, including
88 the rule against written reports based upon hearsay.

89 (l) Except for res gestae, extrajudicial statements made by
90 a juvenile who has not attained fourteen years of age to law-
91 enforcement officials or while in custody are not admissible
92 unless those statements were made in the presence of the
93 juvenile's counsel. Except for res gestae, extrajudicial state-
94 ments made by a juvenile who has not attained sixteen years of
95 age but who is at least fourteen years of age to law-enforcement
96 officers or while in custody, are not admissible unless made in
97 the presence of the juvenile's counsel or made in the presence
98 of, and with the consent of, the juvenile's parent or custodian,
99 and the parent or custodian has been fully informed regarding
100 the juvenile's right to a prompt detention hearing, the juvenile's
101 right to counsel, including appointed counsel if the juvenile
102 cannot afford counsel, and the juvenile's privilege against self-
103 incrimination.

104 (m) A transcript or recording shall be made of all transfer,
105 adjudicatory and dispositional hearings held in circuit court. At
106 the conclusion of each of these hearings, the circuit court shall
107 make findings of fact and conclusions of law, both of which
108 shall appear on the record. The court reporter shall furnish a
109 transcript of the proceedings at no charge to any indigent
110 juvenile who seeks review of any proceeding under this article
111 if an affidavit is filed stating that neither the juvenile nor the
112 juvenile's parents or custodian have the ability to pay for the
113 transcript.

CHAPTER 55

(Com. Sub. for H. B. 2755 — By Delegates Hall, Martin, Paxton,
Amores, L. Smith and Anderson)

[Passed April 12, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section ten, article five, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to waiver and transfer of juveniles to the criminal jurisdiction of the circuit court for second degree arson offenses involving setting fire to or burning a public building or church; and defining public building or church.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. JUVENILE PROCEEDINGS.

§49-5-10. Waiver and transfer of jurisdiction.

1 (a) Upon written motion of the prosecuting attorney filed at
2 least eight days prior to the adjudicatory hearing and with
3 reasonable notice to the juvenile, his or her counsel, and his or
4 her parents, guardians or custodians, the court shall conduct a
5 hearing to determine if juvenile jurisdiction should or must be
6 waived and the proceeding transferred to the criminal jurisdic-
7 tion of the court. Any motion filed in accordance with this
8 section is to state, with particularity, the grounds for the

9 requested transfer, including the grounds relied upon as set
10 forth in subsection (d), (e), (f) or (g) of this section, and the
11 burden is upon the state to establish the grounds by clear and
12 convincing evidence. Any hearing held under the provisions of
13 this section is to be held within seven days of the filing of the
14 motion for transfer unless it is continued for good cause.

15 (b) No inquiry relative to admission or denial of the
16 allegations of the charge or the demand for jury trial may be
17 made by or before the court until the court has determined
18 whether the proceeding is to be transferred to criminal jurisdic-
19 tion.

20 (c) The court shall transfer a juvenile proceeding to
21 criminal jurisdiction if a juvenile who has attained the age of
22 fourteen years makes a demand on the record to be transferred
23 to the criminal jurisdiction of the court. The case may then be
24 referred to magistrate or circuit court for further proceedings,
25 subject to the court's jurisdiction.

26 (d) The court shall transfer a juvenile proceeding to
27 criminal jurisdiction if there is probable cause to believe that:

28 (1) The juvenile is at least fourteen years of age and has
29 committed the crime of treason under section one, article one,
30 chapter sixty-one of this code; the crime of murder under
31 sections one, two and three, article two of said chapter; the
32 crime of robbery involving the use or presenting of firearms or
33 other deadly weapons under section twelve of said article; the
34 crime of kidnapping under section fourteen-a of said article; the
35 crime of first degree arson under section one, article three of
36 said chapter; or the crime of sexual assault in the first degree
37 under section three, article eight-b of said chapter; or

38 (2) The juvenile is at least fourteen years of age and has
39 committed an offense of violence to the person which would be

40 a felony if the juvenile was an adult: *Provided*, That the
41 juvenile has been previously adjudged delinquent for the
42 commission of an offense of violence to the person which
43 would be a felony if the juvenile was an adult; or

44 (3) The juvenile is at least fourteen years of age and has
45 committed an offense which would be a felony if the juvenile
46 was an adult: *Provided*, That the juvenile has been twice
47 previously adjudged delinquent for the commission of an
48 offense which would be a felony if the juvenile was an adult.

49 (e) The court may transfer a juvenile proceeding to criminal
50 jurisdiction if there is probable cause to believe that the juvenile
51 would otherwise satisfy the provisions of subdivision (1),
52 subsection (d) of this section, but who is younger than fourteen
53 years of age.

54 (f) The court may, upon consideration of the juvenile's
55 mental and physical condition, maturity, emotional attitude,
56 home or family environment, school experience and similar
57 personal factors, transfer a juvenile proceeding to criminal
58 jurisdiction if there is probable cause to believe that the juvenile
59 would otherwise satisfy the provisions of subdivision (2) or (3),
60 subsection (d) of this section, but who is younger than fourteen
61 years of age.

62 (g) The court may, upon consideration of the juvenile's
63 mental and physical condition, maturity, emotional attitude,
64 home or family environment, school experience and similar
65 personal factors, transfer a juvenile proceeding to criminal
66 jurisdiction if there is probable cause to believe that:

67 (1) The juvenile, who is at least fourteen years of age, has
68 committed an offense of violence to a person which would be
69 a felony if the juvenile was an adult; or

70 (2) The juvenile, who is at least fourteen years of age, has
71 committed an offense which would be a felony if the juvenile
72 was an adult: *Provided*, That the juvenile has been previously
73 adjudged delinquent for the commission of a crime which
74 would be a felony if the juvenile was an adult; or

75 (3) The juvenile, who is at least fourteen years of age, used
76 or presented a firearm or other deadly weapon during the
77 commission of a felony; or

78 (4) The juvenile has committed a violation of the provisions
79 of section four hundred one, article four, chapter sixty-a of this
80 code which would be a felony if the juvenile was an adult
81 involving the manufacture, delivery or possession with the
82 intent to deliver a narcotic drug. For purposes of this subdivi-
83 sion, the term “narcotic drug” has the same definition as that set
84 forth in section one hundred one, article one of said chapter; or

85 (5) The juvenile has committed the crime of second degree
86 arson as defined in section two, article three, chapter sixty-one
87 of this code involving setting fire to or burning a public
88 building or church. For purposes of this subdivision, the term
89 “public building” means a building or structure of any nature
90 owned, leased or occupied by this state, a political subdivision
91 of this state or a county board of education and used at the time
92 of the alleged offense for public purposes. For purposes of this
93 subdivision, the term “church” means a building or structure of
94 any nature owned, leased or occupied by a church, religious
95 sect, society or denomination and used at the time of the alleged
96 offense for religious worship or other religious or benevolent
97 purpose, or as a residence of a minister or other member of
98 clergy.

99 (h) For purposes of this section, the term “offense of
100 violence” means an offense which involves the use or threat-
101 ened use of physical force against a person.

102 (i) If, after a hearing, the court directs the transfer of any
103 juvenile proceeding to criminal jurisdiction, it shall state on the
104 record the findings of fact and conclusions of law upon which
105 its decision is based or shall incorporate findings of fact and
106 conclusions of law in its order directing transfer.

107 (j) A juvenile who has been transferred to criminal jurisdic-
108 tion pursuant to the provisions of subsection (e), (f) or (g) of
109 this section, by an order of transfer, has the right to either
110 directly appeal an order of transfer to the supreme court of
111 appeals or to appeal the order of transfer following a conviction
112 of the offense of transfer. If the juvenile exercises the right to
113 a direct appeal from an order of transfer, the notice of intent to
114 appeal and a request for transcript is to be filed within ten days
115 from the date of the entry of any such order of transfer, and the
116 petition for appeal is to be presented to the supreme court of
117 appeals within forty-five days from the entry of the order of
118 transfer. The provisions of article five, chapter fifty-eight of this
119 code pertaining to the appeals of judgments in civil actions
120 applies to appeals under this chapter except as modified in this
121 section. The court may, within forty-five days of the entry of
122 the order of transfer, by appropriate order, extend and reextend
123 the period in which to file the petition for appeal for additional
124 time, not to exceed a total extension of sixty days, as in the
125 court's opinion may be necessary for preparation of the
126 transcript: *Provided*, That the request for a transcript was made
127 by the party seeking appeal within ten days of entry of the order
128 of transfer. In the event any notice of intent to appeal and
129 request for transcript be timely filed, proceedings in criminal
130 court are to be stayed upon motion of the defendant pending
131 final action of the supreme court of appeals.

CHAPTER 56

(Com. Sub. for H. B. 2410 — By Delegates Wills, Givens and Schadler)

[Passed April 2, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article five-d, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the child fatality review team; providing required members of the team; defining the purposes of the team; restricting the authority of the team; providing that certain records and findings of the team are confidential; and providing that members of the team are not subject to subpoena.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5D. MULTIDISCIPLINARY TEAMS.

§49-5D-5. Child fatality review team.

- 1 (a) The child fatality review team is hereby established
- 2 under the office of the chief medical examiner. The child
- 3 fatality review team is a multidisciplinary team created to
- 4 review the deaths of children under the age of eighteen years as
- 5 provided for in this section.

6 (b) The child fatality review team is to consist of the
7 following members, appointed by the governor, to serve three-
8 year terms:

9 (1) The chief medical examiner, who is to serve as the
10 chairperson of the child fatality review team;

11 (2) Two prosecuting attorneys or their designees;

12 (3) The state superintendent of the West Virginia state
13 police or his or her designee;

14 (4) One law-enforcement official other than a member of
15 the West Virginia state police;

16 (5) One child protective services worker currently em-
17 ployed in investigating reports of child abuse or neglect;

18 (6) One physician, specializing in the practice of pediatric
19 medicine or family medicine;

20 (7) One physician, specializing in the practice of pediatric
21 critical care medicine;

22 (8) One social worker who may be employed in the area of
23 public health;

24 (9) The director of the office of maternal and child health
25 of the department of health and human resources or his or her
26 designee;

27 (10) One representative of the sudden infant death syn-
28 drome program of the office of maternal and child health;

29 (11) The director of the division of children's mental health
30 services of the office of behavioral health services or his or her
31 designee;

32 (12) The director of the office of social services of the
33 department of health and human resources or his or her
34 designee;

35 (13) The superintendent of the department of education or
36 his or her designee;

37 (14) The director of the division of juvenile services or his
38 or her designee; and

39 (15) The president of the West Virginia association of
40 school nurses or his or her designee.

41 (c) Members of the child fatality review team shall, unless
42 sooner removed, continue to serve until their respective terms
43 expire and until their successors have been appointed and have
44 qualified.

45 (d) Each appointment of a prosecuting attorney, whether for
46 a full term or to fill a vacancy, is to be made by the governor
47 from among three nominees selected by the West Virginia
48 prosecuting attorneys institute. Each appointment of a law-
49 enforcement officer, whether for a full term or to fill a vacancy,
50 is to be made by the governor from among three nominees
51 selected by the state fraternal order of police or the West
52 Virginia deputy sheriff's association. Each appointment of a
53 child protective services worker and a social worker, whether
54 for a full term or to fill a vacancy, is to be made by the governor
55 from among three nominees selected by the West Virginia
56 social work licensing board. Each appointment of a physician,
57 whether for a full term or to fill a vacancy, is to be made by the
58 governor from among three nominees selected by the West

59 Virginia state medical association or the West Virginia acad-
60 emy of pediatrics. When an appointment is for a full term, the
61 nomination is to be submitted to the governor not later than
62 eight months prior to the date on which the appointment is to
63 become effective. In the case of an appointment to fill a
64 vacancy, the nominations are to be submitted to the governor
65 within thirty days after the request for the nomination has been
66 made by the governor to the chairperson or president of the
67 organization. When an association fails to submit to the
68 governor nominations for the appointment in accordance with
69 the requirements of this section, the governor may make the
70 appointment without nominations.

71 (e) Each member of the child fatality review team shall
72 serve without additional compensation and may not be reim-
73 bursed for any expenses incurred in the discharge of his or her
74 duties under the provisions of this article.

75 (f) The child fatality review team shall, pursuant to the
76 provisions of chapter twenty-nine-a, promulgate rules applica-
77 ble to the following:

78 (1) The standard procedures for the establishment, forma-
79 tion and conduct of the child fatality review team; and

80 (2) Recommend protocols for the review of child fatalities
81 where other than natural causes are suspected.

82 (g) The child fatality review team shall:

83 (1) Review all deaths of children under the age of eighteen
84 years who are residents of this state in order to identify trends,
85 patterns and risk factors;

86 (2) Provide statistical analysis regarding the causes of child
87 fatalities in West Virginia;

88 (3) Promote public awareness of the incidence and causes
89 of child fatalities, including recommendations for their reduc-
90 tion; and

91 (4) Provide training for state agencies and local
92 multidisciplinary teams.

93 (h) The child fatality review team shall submit an annual
94 report to the governor and to the Legislature concerning its
95 activities and the incidents of child fatalities within the state.
96 The report is due annually on the first day of December. The
97 report is to include statistics setting forth the number of child
98 fatalities, identifiable trends in child fatalities in the state,
99 including possible causes, if any, and recommendations to
100 reduce the number of preventable child fatalities in the state.
101 The report is to also include the number of children whose
102 deaths have been determined to have been unexpected or
103 unexplained.

104 (i) A local multidisciplinary investigative team created
105 pursuant to the provisions of section two of this article shall
106 review all cases referred to it pursuant to the provisions of that
107 section: *Provided*, That a local multidisciplinary investigative
108 team may refer any or all cases for review of deaths to the child
109 fatality review team. The local multidisciplinary investigative
110 team shall provide all information to the child fatality review
111 team necessary for the child fatality review team to create and
112 submit any report required by this section.

113 (j) The child fatality review team, in the exercise of its
114 duties as defined in this section, may not:

115 (1) Call witnesses or take testimony from individuals
116 involved in the investigation of a child fatality;

117 (2) Contact a family member of the deceased child, except
118 if a member of the team is involved in the investigation of the
119 death and must contact a family member in the course of
120 performing his or her duties outside of the team; or

121 (3) Enforce any public health standard or criminal law or
122 otherwise participate in any legal proceeding, except if a
123 member of the team is involved in the investigation of the death
124 or resulting prosecution and must participate in a legal proceed-
125 ing in the course of performing in his or her duties outside of
126 the team.

127 (k) Proceedings, records and opinions of the child fatality
128 review team are confidential, in accordance with section one,
129 article seven, chapter forty-nine of this code, and are not subject
130 to discovery, subpoena or introduction into evidence in any
131 civil or criminal proceeding. Nothing in this subsection is to be
132 construed to limit or restrict the right to discover or use in any
133 civil or criminal proceeding anything that is available from
134 another source and entirely independent of the proceedings of
135 the child fatality review team.

136 (l) Members of the child fatality review team may not be
137 questioned in any civil or criminal proceeding regarding
138 information presented in or opinions formed as a result of a
139 meeting of the team. Nothing in this subsection may be
140 construed to prevent a member of the child fatality review team
141 from testifying to information obtained independently of the
142 team or which is public information.

CHAPTER 57

(Com. Sub. for H. B. 2418 — By Delegates Givens, Douglas,
Fleischauer, Mezzatesta and Trump)

[Passed March 19, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine, article six-a, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to child abuse and neglect; authorizing the division of child protective services to issue administrative subpoenas in order to locate certain children; providing for service; and invoking judicial aid to compel compliance therewith.

Be it enacted by the Legislature of West Virginia:

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

**ARTICLE 6A. REPORTS OF CHILDREN SUSPECTED TO BE ABUSED OR
NEGLECTED.**

***§49-6A-9. Establishment of child protective services; general
duties and powers; cooperation of other state
agencies.**

- 1 (a) The state department shall establish or designate in
- 2 every county a local child protective services office to perform
- 3 the duties and functions set forth in this article.

***Clerk's Note:** This section was also amended by S. B. 620 (Chapter 51), which passed subsequent to this act.

4 (b) The local child protective service shall investigate all
5 reports of child abuse or neglect: *Provided*, That under no
6 circumstances shall investigating personnel be relatives of the
7 accused, the child or the families involved. In accordance with
8 the local plan for child protective services, it shall provide
9 protective services to prevent further abuse or neglect of
10 children and provide for or arrange for and coordinate and
11 monitor the provision of those services necessary to ensure the
12 safety of children. The local child protective service shall be
13 organized to maximize the continuity of responsibility, care and
14 service of individual workers for individual children and
15 families: *Provided, however*, That under no circumstances may
16 the secretary or his or her designee promulgate rules or estab-
17 lish any policy which restricts the scope or types of alleged
18 abuse or neglect of minor children which are to be investigated
19 or the provision of appropriate and available services.

20 Each local child protective service office shall:

21 (1) Receive or arrange for the receipt of all reports of
22 children known or suspected to be abused or neglected on a
23 twenty-four hour, seven-day-a-week basis and cross-file all
24 such reports under the names of the children, the family, any
25 person substantiated as being an abuser or neglected by
26 investigation of the department of health and human resources,
27 with use of such cross-filing of such person's name limited to
28 the internal use of the department;

29 (2) Provide or arrange for emergency children's services to
30 be available at all times;

31 (3) Upon notification of suspected child abuse or neglect,
32 commence or cause to be commenced a thorough investigation
33 of the report and the child's environment. As a part of this
34 response, within fourteen days, there shall be: A face-to-face

35 interview with the child or children, and the development of a
36 protection plan, if necessary for the safety or health of the child,
37 which may involve law-enforcement officers or the court;

38 (4) Respond immediately to all allegations of imminent
39 danger to the physical well-being of the child or of serious
40 physical abuse. As a part of this response, within seventy-two
41 hours, there shall be: A face-to-face interview with the child or
42 children; and the development of a protection plan which may
43 involve law-enforcement officers or the court; and

44 (5) In addition to any other requirements imposed by this
45 section, when any matter regarding child custody is pending,
46 the circuit court or family law master may refer allegations of
47 child abuse and neglect to the local child protective service for
48 investigation of the allegations as defined by this chapter and
49 require the local child protective service to submit a written
50 report of the investigation to the referring circuit court or family
51 law master within the time frames set forth by the circuit court
52 or family law master.

53 (c) In those cases in which the local child protective service
54 determines that the best interests of the child require court
55 action, the local child protective service shall initiate the
56 appropriate legal proceeding.

57 (d) The local child protective service shall be responsible
58 for providing, directing or coordinating the appropriate and
59 timely delivery of services to any child suspected or known to
60 be abused or neglected, including services to the child's family
61 and those responsible for the child's care.

62 (e) To carry out the purposes of this article, all departments,
63 boards, bureaus and other agencies of the state or any of its

64 political subdivisions and all agencies providing services under
65 the local child protective service plan shall, upon request,
66 provide to the local child protective service such assistance and
67 information as will enable it to fulfill its responsibilities.

68 (f)(1) In order to obtain information regarding the location
69 of a child who is the subject of an allegation of abuse or
70 neglect, the secretary of the department of health and human
71 resources may serve, by certified mail or personal service, an
72 administrative subpoena on any person, corporation, partner-
73 ship, business or organization, for an appearance by the person
74 served or for the production of information leading to the
75 location of such child.

76 (2) In case of disobedience to the subpoena, in compelling
77 the personal appearance of any person so served or the produc-
78 tion of documents and things, the secretary may invoke the aid
79 of (A) the circuit court with jurisdiction over the served party,
80 if the person served is a resident, or (B) the circuit court of the
81 county in which the local child protective services office
82 conducting the investigation is located, if the person served is
83 a nonresident.

84 (3) A circuit court shall not enforce an administrative
85 subpoena unless it finds that (A) the investigation is one the
86 division of child protective services is authorized to make, and
87 is being conducted pursuant to a legitimate purpose, (B) the
88 inquiry is relevant to that purpose, (C) the inquiry is not too
89 broad or indefinite, (D) the information sought is not already in
90 the possession of the division of child protective services, and
91 (E) any administrative steps required by law have been fol-
92 lowed.

CHAPTER 58

(Com. Sub. for S. B. 34 — By Senators Kessler, Sharpe, Minear,
McKenzie, Hunter, Ross, Edgell, Mitchell, Anderson,
Burnette, Boley and Rowe)

[Passed April 13, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article six-b, relating to the protection and preservation of statements and testimony of child witnesses; allowing and providing procedures for taking the testimony of a child witness by using live, two-way closed-circuit television; setting forth legislative findings; defining certain terms; prescribing findings of fact required for taking testimony of child witness through use of live two-way closed-circuit television; describing procedures for taking testimony of child witness; requiring certain jury instructions; and providing for the memorialization of statements made by alleged child victims of sexual assault or sexual abuse.

Be it enacted by the Legislature of West Virginia:

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

**ARTICLE 6B. PROTECTION AND PRESERVATION OF STATEMENTS
AND TESTIMONY OF CHILD WITNESS.**

§62-6B-1. Legislative findings.

§62-6B-2. Definitions.

§62-6B-3. Findings of fact required for taking testimony of child witness by closed-circuit television; considerations for court.

§62-6B-4. Procedures required for taking testimony of child witness by closed-circuit television; election of defendant; jury instruction; sanction for failure to follow procedures.

§62-6B-5. Memorialization of statements of certain child witnesses; admissibility; hearing.

§62-6B-1. Legislative findings.

1 The Legislature hereby finds that there are rare occasions
2 when the interests of justice cannot be served because a child
3 who is alleged to be the victim of certain offenses is unable to
4 testify while in the physical presence of the defendant in the
5 courtroom.

6 The Legislature further finds that the constitutional right of
7 the accused to be confronted with the witnesses against him or
8 her must be protected and that this constitutional guarantee can
9 be protected while, at the same time, allowing a child to testify
10 outside of the physical presence of a defendant in the court-
11 room.

12 The Legislature further finds that a child, more so than an
13 adult, may be subject to coercion and pressure by interested
14 adults and the interests of justice would be served by requiring,
15 unless infeasible, memorialization of child victim statements in
16 certain criminal matters.

§62-6B-2. Definitions.

1 For the purposes of this article, the words or terms defined
2 in this section, and any variation of those words or terms
3 required by the context, have the meanings ascribed to them in
4 this section. These definitions are applicable unless a different
5 meaning clearly appears from the context.

6 (1) "Child witness" means a person thirteen years of age or
7 less who is or will be called to testify in a criminal matter
8 concerning an alleged violation of the provisions of sections
9 three, four, five and seven, article eight-b, chapter sixty-one of
10 this code in which the child is the alleged victim.

11 (2) "Live, two-way closed-circuit television" means a
12 simultaneous transmission, by closed-circuit television or other
13 electronic means, between the courtroom and the testimonial
14 room.

15 (3) "Operator" means the individual authorized by the court
16 to operate the two-way closed-circuit television equipment used
17 in accordance with the provisions of this article.

18 (4) "Testimonial room" means a room within the court-
19 house other than the courtroom from which the testimony of a
20 child witness or the defendant is transmitted to the courtroom
21 by means of live, two-way closed-circuit television.

**§62-6B-3. Findings of fact required for taking testimony of child
witness by closed-circuit television; considerations
for court.**

1 (a) Upon a written motion filed by the prosecuting attorney,
2 and upon findings of fact determined pursuant to subsection (b)
3 of this section, a circuit court may order that the testimony of
4 a child witness may be taken at a pretrial proceeding or at trial
5 through the use of live, two-way closed-circuit television.

6 (b) Prior to ordering that the testimony of a child witness
7 may be taken through the use of live, two-way closed-circuit
8 television, the circuit court must find by clear and convincing
9 evidence, after conducting an evidentiary hearing on this issue,
10 that:

11 (1) The child is an otherwise competent witness;

12 (2) That, absent the use of live, two-way closed-circuit
13 television, the child witness will be unable to testify due solely
14 to being required to be in the physical presence of the defendant
15 while testifying;

16 (3) The child witness can only testify if live, two-way
17 closed-circuit television is used in the trial; and

18 (4) That the state's ability to proceed against the defendant
19 without the child witness' live testimony would be substantially
20 impaired or precluded.

21 (c) The court shall consider the following factors in
22 determining the necessity of allowing a child witness to testify
23 by the use of live, two-way closed-circuit television:

24 (1) The age and maturity of the child witness;

25 (2) The facts and circumstances of the alleged offense;

26 (3) The necessity of the child's live testimony to the
27 prosecution's ability to proceed;

28 (4) Whether or not the facts of the case involve the alleged
29 infliction of bodily injury to the child witness or the threat of
30 bodily injury to the child or another; and

31 (5) Any mental or physical handicap of the child witness.

32 (d) In determining whether to allow a child witness to
33 testify through live, two-way closed-circuit television the court
34 shall appoint a psychiatrist, doctoral-level licensed psychologist
35 or a licensed clinical social worker with at least five years of
36 significant clinical experience in the treatment and evaluation
37 of children who shall serve as an advisor or friend of the court

38 to provide the court with an expert opinion as to whether, to a
39 reasonable degree of professional certainty, the child witness
40 will suffer severe emotional harm, be unable to testify based
41 solely on being in the physical presence of the defendant while
42 testifying and that the child witness does not evidence signs of
43 being subjected to undue influence or coercion. The opinion of
44 the psychiatrist, doctoral-level licensed psychologist or licensed
45 clinical social worker shall be filed with the circuit court at least
46 thirty days prior to the final hearing on the use of live, two-way
47 closed-circuit television and the defendant shall be allowed to
48 review the opinion and present evidence on the issue by the use
49 of an expert or experts or otherwise.

**§62-6B-4. Procedures required for taking testimony of child
witness by closed-circuit television; election of
defendant; jury instruction; sanction for failure to
follow procedures.**

1 (a) If the court determines that the use of live, two-way
2 closed-circuit testimony is necessary and orders its use the
3 defendant may, at any time prior to the child witness being
4 called, elect to absent himself from the courtroom during the
5 child witness' testimony. If the defendant so elects the child
6 shall be required to testify in the courtroom.

7 (b) (1) If live, two-way closed-circuit television is used in
8 the testimony of the child witness, he or she shall be taken into
9 the testimonial room and be televised live, by two-way closed-
10 circuit equipment to the view of the defendant, counsel, the
11 court and, if applicable, the jury. The projected image of the
12 defendant shall be visible for child witness to view if he or she
13 chooses to do so and the view of the child witness available to
14 those persons in the courtroom shall include a full body view.
15 Only the prosecuting attorney, the attorney for the defendant
16 and the operator of the equipment may be present in the room

17 with the child witness during testimony. Only the court, the
18 prosecuting attorney and the attorney for the defendant may
19 question the child. In pro se proceedings, the court may modify
20 the provisions of this subdivision relating to the role of the
21 attorney for the defendant to allow the pro se defendant to
22 question the child witness in such a manner as to cause as little
23 psychological trauma as possible under the circumstances. The
24 court shall permit the defendant to observe and hear the
25 testimony of the child witness contemporaneous with the taking
26 of the testimony. The court shall provide electronic means for
27 the defendant and the attorney for the defendant to confer
28 confidentially during the taking of the testimony.

29 (2) If the defendant elects to not be physically present in the
30 courtroom during the testimony of the child witness, the
31 defendant shall be taken into the testimonial room and be
32 televised live, by two-way closed-circuit equipment to the view
33 of the finder of fact and others present in the courtroom. The
34 defendant shall be taken to the testimonial room prior to the
35 appearance of the child witness in the courtroom. There shall be
36 made and maintained a recording of the images and sounds of
37 all proceedings which were televised pursuant to this article.
38 While the defendant is in the testimonial room, the defendant
39 shall be permitted to view the live, televised image of the child
40 witness and the image of those other persons in the courtroom
41 whom the court determines the defendant is entitled to view.
42 Only the court, the prosecuting attorney and the attorney for the
43 defendant may question the child. In pro se proceedings, the
44 court may modify the provisions of this subdivision relating to
45 the role of the attorney for the defendant to allow the pro se
46 defendant to question the child witness in such a manner as to
47 cause as little emotional distress as possible under the circum-
48 stances. The transmission from the courtroom to the testimonial
49 room shall be sufficient to permit the defendant to observe and

50 hear the testimony of the child witness contemporaneous with
51 the taking of the testimony. No proceedings other than the
52 taking of the testimony of the child witness shall occur while
53 the defendant is outside the courtroom. In the event that the
54 defendant elects that the attorney for the defendant remain in
55 the courtroom while the defendant is in the testimonial room,
56 the court shall provide electronic means for the defendant and
57 the attorney for the defendant to confer confidentially during
58 the taking of the testimony.

59 (c) In every case where the provisions of the article are
60 used, the jury, at a minimum shall, be instructed, unless such
61 instruction is waived by the defendant, that the use of live, two-
62 way closed-circuit television is being used solely for the child's
63 convenience, that the use of the medium cannot as a matter of
64 law and fact be considered as anything other than being for the
65 convenience of the child witness and that to infer anything else
66 would constitute a violation of the oath taken by the jurors.

§62-6B-5. Memorialization of statements of certain child witnesses; admissibility; hearing.

1 (a) After the effective date of this section, whenever any
2 law-enforcement officer, physician, psychologist, social worker
3 or investigator, in the course of his or her employment or
4 profession or while engaged in an active criminal investigation
5 as a law-enforcement officer or an agent of a prosecuting
6 attorney, obtains a statement from a child thirteen years of age
7 or younger who is an alleged victim in an investigation or
8 prosecution alleging a violation of the provisions of section
9 three, four, five or seven, article eight-b, chapter sixty-one of
10 this code, he or she shall forthwith make a contemporaneous
11 written notation and recitation of the statement received or
12 obtained. An audio recording or video recording with sound
13 capability of the statement may be used in lieu of the written

14 recitation required by the provisions of this section. Failure to
15 comply with the provisions of this section creates a presump-
16 tion that the statement is inadmissible. The statement may be
17 admitted if, after a hearing on the matter, the court finds by
18 clear and convincing evidence that the failure to comply with
19 the provisions of this section was a good faith omission and that
20 the content of the proffered statement is an accurate recital of
21 the information provided by the child and is otherwise admissi-
22 ble.

23 (b) The provisions of this section shall not apply to:

24 (1) Persons engaged in investigation pursuant to the
25 provisions of article six or seven, chapter forty-nine of this
26 code;

27 (2) Medical personnel and other persons performing a
28 forensic medical examination of a child who is an alleged
29 victim; and

30 (3) Prosecuting attorneys when counseling with a child in
31 preparation for eliciting the child's testimony in court.

CHAPTER 59

(H. B. 2817 — By Delegates Kominar, Cann, Keener, Hall and Evans)

[Passed April 13, 2001; in effect from passage. Approved by the Governor.]

AN ACT finding and declaring certain claims against the state and its agencies to be moral obligations of the state and directing the auditor to issue warrants for the payment thereof.

Be it enacted by the Legislature of West Virginia:

CLAIMS AGAINST THE STATE.

§1. Finding and declaring certain claims against the alcohol beverage control administration; department of administration; department of agriculture; department of tax and revenue; division of corrections; division of highways; division of juvenile services; division of labor; division of motor vehicles; division of natural resources; education and state employees grievance board; higher education policy commission; public service commission; regional jail and correctional facility authority; and West Virginia solid waste management board to be moral obligations of the state and directing payment thereof.

1 The Legislature has considered the findings of fact and
2 recommendations reported to it by the court of claims concern-
3 ing various claims against the state and agencies thereof, and in
4 respect to each of the following claims the Legislature adopts
5 those findings of fact as its own, and in respect of certain claims
6 herein, the Legislature has independently made findings of fact
7 and determinations of award and hereby declares it to be the
8 moral obligation of the state to pay each such claim in the
9 amount specified below and directs the auditor to issue warrants
10 for the payment thereof out of any fund appropriated and
11 available for the purpose.

12 (a) *Claims against the Alcohol Beverage Control Administra-*
13 *tion:*

14 (TO BE PAID FROM SPECIAL REVENUE FUND)

15	(1) Bell Atlantic - West Virginia, Inc. . . \$	32.67
16	(2) Phillip N. Mason and Nick I. Mason \$	13,933.00

17 (b) *Claims against the Department of Administration:*

18 (TO BE PAID FROM SPECIAL REVENUE FUND)

19 (1) Cameron Gas Company \$ 100,000.00

20 (TO BE PAID FROM GENERAL REVENUE FUND)

21 (2) Ron Mace and Joan P. Mace \$ 375.00

22 (c) *Claim against the Department of Agriculture:*

23 (TO BE PAID FROM SPECIAL REVENUE FUND)

24 (1) Ron Mace and Joan P. Mace \$ 637.50

25 (d) *Claim against the Department of Tax and Revenue:*

26 (TO BE PAID FROM GENERAL REVENUE FUND)

27 (1) Rick Modesitt \$ 179.85

28 (e) *Claims against the Division of Corrections:*

29 (TO BE PAID FROM GENERAL REVENUE FUND)

30 (1) Arthur Adkins \$ 70.55

31 (2) Wendell K. Ash \$ 13.13

32 (3) Attorney General \$ 19,829.75

33 (4) Cabell County Commission \$ 86,678.74

34 (5) Kenneth E. Chance, Jr. \$ 5.00

35 (6) Bruce Davidson \$ 15.90

36 (7) Division of Environmental Protection,
37 Office of Water Resources \$ 110.00

38 (8) John A. Edens \$ 733.00

39 (9) Elswick Lumber Company, Inc. \$ 16.43

40 (10) Ferguson Brothers Plumbing
41 and Heating Company \$ 133.75

42	(11) Harrison County Commission	\$ 45,871.50
43	(12) Jackson County Commission	\$ 5,275.00
44	(13) Marion County Commission	\$ 61,982.13
45	(14) McDowell County Commission	\$ 237,551.25
46	(15) Monongalia County Commission	\$ 55,248.09
47	(16) Chris Page	\$ 84.20
48	(17) Roger Lee Patrick	\$ 19.75
49	(18) Preston County Commission	\$ 100.00
50	(19) Randolph County Commission	\$ 1,511.55
51	(20) Ritchie County Commission	\$ 307.00
52	(21) Smith and Wesson Academy	\$ 250.00
53	(22) St. Mary's Ford Mercury	\$ 44.80
54	(23) Taylor County Commission	\$ 40,175.00
55	(24) Tyler County Commission	\$ 2,525.00
56	(25) WV Regional Jail and	
57	Correctional Facility Authority	\$ 4,583,896.00
58	(26) Wayne County Commission	\$ 3,025.00
59	(27) WV Network for Educational	
60	Telecomputing	\$ 42.00
61	(28) Judson White	\$ 27.06
62	(29) Wirt County Commission	\$ 19,475.00
63	(30) Wood County Commission	\$ 113,710.79

64 (f) *Claims against the Division of Highways:*

65 (TO BE PAID FROM STATE ROAD FUND)

66	(1) Billy Arthur	\$ 3,000.00
67	(2) Kenneth L. Baker	\$ 354.30
68	(3) Don K. Ball	\$ 5,000.00
69	(4) Linda D. Bean	\$ 38.16
70	(5) Donald L. and Carol M. Benninger	\$ 150.52
71	(6) Paul Boggess	\$ 500.00
72	(7) David W. Bott	\$ 527.06
73	(8) Mary Jane Bowling	\$ 633.43

74	(9) Clinton Braham	\$ 52.00
75	(10) Steven L. Braithwaite	\$ 409.84
76	(11) Thomas J. Carr	\$ 250.00
77	(12) Roger D. Chapman	\$ 121.84
78	(13) Timothy W. Click	\$ 100.00
79	(14) Ernest G. Conley	\$ 500.00
80	(15) Timothy Copley	\$ 398.77
81	(16) Eric Cory	\$ 6,500.00
82	(17) Kenneth L. Cross	\$ 300.15
83	(18) Lori Dancy	\$ 258.38
84	(19) Robert Dean	\$ 5,000.00
85	(20) Jason Dunlap	\$ 94.32
86	(21) Debra Ann Elsea	\$ 200.00
87	(22) Richard C. and Joann Forester	\$ 510.61
88	(23) Joseph S. Foster	\$ 1,000.00
89	(24) Lori Frederick	\$ 187.55
90	(25) Michael Freyman, Sr.	\$ 100.00
91	(26) Russell S. Garrett	\$ 372.12
92	(27) Charlotte Gerlach	\$ 84.75
93	(28) Austin T. and Irene M. Getz	\$ 1,000.00
94	(29) Mary Harless	\$ 34.01
95	(30) James Franklin and Patricia Ann Hart	\$ 16,000.00
96	(31) Edith L. Holmes	\$ 744.77
97	(32) Kimberly and Gary Jones	\$ 2,200.00
98	(33) Pennie L. and Kenneth A. Jones	\$ 500.00
99	(34) Kenneth Andy Kennedy dba	
100	Kennedy Auto Sales	\$ 2,397.00
101	(35) Mark Scott King	\$ 152.03
102	(36) Douglas and Susan Kirchner	\$ 1,800.00
103	(37) Barbara Linkous	\$ 100.00
104	(38) Mickey D. Mahone, Sr.	\$ 3,900.00
105	(39) Shirley McClure	\$ 233.32
106	(40) Beth McElwee	\$ 557.78
107	(41) Glenna B. Meadows	\$ 397.28

108	(42) Gary W. Miller	\$	300.08
109	(43) Jill S. Moses	\$	76.85
110	(44) Jeff Mozingo	\$	95.85
111	(45) Barry and Teresa Mullins	\$	338.54
112	(46) Harry Murphy	\$	50.00
113	(47) Leonard Brent Newsome	\$	1,000.00
114	(48) Stephen M. and Cathy J. Nichols . . .	\$	73.12
115	(49) Richard B. and Frances C. Pitzer . . .	\$	2,093.93
116	(50) Larry G. Randan	\$	123.46
117	(51) Sue E. Ryder	\$	62.99
118	(52) Connie F. Sadler	\$	264.06
119	(53) Fred Savage, Administrator of		
120	the Estate of Luther Savage	\$	4,000.00
121	(54) Eugene Saville	\$	450.00
122	(55) Francis X. Scott	\$	500.00
123	(56) Brenda K. Smailes	\$	500.00
124	(57) Chris Smith	\$	551.97
125	(58) Betty Williams Stacy	\$	3,570.00
126	(59) Carolyn Stover	\$	250.00
127	(60) Stephanie Gale Sturm	\$	500.00
128	(61) Lynda Ware	\$	1,143.57
129	(62) Denise Lynn Weldon	\$	160.35
130	(63) Sherry Wellman	\$	1,000.00
131	(64) David Wigglesworth and		
132	Heath Acree	\$	200.18
133	(65) Ransom Wiley	\$	1,000.00
134	(66) Robert T. Wilson	\$	281.41
135	(67) Sebrina L. Wilson	\$	25,000.00
136	(68) John M. Woodie	\$	250.00

137 (g) *Claims against the Division of Juvenile Services:*

138 (TO BE PAID FROM GENERAL REVENUE FUND)

139 (1) Charleston Psychiatric Group, Inc. . . \$ 600.00

196	CLAIMS	[Ch. 59
140	(2) EMP of Harrison County	\$ 195.10
141	(3) EMP of Ohio County	\$ 550.00
142	(4) J. D. Hissem, D.D.S.	\$ 255.00
143	(5) Ohio Valley Medical Center	\$ 839.67
144	(6) Radiological Physicians Associates ..	\$ 1,262.00
145	(7) Sirchie Finger Print Laboratories, Inc.	\$ 57.97
146	(8) The Journal	\$ 43.55
147	(9) Town and Country Hardware, Inc. ..	\$ 69.98
148	(10) U. S. Food Service	\$ 2,031.16
149	(11) United Hospital Center	\$ 102.70
150	(12) Wheeling Clinic, A Division of	
151	Wheeling Hospital	\$ 252.00
152	(h) <i>Claim against the Division of Labor:</i>	
153	(TO BE PAID FROM GENERAL REVENUE FUND)	
154	(1) Bill Lewis Motors, Inc.	\$ 179.10
155	(i) <i>Claims against the Division of Motor Vehicles:</i>	
156	(TO BE PAID FROM STATE ROAD FUND)	
157	(1) Banctec	\$ 2,578.79
158	(2) Roger L. Daff	\$ 320.00
159	(3) Kathy E. Dillon	\$ 420.00
160	(4) William A. Schreyer	\$ 75.00
161	(j) <i>Claim against the Division of Natural Resources:</i>	
162	(TO BE PAID FROM SPECIAL REVENUE FUND)	
163	(1) University of Georgia Research	
164	Foundation, Inc.	\$ 3,030.00
165	(k) <i>Claims against the Education and State Employees Griev-</i>	
166	<i>ance Board:</i>	

167 (TO BE PAID FROM GENERAL REVENUE FUND)

168	(1) Bell Atlantic - West Virginia, Inc. . . \$	224.96
169	(2) Verizon - West Virginia, Inc. \$	81.07

170 (l) *Claims against the Higher Education Policy Commission:*

171 (TO BE PAID FROM SPECIAL REVENUE FUND)

172	(1) Casey P. Himel \$	45.00
173	(2) Daniel J. Hoye \$	169.80
174	(3) Patricia A. and David Samuel Hughart \$	2,327.00
175	(4) Colin Tucker \$	139.00

176 (m) *Claim against the Public Service Commission:*

177 (TO BE PAID FROM SPECIAL REVENUE FUND)

178	(1) Beckley Newspapers \$	66.64
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179 (n) *Claims against the Regional Jail and Correctional Facility*
180 *Authority:*

181 (TO BE PAID FROM SPECIAL REVENUE FUND)

182	(1) William R. Adkins \$	425.00
183	(2) Gary R. Baker \$	30.00
184	(3) Eddie Garrett \$	175.00
185	(4) Mustapha M. Nasser \$	97.00
186	(5) Nitro Electric Company \$	204,083.00
187	(6) Ervin Lee Phillips \$	130.00
188	(7) Kasey T. Thompson \$	13.20
189	(8) William Junior Toncray \$	108.32

190 (o) *Claim against the WV Solid Waste Management Board:*

191 (TO BE PAID FROM SPECIAL REVENUE FUND -
192 ACCOUNT NO. 3288)

193 (1) Janet J. Borowski \$ 487.29

194 The Legislature finds that the above moral obligations and
195 the appropriations made in satisfaction thereof shall be the full
196 compensation for all claimants, and that prior to the payments
197 to any claimant provided for in this bill, the court of claims
198 shall receive a release from said claimant releasing any and all
199 claims for moral obligations arising from the matters consid-
200 ered by the Legislature in the finding of the moral obligations
201 and the making of the appropriations for said claimant. The
202 court of claims shall deliver all releases obtained from claim-
203 ants to the department against which the claim was allowed.



CHAPTER 60

(S. B. 455 — By Senators Love, Helmick, Sharpe, Edgell and Minear)



[Passed April 13, 2001; in effect from passage. Approved by the Governor.]

†



AN ACT finding and declaring certain claims against the state and its agencies to be moral obligations of the state and directing the auditor to issue warrants for the payment thereof.

Be it enacted by the Legislature of West Virginia:

CLAIMS AGAINST THE STATE.

§1. Finding and declaring certain claims against the department of administration; department of education; division of corrections; and the division of labor; to be moral obligations of the state and directing payments thereof.

1 The Legislature has heretofore made findings of fact that
 2 the state has received the benefit of the commodities received
 3 and/or services rendered by certain claimants herein and has
 4 considered these claims against the state, and agencies thereof,
 5 which have arisen due to overexpenditures of the departmental
 6 appropriations by officers of the state spending units, the claims
 7 having been previously considered by the court of claims which
 8 also found that the state has received the benefit of the com-
 9 modities received and/or services rendered by the claimants, but
 10 were denied by the court of claims on the purely statutory
 11 grounds that to allow the claims would be condoning illegal
 12 acts contrary to the laws of the state. The Legislature, pursuant
 13 to its findings of fact and also by the adoption of the findings of
 14 fact by the court of claims as its own, while not condoning such
 15 illegal acts, hereby declares it to be the moral obligation of the
 16 state to pay these claims in the amounts specified below and
 17 directs the auditor to issue warrants upon receipt of properly
 18 executed requisitions supported by itemized invoices, state-
 19 ments or other satisfactory documents as required by section
 20 ten, article three, chapter twelve of the code of West Virginia,
 21 one thousand nine hundred thirty-one, as amended, for the
 22 payments thereof out of any fund appropriated and available for
 23 the purpose.

24 (a) *Claim against the Department of Administration:*

25 (TO BE PAID FROM GENERAL REVENUE FUND)

26 (1) Xerox Corporation \$ 379,987.57

27 (b) *Claim against the Department of Education:*

28 (TO BE PAID FROM GENERAL REVENUE FUND)

29 (1) Donna L. Currey \$ 882.00

30 (c) *Claims against the Division of Corrections:*

31 (TO BE PAID FROM GENERAL REVENUE FUND)

32	(1) Anthony Creek Rescue Squad	\$	155.50
33	(2) Associated Emergency Physicians, Inc. . .	\$	516.00
34	(3) Associated Radiologists, Inc.	\$	30.00
35	(4) Ghali Bacha, M.D.	\$	375.00
36	(5) Barbour County Family Medicine	\$	83.00
37	(6) Bluefield Internist-Cardiologist, Inc.	\$	478.00
38	(7) Capital Neurology	\$	293.00
39	(8) Central WV Medcorp, Inc.	\$	465.00
40	(9) Charleston Area Medical Center, Inc. . . .	\$	312,532.20
41	(10) Charleston Cardiology Group	\$	2,925.81
42	(11) Charleston Heart Specialists	\$	2,285.00
43	(12) City of Wheeling Ambulance	\$	168.00
44	(13) Correctional Medical Services, Inc	\$	616,025.61
45	(14) D'Brot and Al-Asadi, PLLC	\$	1,385.00
46	(15) G. Y. Dagher, M.D.	\$	1,275.00
47	(16) Davis Memorial Hospital	\$	17,447.47
48	(17) Eye and Ear Clinic Physicians, Inc.	\$	150.00
49	(18) Carl Fisher, III, M.D.	\$	700.00
50	(19) James W. Gainer, M.D.	\$	380.00
51	(20) General Ambulance, Inc.	\$	350.00
52	(21) General Anesthesia Services	\$	13,914.00
53	(22) Grafton City Hospital	\$	3,735.49
54	(23) Greenbrier Valley Medical Center	\$	592.48
55	(24) Mark R. Hatfield, M.D.	\$	200.00
56	(25) John P. Henderson, II, M.D.	\$	202.00
57	(26) Carl Stephen High, M.D.	\$	154.00
58	(27) Highland Cellular, Inc.	\$	358.03
59	(28) Huntington Anesthesiology Group	\$	483.00
60	(29) James E. LeVos, M.D., Doddridge County		
61	Medical Center	\$	100.00
62	(30) Jan Care Ambulance	\$	2,768.00

63	(31) Kanawha Nephrology, Inc.	\$ 500.00
64	(32) Kelly Medical Corporation	\$ 1,237.75
65	(33) Laboratory Corporation of America	\$ 3,150.75
66	(34) Marion Anesthesia Associates	\$ 819.00
67	(35) Montgomery General Hospital	\$ 125,568.11
68	(36) Montgomery Radiologists, Inc.	\$ 2,156.12
69	(37) Mountain State Plastic Surgeons, PLLC	\$ 200.00
70	(38) Neurological Associates, Inc.	\$ 2,298.00
71	(39) William E. Noble, M.D.	\$ 1,308.00
72	(40) Joseph A. Noronha, M.D.	\$ 438.00
73	(41) Nuclear Medicine Services, Inc.	\$ 347.00
74	(42) Ohio Valley Medical Center	\$ 95,127.58
75	(43) Pocahontas Memorial Hospital	\$ 456.00
76	(44) Professional Imaging, Inc.	\$ 715.47
77	(45) Radiological Physicians Associates	\$ 24.00
78	(46) Radiology, Inc.	\$ 93.00
79	(47) Khalid Rana, M.D.	\$ 100.00
80	(48) Narayana N. Reddy, M.D.	\$ 180.00
81	(49) Venu Reddy, M.D.	\$ 1,420.00
82	(50) Samuel K. Roberts, M.D.	\$ 422.00
83	(51) Rose Associated Radiologists	\$ 104.00
84	(52) Jose M. Serrato, M.D.	\$ 94.00
85	(53) St. Joseph's Hospital	\$ 3,465.50
86	(54) State Electric Supply Company, Inc. . . .	\$ 384.54
87	(55) Taylor County Emergency Squad	\$ 538.00
88	(56) Jash Thakkar, M.D.	\$ 315.00
89	(57) Ganpat G. Thakker, M.D.	\$ 787.13
90	(58) Thomas Memorial Hospital	\$ 1,478.91
91	(59) Thoracic & Cardiovascular	
92	Associates, Inc.	\$ 18,065.40
93	(60) Tri-Tech, Inc.	\$ 445.84
94	(61) Tygart Valley Total Care Clinic	\$ 1,363.00
95	(62) University Health Associates	\$ 35,257.00
96	(63) Valley Radiologists, Inc.	\$ 718.50

202	CLAIMS	[Ch. 61
97	(64) Byron L. VanPelt, M.D.	\$ 105.00
98	(65) Welch Community Hospital	\$ 3,079.89
99	(66) West Virginia Cardiovascular Associates	\$ 705.00
100	(67) West Virginia University Hospitals, Inc.	\$ 239,312.80
101	(68) Wladimir Zyznewsky, M.D.	\$ 1,705.00
102	(d) <i>Claim against the Division of Labor:</i>	
103	(TO BE PAID FROM GENERAL REVENUE FUND)	
104	(1) Teays River Construction Company	\$ 6,205.04

CHAPTER 61

(S. B. 601 — By Senators Tomblin, Mr. President, Redd (By Request), Wooton, Hunter, Burnette, Rowe, Mitchell, Jackson, Snyder, Bailey, Plymale, Unger, Edgell, Kessler, Minard, Anderson, Chafin, Sharpe, Ross, Caldwell, McCabe, Love and Helmick)

[Passed April 14, 2001; to take effect July 1, 2001. Approved by the Governor.]

AN ACT to amend and reenact sections three and fourteen, article two-a, chapter fourteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to payment of awards to crime victims; allowing payment of claims for crime scene cleanup, victim relocation, mental health counseling for secondary victims of crime and certain travel expenses; clarifying that mental health counseling is an allowable expense; and increasing the total award that may be made for victims left permanently and totally disabled.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2A. COMPENSATION AWARDS TO VICTIMS OF CRIMES.

§14-2A-3. Definitions.

§14-2A-14. Grounds for denial of claim or reduction of awards; maximum awards.

§14-2A-3. Definitions.

1 As used in this article, the term:

2 (a) "Claimant" means any of the following persons,
3 whether residents or nonresidents of this state, who claim an
4 award of compensation under this article:

5 (1) A victim: *Provided*, That the term victim does not
6 include a nonresident of this state where the criminally injuri-
7 ous act did not occur in this state;

8 (2) A dependent, spouse or minor child of a deceased
9 victim; or in the event that the deceased victim is a minor, the
10 parents, legal guardians and siblings of the victim;

11 (3) A third person other than a collateral source who legally
12 assumes or voluntarily pays the obligations of a victim, or of a
13 dependent of a victim, which obligations are incurred as a result
14 of the criminally injurious conduct that is the subject of the
15 claim;

16 (4) A person who is authorized to act on behalf of a victim,
17 dependent or a third person who is not a collateral source; and,
18 in the event that the victim, dependent or third person who is
19 not a collateral source is a minor or other legally incompetent
20 person, the duly qualified fiduciary of the minor; and

21 (5) A person who is a secondary victim in need of mental
22 health counseling due to the person's exposure to the crime

23 committed. An award to a secondary victim may not exceed one
24 thousand dollars.

25 (b) "Collateral source" means a source of benefits or
26 advantages for economic loss otherwise compensable that the
27 victim or claimant has received, or that is readily available to
28 him or her, from any of the following sources:

29 (1) The offender, including any restitution received from
30 the offender pursuant to an order by a court of law sentencing
31 the offender or placing him or her on probation following a
32 conviction in a criminal case arising from the criminally
33 injurious act for which a claim for compensation is made;

34 (2) The government of the United States or any of its
35 agencies, a state or any of its political subdivisions or an
36 instrumentality of two or more states;

37 (3) Social security, medicare and medicaid;

38 (4) State-required, temporary, nonoccupational disability
39 insurance; other disability insurance;

40 (5) Workers' compensation;

41 (6) Wage continuation programs of any employer;

42 (7) Proceeds of a contract of insurance payable to the
43 victim or claimant for loss that was sustained because of the
44 criminally injurious conduct;

45 (8) A contract providing prepaid hospital and other health
46 care services or benefits for disability; and

47 (9) That portion of the proceeds of all contracts of insur-
48 ance payable to the claimant on account of the death of the
49 victim which exceeds twenty-five thousand dollars.

50 (c) "Criminally injurious conduct" means conduct that
51 occurs or is attempted in this state or in any state not having a

52 victim compensation program which by its nature poses a
53 substantial threat of personal injury or death and is punishable
54 by fine or imprisonment or death or would be so punishable but
55 for the fact that the person engaging in the conduct lacked
56 capacity to commit the crime under the laws of this state.
57 Criminally injurious conduct also includes an act of terrorism,
58 as defined in 18 U.S.C. §2331, committed outside of the United
59 States against a resident of this state. Criminally injurious
60 conduct does not include conduct arising out of the ownership,
61 maintenance or use of a motor vehicle, except when the person
62 engaging in the conduct intended to cause personal injury or
63 death, or except when the person engaging in the conduct
64 committed negligent homicide, driving under the influence of
65 alcohol, controlled substances or drugs or reckless driving.

66 (d) "Dependent" means an individual who received over
67 half of his or her support from the victim. For the purpose of
68 determining whether an individual received over half of his or
69 her support from the victim, there shall be taken into account
70 the amount of support received from the victim as compared to
71 the entire amount of support which the individual received from
72 all sources, including support which the individual himself or
73 herself supplied. The term "support" includes, but is not limited
74 to, food, shelter, clothing, medical and dental care and educa-
75 tion. The term "dependent" includes a child of the victim born
76 after his or her death.

77 (e) "Economic loss" means economic detriment consisting
78 only of allowable expense, work loss and replacement services
79 loss. If criminally injurious conduct causes death, economic
80 loss includes a dependent's economic loss and a dependent's
81 replacement services loss. Noneconomic detriment is not
82 economic loss; however, economic loss may be caused by pain
83 and suffering or physical impairment. For purposes of this
84 article, the term "economic loss" includes a lost scholarship as
85 defined in this section.

86 (f) (1) "Allowable expense" means reasonable charges
87 incurred or to be incurred for reasonably needed products,
88 services and accommodations, including those for medical care,
89 mental health counseling, prosthetic devices, eye glasses,
90 dentures, rehabilitation and other remedial treatment and care.

91 (2) Allowable expense includes a total charge not in excess
92 of six thousand dollars for expenses in any way related to
93 funeral, cremation and burial. It does not include that portion of
94 a charge for a room in a hospital, clinic, convalescent home,
95 nursing home or any other institution engaged in providing
96 nursing care and related services in excess of a reasonable and
97 customary charge for semiprivate accommodations, unless
98 accommodations other than semiprivate accommodations are
99 medically required.

100 (3) Allowable expense also includes:

101 (A) A charge, not to exceed one thousand dollars, for crime
102 scene cleanup;

103 (B) Victim relocation costs, not to exceed one thousand
104 dollars; and

105 (C) Reasonable travel expenses, not to exceed one thousand
106 dollars, for a claimant to attend court proceedings that are
107 conducted for the prosecution of the offender.

108 (g) "Work loss" means loss of income from work that the
109 injured person would have performed if he or she had not been
110 injured and expenses reasonably incurred or to be incurred by
111 him or her to obtain services in lieu of those he or she would
112 have performed for income, reduced by any income from
113 substitute work actually performed or to be performed by him
114 or her, or by income he or she would have earned in available

115 appropriate substitute work that he or she was capable of
116 performing but unreasonably failed to undertake.

117 (h) "Replacement services loss" means expenses reasonably
118 incurred or to be incurred in obtaining ordinary and necessary
119 services in lieu of those the injured person would have per-
120 formed, not for income but for the benefit of himself or herself
121 or his or her family, if he or she had not been injured.

122 (i) "Dependent's economic loss" means loss after a victim's
123 death of contributions or things of economic value to his or her
124 dependents, not including services they would have received
125 from the victim if he or she had not suffered the fatal injury,
126 less expenses of the dependents avoided by reason of the
127 victim's death.

128 (j) "Dependent's replacement service loss" means loss
129 reasonably incurred or to be incurred by dependents after a
130 victim's death in obtaining ordinary and necessary services in
131 lieu of those the victim would have performed for their benefit
132 if he or she had not suffered the fatal injury, less expenses of
133 the dependents avoided by reason of the victim's death and not
134 subtracted in calculating dependent's economic loss.

135 (k) "Victim" means a person who suffers personal injury or
136 death as a result of any one of the following: (1) Criminally
137 injurious conduct; (2) the good faith effort of the person to
138 prevent criminally injurious conduct; or (3) the good faith effort
139 of the person to apprehend a person that the injured person has
140 observed engaging in criminally injurious conduct or who the
141 injured person has reasonable cause to believe has engaged in
142 criminally injurious conduct immediately prior to the attempted
143 apprehension.

144 (l) "Contributory misconduct" means any conduct of the
145 claimant, or of the victim through whom the claimant claims an

146 award, that is unlawful or intentionally tortious and that,
147 without regard to the conduct's proximity in time or space to
148 the criminally injurious conduct, has causal relationship to the
149 criminally injurious conduct that is the basis of the claim and
150 shall also include the voluntary intoxication of the claimant,
151 either by the consumption of alcohol or the use of any con-
152 trolled substance when the intoxication has a causal connection
153 or relationship to the injury sustained. The voluntary intoxica-
154 tion of a victim is not a defense against the estate of a deceased
155 victim.

156 (m) "Lost scholarship" means a scholarship, academic
157 award, stipend or other monetary scholastic assistance which
158 had been awarded or conferred upon a victim in conjunction
159 with a postsecondary school educational program and, which
160 the victim is unable to receive or use, in whole or in part, due
161 to injuries received from criminally injurious conduct.

**§14-2A-14. Grounds for denial of claim or reduction of awards;
maximum awards.**

1 (a) Except as provided in subsection (b), section ten of this
2 article, the judge or commissioner may not approve an award of
3 compensation to a claimant who did not file his or her applica-
4 tion for an award of compensation within two years after the
5 date of the occurrence of the criminally injurious conduct that
6 caused the injury or death for which he or she is seeking an
7 award of compensation.

8 (b) The judge or commissioner may not approve an award
9 of compensation if the criminally injurious conduct upon which
10 the claim is based was not reported to a law-enforcement officer
11 or agency within seventy-two hours after the occurrence of the
12 conduct, unless it is determined that good cause existed for the
13 failure to report the conduct within the seventy-two hour period.

14 (c) The judge or commissioner may not approve an award
15 of compensation to a claimant who is the offender or an
16 accomplice of the offender who committed the criminally
17 injurious conduct, nor to any claimant if the award would
18 unjustly benefit the offender or his or her accomplice.

19 (d) A judge or commissioner, upon a finding that the
20 claimant or victim has not fully cooperated with appropriate
21 law-enforcement agencies or the claim investigator, may deny
22 a claim, reduce an award of compensation or reconsider a claim
23 already approved.

24 (e) A judge or commissioner may not approve an award of
25 compensation if the injury occurred while the victim was
26 confined in any state, county or regional jail, prison, private
27 prison or correctional facility.

28 (f) After reaching a decision to approve an award of
29 compensation, but prior to announcing the approval, the judge
30 or commissioner shall require the claimant to submit current
31 information as to collateral sources on forms prescribed by the
32 clerk of the court of claims. The judge or commissioner shall
33 reduce an award of compensation or deny a claim for an award
34 of compensation that is otherwise payable to a claimant to the
35 extent that the economic loss upon which the claim is based is
36 or will be recouped from other persons, including collateral
37 sources, or if the reduction or denial is determined to be
38 reasonable because of the contributory misconduct of the
39 claimant or of a victim through whom he or she claims. If an
40 award is reduced or a claim is denied because of the expected
41 recoupment of all or part of the economic loss of the claimant
42 from a collateral source, the amount of the award or the denial
43 of the claim shall be conditioned upon the claimant's economic
44 loss being recouped by the collateral source: *Provided*, That if
45 it is thereafter determined that the claimant will not receive all

46 or part of the expected recoupment, the claim shall be reopened
47 and an award shall be approved in an amount equal to the
48 amount of expected recoupment that it is determined the
49 claimant will not receive from the collateral source, subject to
50 the limitation set forth in subsection (g) of this section.

51 (g) (1) Except in the case of death, or as provided in
52 subdivision (2) of this subsection, compensation payable to a
53 victim and to all other claimants sustaining economic loss
54 because of injury to that victim may not exceed twenty-five
55 thousand dollars in the aggregate. Compensation payable to all
56 claimants because of the death of the victim may not exceed
57 thirty-five thousand dollars in the aggregate.

58 (2) In the event the victim's personal injuries are so severe
59 as to leave the victim with a disability, as defined in section 223
60 of the social security act, as amended, as codified in 42 U.S.C.
61 423, the court may award an additional amount, not to exceed
62 one hundred thousand dollars, for special needs attributable to
63 the injury.

64 (h) If an award of compensation of five thousand dollars or
65 more is made to a minor, a guardian shall be appointed pursuant
66 to the provisions of article ten, chapter forty-four of this code
67 to manage the minor's estate.

CHAPTER 62

(Com. Sub. for S. B. 603 — By Senator Tomblin, Mr. President)

[Passed April 14, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections five, nine and twelve, article two-a, chapter five-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section ten, article three, chapter twenty-two of said code, all relating to economic development and reclamation of surface mining sites; allowing office of coalfield community development and other economic development agencies to develop master plans; expanding the authority of the office of coalfield community development relating to post-mining sites; including recommendations by local economic redevelopment authorities as part of reclamation plans; establishing criteria to consider in development of these sites; providing for certain land uses as post-mining land uses; providing that master plans must comport to environmental reclamation requirements; establishing additional rule-making requirements for the office of coalfield community development; and allowing existing and future surface mining permits to include master plan criteria and reclamation standards.

Be it enacted by the Legislature of West Virginia:

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

Chapter

5B. Economic Development Act of 1985.

22. Environmental Resources.

CHAPTER 5B. ECONOMIC DEVELOPMENT ACT OF 1985.

ARTICLE 2A. OFFICE OF COALFIELD COMMUNITY DEVELOPMENT.

§5B-2A-5. Powers and duties.

§5B-2A-9. Securing developable land and infrastructure.

§ 5B-2A-12. Rulemaking.

§5B-2A-5. Powers and duties.

1 The office has and may exercise the following duties,
2 powers and responsibilities:

3 (1) To establish a procedure for developing a community
4 impact statement as provided in section six of this article and to
5 administer the procedure so established;

6 (2) To establish a procedure for developing and implement-
7 ing coalfield community development statements as provided
8 in section seven of this article and to administer the procedure
9 so established;

10 (3) To establish a procedure for determining the assets that
11 could be developed in and maintained by the community to
12 foster its long-term viability as provided in section eight of this
13 article and to administer the procedure so established;

14 (4) To establish a procedure for determining the land and
15 infrastructure needs in the general area of the surface mining
16 operations as provided in section nine of this article and to
17 administer the procedure so established;

18 (5) To establish a procedure to develop action reports and
19 annual updates as provided in section ten of this article and to
20 administer the procedure so established;

21 (6) To determine the need for meetings to be held among
22 the various interested parties in the communities impacted by
23 surface mining operations and, when appropriate, to facilitate
24 the meetings;

25 (7) To establish a procedure to assist property owners in the
26 sale of their property as provided in section eleven of this
27 article and to administer the procedure so established;

28 (8) In conjunction with the division, to maintain and
29 operate a system to receive and address questions, concerns and
30 complaints relating to surface mining; and

31 (9) On its own initiative or at the request of a community in
32 close proximity to a mining operation, or a mining operation,
33 offer assistance to facilitate the development of economic or
34 community assets. Such assistance may include the preparation
35 of a master land use plan pursuant to the provisions of section
36 nine of this article.

§5B-2A-9. Securing developable land and infrastructure.

1 (a) As a part of the coalfield community development
2 statement required by section seven of this article, the office, in
3 a collaborative effort with those persons and entities identified
4 in subdivision (1), subsection (b), section seven of this article,
5 shall determine the land and infrastructure needs in the general
6 area of the surface mining operations.

7 (b) For the purposes of this section, the term “general area”
8 shall mean the county or counties in which the mining opera-
9 tions are being conducted or any adjacent county.

10 (c) To assist the office in the development of the coalfield
11 community development statement, the operator shall be
12 required to prepare and submit to the office the information set
13 forth in this subsection as follows:

14 (1) A map of the area for which a permit under article three,
15 chapter twenty-two of this code is being sought or has been
16 obtained;

17 (2) The names of the surface and mineral owners of the
18 property to be mined pursuant to the permit; and

19 (3) A statement of the post-mining land use for all land
20 which may be affected by the mining operations.

21 (d) In making a determination of the land and infrastructure
22 needs in the general area of the mining operations, the office
23 shall consider at least the following:

24 (1) The availability of developable land in the general area;

25 (2) The needs of the general area for developable land;

26 (3) The availability of infrastructure, including, but not
27 limited to, access roads, water service, wastewater service and
28 other utilities;

29 (4) The amount of land to be mined and the amount of
30 valley to be filled;

31 (5) The amount, nature and cost to develop and maintain
32 the community assets identified in section eight of this article;
33 and

34 (6) The availability of federal, state and local grants and
35 low-interest loans to finance all or a portion of the acquisition
36 and construction of the identified land and infrastructure needs
37 of the general area.

38 (e) In making a determination of the land and infrastructure
39 needs in the general area of the surface mining operations, the
40 office shall give significant weight to developable land on or
41 near existing or planned multilane highways.

42 (f) In addition to the coal field community development
43 statement cited in subsection (a) of this section, the office may
44 secure developable land and infrastructure for a development
45 office or county through the preparation of a master land use
46 plan for inclusion into a reclamation plan prepared pursuant to

47 the provisions of section ten, article three, chapter twenty-two
48 of this code. No provision of this section may be construed to
49 modify requirements of article three, chapter twenty-two of this
50 code. Participation in a master land use plan is voluntary.

51 (1) State, local, county or regional development or redevelop-
52 opment authorities may determine land and infrastructure needs
53 within their jurisdictions through the development of a master
54 land use plan which incorporates post-mining land use needs
55 that include industrial uses, commercial uses, agricultural uses,
56 public facility uses or recreational facility uses.

57 (2) A master land use plan must be reviewed by the office
58 of coalfield community development and approved by the
59 division of environmental protection pursuant to section ten,
60 article three, chapter twenty-two of the code before the master
61 land use plan can be implemented.

62 (3) The required infrastructure component standards needed
63 to accomplish the designated post-mining land uses identified
64 in subdivision (1) of this subsection shall be developed by the
65 relevant state, local, county or regional development or redevelop-
66 opment authority. These standards must be in place before the
67 respective state, local, county or regional development or
68 redevelopment authority can accept ownership of property
69 donated pursuant to a master land use plan. Acceptance of
70 ownership of such property by a state, local, county or regional
71 development or redevelopment authority may not occur unless
72 it is determined that: (a) The property use is compatible with
73 adjacent land uses; (b) the use satisfies the relevant develop-
74 ment or redevelopment authority's anticipated need and market
75 use; (c) the property has in place necessary infrastructure
76 components needed to achieve the anticipated use; (d) the use
77 is supported by all other appropriate public agencies; (e) the
78 property is eligible for bond release in accordance with section

79 twenty-three, article three, chapter twenty-two of this code; and
80 (f) the use is feasible. Required infrastructure component
81 standards require approval of the relevant county commission
82 or commissions before such standards are accepted. County
83 commission approval may be rendered only after a reasonable
84 public comment period.

85 (4) The provisions of this subsection shall not take effect
86 until legislative rules are promulgated pursuant to paragraph
87 (C), subdivision (1), subsection (c), section twenty-three, article
88 three, chapter twenty-two of this code governing bond releases
89 which assure sound future maintenance by the local or regional
90 economic development, redevelopment or planning agencies.

§5B-2A-12. Rule making.

1 The office shall propose rules for legislative approval in
2 accordance with article three, chapter twenty-nine-a of this code
3 to establish, implement and enforce the provisions of this
4 article, which rules shall include, but not be limited to:

5 (1) The development of standards for establishing the value
6 of property by the office;

7 (2) A process for the development of a coalfield community
8 development statement when multiple permit applications are
9 applied for by one or more operators in any single county or
10 contiguous area of an adjacent county; and

11 (3) Criteria for the development of a master plan by local,
12 county, regional or redevelopment authorities which coordi-
13 nates the permitting and reclamation requirements of the
14 division of environmental protection with these authorities.

CHAPTER 22. ENVIRONMENTAL RESOURCES.

ARTICLE 3. SURFACE COAL MINING AND RECLAMATION ACT.

§22-3-10. Reclamation plan requirements.

1 (a) Each reclamation plan submitted as part of a sur-
2 face-mining permit application shall include, in the degree of
3 detail necessary to demonstrate that reclamation required by
4 this article can be accomplished, a statement of:

5 (1) The identification of the lands subject to surface mining
6 over the estimated life of these operations and the size, se-
7 quence and timing of the operations for which it is anticipated
8 that individual permits for mining will be sought;

9 (2) The condition of the land to be covered by the permit
10 prior to any mining, including: (A) The uses existing at the time
11 of the application and, if the land has a history of previous
12 mining, the uses which preceded any mining; (B) the capability
13 of the land prior to any mining to support a variety of uses,
14 giving consideration to soil and foundation characteristics,
15 topography and vegetation cover and, if applicable, a soil
16 survey prepared pursuant to subdivision (15), subsection (a),
17 section nine of this article; and (C) the best information
18 available on the productivity of the land prior to mining,
19 including appropriate classification as prime farmlands and the
20 average yield of food, fiber, forage or wood products from the
21 lands obtained under high levels of management;

22 (3) The use which is proposed to be made of the land
23 following reclamation, including a discussion of the utility and
24 capacity of the reclaimed land to support a variety of alternative
25 uses and the relationship of the use to existing land use policies
26 and plans and the comments of any owner of the surface, other
27 state agencies and local governments which would have to
28 initiate, implement, approve or authorize the proposed use of
29 the land following reclamation. The plan may include a master
30 plan as provided in section nine, article two-a, chapter five-b of

31 this code which includes a post-mining land use consistent with
32 the reclamation and post-mining land use requirements of this
33 article;

34 (4) A detailed description of how the proposed post-mining
35 land use is to be achieved and the necessary support activities
36 which may be needed to achieve the proposed land use;

37 (5) The engineering techniques proposed to be used in
38 mining and reclamation and a description of the major equip-
39 ment; a plan for the control of surface water drainage and of
40 water accumulation; a plan where appropriate, for backfilling,
41 soil stabilization and compacting, grading, revegetation and a
42 plan for soil reconstruction, replacement and stabilization
43 pursuant to the performance standards in subdivision (7),
44 subsection (b), section thirteen of this article for those food,
45 forage and forest lands identified therein; and a statement as to
46 how the operator plans to comply with each of the applicable
47 requirements set out in section thirteen or fourteen of this
48 article;

49 (6) A detailed estimated timetable for the accomplishment
50 of each major step in the reclamation plan;

51 (7) The consideration which has been given to conducting
52 surface mining operations in a manner consistent with surface
53 owner plans and applicable state and local land use plans and
54 programs;

55 (8) The steps to be taken to comply with applicable air and
56 water quality laws and rules and any applicable health and
57 safety standards;

58 (9) The consideration which has been given to developing
59 the reclamation plan in a manner consistent with local physical
60 environmental and climatological conditions;

61 (10) All lands, interests in lands or options on the interests
62 held by the applicant or pending bids on interests in lands by
63 the applicant, which lands are contiguous to the area to be
64 covered by the permit;

65 (11) A detailed description of the measures to be taken
66 during the surface mining and reclamation process to assure the
67 protection of: (A) The quality of surface and groundwater
68 systems, both on- and off-site, from adverse effects of the
69 surface mining operation; (B) the rights of present users to the
70 water; and (C) the quantity of surface and groundwater systems,
71 both on- and off-site, from adverse effects of the surface mining
72 operation or to provide alternative sources of water where the
73 protection of quantity cannot be assured;

74 (12) The results of tests borings which the applicant has
75 made at the area to be covered by the permit or other equivalent
76 information and data in a form satisfactory to the director,
77 including the location of subsurface water and an analysis of the
78 chemical properties, including acid forming properties of the
79 mineral and overburden: *Provided*, That information which
80 pertains only to the analysis of the chemical and physical
81 properties of the coal, except information regarding the mineral
82 or elemental contents which are potentially toxic in the environ-
83 ment, shall be kept confidential and not made a matter of public
84 record;

85 (13) The consideration which has been given to maximize
86 the utilization and conservation of the solid fuel resource being
87 recovered so that re-affecting the land in the future can be
88 minimized; and

89 (14) Any other requirements as the director may prescribe
90 by rule.

91 (b) Any surface mining permit application filed after the
92 effective date of this subsection may contain, in addition to the
93 requirements of subsection (a) of this section, a master land use
94 plan, prepared in accordance with article two-a, chapter five-b
95 of this code, as to the post-mining land use. A reclamation plan
96 approved but not implemented or pending approval as of the
97 effective date of this section may be amended to provide for a
98 revised reclamation plan consistent with the provisions of this
99 subsection.

100 (c) The reclamation plan shall be available to the public for
101 review except for those portions thereof specifically exempted
102 in subsection (a) of this section.

CHAPTER 63

(Com. Sub. for S. B. 526 — By Senators Sharpe, Snyder and Facemyer)

[Passed April 14, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one hundred twelve and one hundred thirteen, article three, chapter forty-six-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section one hundred seven, article four of said chapter, all relating to the consumer credit and protection act and regulated consumer lenders; modifying the late payment fees on precomputed and nonprecomputed credit sales or consumer loans, and modifying the unsecured loan amounts on which an origination fee and thirty-one percent interest can be charged.

Be it enacted by the Legislature of West Virginia:

That sections one hundred twelve and one hundred thirteen, article three, chapter forty-six-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section one hundred seven, article four of said chapter be amended and reenacted, all to read as follows:

Article

3. Finance Charges and Related Provisions.

4. Regulated Consumer Lenders.

ARTICLE 3. FINANCE CHARGES AND RELATED PROVISIONS.

§46A-3-112. Delinquency charges on precomputed consumer credit sales or consumer loans.

§46A-3-113. Delinquency charges on nonprecomputed consumer credit sales or consumer loans repayable in installments.

§46A-3-112. Delinquency charges on precomputed consumer credit sales or consumer loans.

1 (1) With respect to a precomputed consumer credit sale or
2 consumer loan, refinancing or consolidation, the parties may
3 contract for a delinquency charge on any installment not paid
4 in full within ten days after its scheduled due date in an amount
5 not exceeding the greater of:

6 (a) Five percent of the unpaid amount of the installment,
7 not to exceed fifteen dollars; or

8 (b) An amount equivalent to the deferral charge that would
9 be permitted to defer the unpaid amount of the installment for
10 the period that it is delinquent.

11 (2) A delinquency charge under subdivision (a) of subsec-
12 tion (1) may be collected only once on an installment however
13 long it remains in default. No delinquency charge may be

14 collected with respect to a deferred installment unless the
15 installment is not paid in full within ten days after its deferred
16 due date. A delinquency charge may be collected at the time it
17 accrues or at any time thereafter.

18 (3) No delinquency charge may be collected on an install-
19 ment which is paid in full within ten days after its scheduled or
20 deferred installment due date, even though an earlier maturing
21 installment or a delinquency or deferral charge on an earlier
22 installment may not have been paid in full. For purposes of this
23 subsection, payments shall be applied first to current install-
24 ments, then to delinquent installments and then to delinquency
25 and other charges.

26 (4) If two installments, or parts thereof, of a precomputed
27 consumer credit sale or consumer loan are in default for ten
28 days or more, the creditor may elect to convert such sale or loan
29 from a precomputed sale or loan to one in which the sales
30 finance charge or loan finance charge is based on unpaid
31 balances. In such event, the creditor shall make a rebate
32 pursuant to the provisions on rebate upon prepayment, refinanc-
33 ing or consolidation as of the maturity date of any installment
34 then delinquent and thereafter may make a sales finance charge
35 or loan finance charge as authorized by the appropriate provi-
36 sions on sales finance charges or loan finance charges for
37 consumer credit sales or consumer loans.

38 The amount of the rebate may not be reduced by the
39 amount of any permitted minimum charge. If the creditor
40 proceeds under this subsection, any delinquency or deferral
41 charges made with respect to installments due at or after the
42 maturity date of the delinquent installments shall be rebated and
43 no further delinquency or deferral charges shall be made.

44 (5) The commissioner shall prescribe by rule the method or
45 procedure for the calculation of delinquency charges consistent
46 with the other provisions of this chapter where the precomputed
47 consumer credit sale or consumer loan is payable in unequal or
48 irregular installments.

§46A-3-113. Delinquency charges on nonprecomputed consumer credit sales or consumer loans repayable in installments.

1 (1) In addition to the continuation of the sales finance
2 charge or loan finance charge on a delinquent installment with
3 respect to a nonprecomputed consumer credit sale or consumer
4 loan, refinancing or consolidation, repayable in installments,
5 the parties may contract for a delinquency charge on any
6 installment not paid in full within ten days after its scheduled
7 due date of five percent of the unpaid amount of the installment,
8 not to exceed fifteen dollars.

9 (2) A delinquency charge under subsection (1) of this
10 section may be collected only once on an installment however
11 long it remains in default. A delinquency charge may be
12 collected at the time it accrues or at any time thereafter.

13 (3) No delinquency charge may be collected on an install-
14 ment which is paid in full within ten days after its scheduled
15 due date, even though an earlier maturing installment or a
16 delinquency or deferral charge on an earlier installment may not
17 have been paid in full. For purposes of this subsection, pay-
18 ments shall be applied first to current installments, then to
19 delinquent installments and then to delinquency and other
20 charges.

ARTICLE 4. REGULATED CONSUMER LENDERS.

§46A-4-107. Loan finance charge for regulated consumer lenders.

1 (1) With respect to a regulated consumer loan, including a
2 revolving loan account, a regulated consumer lender may
3 contract for and receive a loan finance charge not exceeding
4 that permitted by this section.

5 (2) On a loan of two thousand dollars or less which is
6 unsecured by real property, the loan finance charge, calculated
7 according to the actuarial method, may not exceed thirty-one
8 percent per year on the unpaid balance of the principal amount.

9 (3) On a loan of greater than two thousand dollars or which
10 is secured by real property, the loan finance charge, calculated
11 according to the actuarial method, may not exceed twenty-
12 seven percent per year on the unpaid balance of the principal
13 amount: *Provided*, That the loan finance charge on any loan
14 greater than ten thousand dollars may not exceed eighteen
15 percent per year on the unpaid balance of the principal amount.
16 Loans made by regulated consumer lenders shall be subject to
17 the restrictions and supervision set forth in this article irrespec-
18 tive of their rate of finance charges.

19 (4) Where the loan is nonrevolving and is greater than two
20 thousand dollars, the permitted finance charge may include a
21 charge of not more than a total of two percent of the amount
22 financed for any origination fee, points or investigation fee:
23 *Provided*, That where any loan, revolving or nonrevolving, is
24 secured by real estate, the permitted finance charge may include
25 a charge of not more than a total of five percent of the amount
26 financed for any origination fee, points or investigation fee. In
27 any loan secured by real estate, the charges may not be imposed
28 again by the same or affiliated lender in any refinancing of that
29 loan made within twenty-four months thereof, unless these
30 earlier charges have been rebated by payment or credit to the
31 consumer under the actuarial method or the total of the earlier
32 and proposed charges does not exceed five percent of the

33 amount financed. Charges permitted under this subsection shall
34 be included in the calculation of the loan finance charge. The
35 financing of the charges may be permissible and may not
36 constitute charging interest on interest. In a revolving home
37 equity loan, the amount of the credit line extended shall, for
38 purposes of this subsection, constitute the amount financed.
39 Other than herein provided, no points, origination fee, investi-
40 gation fee or other similar prepaid finance charges attributable
41 to the lender or its affiliates may be levied. Except as provided
42 for by section one hundred nine, article three of this chapter, no
43 additional charges may be made; nor may any charge permitted
44 by this section be assessed unless the loan is made. To the
45 extent that this section overrides the preemption on limiting
46 points and other charges on first lien residential mortgages
47 contained in Section 501 of the United States Depository
48 Institutions Deregulation and Monetary Control Act of 1980,
49 the state law limitations contained in this section shall apply. If
50 the loan is precomputed:

51 (a) The loan finance charge may be calculated on the
52 assumption that all scheduled payments will be made when due;
53 and

54 (b) The effect of prepayment, refinancing or consolidation
55 is governed by the provisions on rebate upon prepayment,
56 refinancing or consolidation contained in section one hundred
57 eleven, article three of this chapter.

58 (5) For the purposes of this section, the term of a loan
59 commences on the date the loan is made. Differences in the
60 lengths of months are disregarded and a day may be counted as
61 one thirtieth of a month. Subject to classifications and differen-
62 tiations the licensee may reasonably establish, a part of a month
63 in excess of fifteen days may be treated as a full month if
64 periods of fifteen days or less are disregarded and if that

65 procedure is not consistently used to obtain a greater yield than
66 would otherwise be permitted.

67 (6) With respect to a revolving loan account:

68 (a) A charge may be made by a regulated consumer lender
69 in each monthly billing cycle which is one twelfth of the
70 maximum annual rates permitted by this section computed on
71 an amount not exceeding the greatest of:

72 (i) The average daily balance of the debt; or

73 (ii) The balance of the debt at the beginning of the first day
74 of the billing cycle, less all payments on and credits to such
75 debt during such billing cycle and excluding all additional
76 borrowings during the billing cycle.

77 For the purpose of this subdivision, a billing cycle is
78 monthly if the billing statement dates are on the same day each
79 month or do not vary by more than four days therefrom.

80 (b) If the billing cycle is not monthly, the maximum loan
81 finance charge which may be made by a regulated consumer
82 lender is that percentage which bears the same relation to an
83 applicable monthly percentage as the number of days in the
84 billing cycle bears to thirty.

85 (c) Notwithstanding subdivisions (a) and (b) of this
86 subsection, if there is an unpaid balance on the date as of which
87 the loan finance charge is applied, the licensee may contract for
88 and receive a charge not exceeding fifty cents if the billing
89 cycle is monthly or longer or the pro rata part of fifty cents
90 which bears the same relation to fifty cents as the number of
91 days in the billing cycle bears to thirty if the billing cycle is
92 shorter than monthly, but no charge may be made pursuant to
93 this subdivision if the lender has made an annual charge for the

94 same period as permitted by the provisions on additional
95 charges.

96 (7) As an alternative to the loan finance charges allowed by
97 subsections (2) and (4) of this section, a regulated consumer
98 lender may on a loan not secured by real estate of two thousand
99 dollars or less contract for and receive interest at a rate of up to
100 thirty-one percent per year on the unpaid balance of the
101 principal amount, together with a nonrefundable loan process-
102 ing fee of not more than two percent of the amount financed:
103 *Provided*, That no other finance charges are imposed on the
104 loan. The processing fee permitted under this subsection shall
105 be included in the calculation of the loan finance charge and the
106 financing of the fee shall be permissible and may not constitute
107 charging interest on interest.

108 (8) Notwithstanding any contrary provision in this section,
109 a licensed regulated consumer lender who is the assignee of a
110 nonrevolving consumer loan unsecured by real property located
111 in this state, which loan contract was applied for by the con-
112 sumer when he or she was in another state, and which was
113 executed and had its proceeds distributed in that other state,
114 may collect, receive and enforce the loan finance charge and
115 other charges, including late fees, provided in the contract
116 under the laws of the state where executed: *Provided*, That the
117 consumer was not induced by the assignee or its in-state
118 affiliates to apply and obtain the loan from an out-of-state
119 source affiliated with the assignee in an effort to evade the
120 consumer protections afforded by this chapter. Such charges
121 may not be considered to be usurious or in violation of the
122 provisions of this chapter or any other provisions of this code.

CHAPTER 64

(Com. Sub. for H. B. 2738 — By Delegates Cann, Coleman,
Campbell, Varner, Beane, Kominar and Fahey)

[Passed April 12, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article one, chapter thirty-one-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section one hundred thirteen; to amend and reenact section one, article nine, chapter forty-seven of said code; and to amend and reenact section one, article one, chapter forty-seven-b of said code, all relating to adding the terms “limited liability company” and “professional limited liability company” to the definition of “person” in certain code provisions relating to limited partnerships or partnerships.

Be it enacted by the Legislature of West Virginia:

That article one, chapter thirty-one-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 one hundred thirteen; that section one, article nine, chapter forty-seven of said code be amended and reenacted; and that section one, article one, chapter forty-seven-b of said code be amended and reenacted, all to read as follows:

Chapter

31B. Uniform Limited Liability Company Act.

47. Regulation of Trade.

47B. Uniform Partnership Act.

**CHAPTER 31B. UNIFORM LIMITED LIABILITY
COMPANY ACT.**

ARTICLE 1. GENERAL PROVISIONS.

**§31B-1-113. Disclosures required by limited liability companies
holding certain licenses.**

1 Notwithstanding any provisions of this code to the contrary,
2 any limited liability company seeking or holding a Class A
3 liquor license issued pursuant to the provisions of article seven,
4 chapter sixty of this code, or which seeks or holds a license
5 under the provisions of article twenty-two-b, chapter twenty-
6 nine of this code shall disclose in any required application the
7 identities of all members or persons entitled to a distribution
8 under section one hundred one, article one, chapter thirty-one-b,
9 or if the license is already held, shall reveal the identities of all
10 members or persons entitled to a distribution under section one
11 hundred one, article one, chapter thirty-one-b, to the regulatory
12 agency overseeing the licensee.

CHAPTER 47. REGULATION OF TRADE.

ARTICLE 9. UNIFORM LIMITED PARTNERSHIP ACT.

§47-9-1. Definitions.

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

3 (1) "Certificate of limited partnership" means the certificate
4 referred to in section eight of this article and the certificate as
5 amended;

6 (2) "Contribution" means any cash, property, services
7 rendered, or a promissory note or other binding obligation to
8 contribute cash or property or to perform services, which a

9 partner contributes to a limited partnership in his or her
10 capacity as a partner;

11 (3) "Event of withdrawal of a general partner" means an
12 event that causes a person to cease to be a general partner as
13 provided in section twenty-three of this article;

14 (4) "Foreign limited partnership" means a partnership
15 formed under the laws of any state other than this state and
16 having as partners one or more general partners and one or
17 more limited partners;

18 (5) "General partner" means a person who has been
19 admitted to a limited partnership as a general partner in
20 accordance with the partnership agreement and named in the
21 certificate of limited partnership as a general partner;

22 (6) "Limited partner" means a person who has been
23 admitted to a limited partnership as a limited partner in accor-
24 dance with the partnership agreement;

25 (7) "Limited partnership" and "domestic limited partner-
26 ship" means a partnership formed by two or more persons under
27 the laws of this state and having one or more general partners
28 and one or more limited partners;

29 (8) "Partner" means a limited or general partner;

30 (9) "Partnership agreement" means any valid agreement,
31 written or oral, of the partners as to the affairs of a limited
32 partnership and the conduct of its business;

33 (10) "Partnership interest" means a partner's share of the
34 profits and losses of a limited partnership and the right to
35 receive distributions of partnership assets;

36 (11) "Person" means a natural person, partnership, limited
37 partnership (domestic or foreign), limited liability company,

38 professional limited liability company, trust, estate, association,
39 corporation, or any other legal or commercial entity; and

40 (12) "State" means a state, territory or possession of the
41 United States, the District of Columbia or the Commonwealth
42 of Puerto Rico.

CHAPTER 47B. UNIFORM PARTNERSHIP ACT.

ARTICLE 1. GENERAL PROVISIONS.

§47B-1-1. Definitions.

1 In this chapter:

2 (1) "Business" includes every trade, occupation and
3 profession.

4 (2) "Debtor in bankruptcy" means a person who is the
5 subject of:

6 (i) In order for relief under Title 11 of the United States
7 Code or a comparable order under a successor statute of general
8 application; or

9 (ii) A comparable order under federal, state or foreign law
10 governing insolvency.

11 (3) "Distribution" means a transfer of money or other
12 property from a partnership to a partner in the partner's
13 capacity as a partner or to the partner's transferee.

14 (4) "Foreign limited liability partnership" means a partner-
15 ship or association formed under or pursuant to an agreement
16 governed by the laws of any state or jurisdiction other than this
17 state that is denominated as a registered limited liability
18 partnership or limited liability partnership under the laws of
19 such other jurisdiction.

20 (5) “Partnership” means an association of two or more
21 persons to carry on as co-owners a business for profit formed
22 under section two, article two of this chapter, predecessor law,
23 or comparable law of another jurisdiction and includes, for all
24 purposes of the laws of this state, a registered limited liability
25 partnership.

26 (6) “Partnership agreement” means the agreement, whether
27 written, oral or implied, among the partners concerning the
28 partnership, including amendments to the partnership agree-
29 ment.

30 (7) “Partnership at will” means a partnership in which the
31 partners have not agreed to remain partners until the expiration
32 of a definite term or the completion of a particular undertaking.

33 (8) “Partnership interest” or “partner’s interest in the
34 partnership” means all of a partner’s interests in the partnership,
35 including the partner’s transferable interest and all management
36 and other rights.

37 (9) “Person” means an individual, corporation, business
38 trust, estate, trust, partnership, limited liability company,
39 professional limited liability company, association, joint
40 venture, government, governmental subdivision, agency or
41 instrumentality, or any other legal or commercial entity.

42 (10) “Property” means all property, real, personal or mixed,
43 tangible or intangible, or any interest therein.

44 (11) “Registered limited liability partnership” means a
45 partnership formed pursuant to an agreement governed by the
46 laws of this state, registered under section one, article ten of this
47 chapter.

48 (12) "State" means a state of the United States, the District
49 of Columbia, the Commonwealth of Puerto Rico, or any
50 territory or insular possession subject to the jurisdiction of the
51 United States.

52 (13) "Statement" means a statement of partnership authority
53 under section three, article three of this chapter, a statement of
54 denial under section four of said article, a statement of dissocia-
55 tion under section four, article seven of this chapter, a statement
56 of dissolution under section five, article eight of this chapter, a
57 statement of merger under section seven, article nine of this
58 chapter, a statement of registration and a statement of with-
59 drawal under section one, article ten of this chapter, or an
60 amendment or cancellation of any of the foregoing.

61 (14) "Transfer" includes an assignment, conveyance, lease,
62 mortgage, deed and encumbrance.

CHAPTER 65

(H. B. 3131 — By Mr. Speaker, Mr. Kiss, and
Delegates Trump and Michael)

[Passed April 14, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section fifteen, article five, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section one-a, article eleven, chapter eight; to amend and reenact sections two, three, ten and twenty-two, article twenty, chapter thirty-one; and to amend and reenact section twenty-eight-a, article one, chapter fifty-nine all of said code, all relating to the funding of the

regional jail and correctional facility authority; providing for disposition of fines received from magistrates and municipalities; authorizing the West Virginia regional and correctional facility authority to create special funds in the state treasury; and disposition of certain fees paid in conjunction with divorce and civil actions and criminal cases with the West Virginia regional and correctional facility authority.

Be it enacted by the Legislature of West Virginia:

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

Chapter

- 7. County Commissions and Officers.**
- 8. Municipal Corporations.**
- 31. Corporations.**
- 59. Fees, Allowances and Costs; Newspapers; Legal Advertisements.**

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 5. FISCAL AFFAIRS.

§7-5-15. Annual statement of sheriff of fines and costs received from magistrates; payment into state treasury.

1 The sheriff shall annually, during the month of January,
 2 render under oath to the auditor a true statement of the account
 3 of all fines and costs collected by magistrates and transmitted
 4 to him or her and pay into the treasury of the state, the net
 5 proceeds of fines and costs as exhibited by the account, to be

6 appropriated as directed by section 5, article XII of the constitu-
7 tion of this state. Failure to do this is a breach of his or her
8 official duty. For the purposes of this section, the net proceeds
9 of such fines and costs are the proceeds remaining after
10 deducting therefrom: (1) The cost of auditing the accounts of
11 magistrates by the chief inspector's office; (2) the amounts of
12 costs and fees paid into the regional jail and correctional facility
13 authority fund of the state treasury by the clerk in the manner
14 provided by section four-a, article three, chapter fifty of this
15 code; (3) until a regional facility is provided pursuant to article
16 twenty, chapter thirty-one of this code, the expenses and costs
17 of operation and maintenance of the county jail or a regional
18 correctional facility, other than a facility provided pursuant to
19 article twenty, chapter thirty-one of this code, operated jointly
20 with one or more other county or counties, and of constructing,
21 reconstructing and renovating any jail facility used for county
22 prisoners and of periodic payments, if any, for the establish-
23 ment of a jail improvement fund in the manner provided by
24 section nine, article one of this chapter for constructing,
25 reconstructing or renovating any jail facility used for county
26 prisoners; and (4) after a regional facility is made available to
27 the county pursuant to article twenty, chapter thirty-one of this
28 code, the expenses and costs of operation of the jail for the
29 county in the form of the per day costs required to be paid into
30 a regional jail and correctional facility authority fund pursuant
31 to subsection (h), section ten, article twenty, chapter thirty-one
32 of this code, the periodic payments, if any, for the establishment
33 of a jail improvement fund in the manner provided by section
34 nine, article one of this chapter, which shall thereafter be
35 transmitted to the state treasurer and deposited in a regional jail
36 and correctional facility authority fund, and the funds expended
37 by the respective counties, if any, for expenses incurred in
38 housing prisoners in local jail facilities used as holding facili-
39 ties.

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 11. POWERS AND DUTIES WITH RESPECT TO ORDINANCES AND ORDINANCE PROCEDURES.

§8-11-1a. Disposition of criminal costs into state treasury account for regional jail and correctional facility authority fund.

1 The clerk of each municipal court, or other person desig-
2 nated to receive fines and costs, shall at the end of each month
3 pay into the regional jail and correctional facility authority fund
4 in the state treasury an amount equal to forty dollars of the costs
5 collected in each proceeding involving a traffic offense consti-
6 tuting a moving violation, regardless of whether the penalty for
7 the violation provides for a period of incarceration, or any other
8 offense for which the ordinance prescribing the offense
9 provides for a period of incarceration: *Provided*, That in a case
10 where a defendant has failed to pay all costs assessed against
11 him or her, no payment may be made to the regional jail and
12 correctional facility authority fund until the defendant has paid
13 all costs which, when paid, are available for the use and benefit
14 of the municipality.

CHAPTER 31. CORPORATIONS.

ARTICLE 20. WEST VIRGINIA REGIONAL JAIL AND CORRECTIONAL FACILITY AUTHORITY.

§31-20-2. Definitions.

§31-20-3. West Virginia regional jail and correctional facility authority; composi-
tion; appointment; terms; compensation and expenses.

§31-20-10. Regional jail and correctional facility authority funds.

§31-20-22. Money of the authority.

§31-20-2. Definitions.

1 Unless the context indicates clearly otherwise, as used in
2 this article:

3 (a) "Adjacent regional juvenile detention facility" means a
4 facility constructed or maintained on property owned or
5 controlled by the regional jail authority and designed for the
6 short term preadjudicatory detention of juveniles, for the
7 confinement of juveniles who are awaiting transportation to or
8 placement at another juvenile detention facility or juvenile
9 correctional facility and for juveniles who are awaiting trial as
10 an adult pursuant to section ten, article five, chapter forty-nine
11 of this code.

12 (b) "Authority" or "West Virginia Regional Jail Authority"
13 means the West Virginia regional jail and correctional facility
14 authority created by this article.

15 (c) "Board" means the governing body of the authority.

16 (d) "Bonds" means bonds of the authority issued under this
17 article.

18 (e) "Cost of construction or renovation of a local jail
19 facility, regional jail facility or juvenile facility" means the cost
20 of all lands, water areas, property rights and easements,
21 financing charges, interest prior to and during construction and
22 for a period not exceeding six months following the completion
23 of construction, equipment, engineering and legal services,
24 plans, specifications and surveys, estimates of costs and other
25 expenses necessary or incidental to determining the feasibility
26 or practicability of any project, together with any other ex-
27 penses necessary or incidental to the financing and the con-
28 struction or renovation of the facilities and the placing of the
29 facilities in operation.

30 (f) "County" means any county of this state.

31 (g) "Federal agency" means the United States of America
32 and any department, corporation, agency or instrumentality

33 created, designated or established by the United States of
34 America.

35 (h) "Fund" or "funds" means a regional jail and correctional
36 facility authority fund provided in section ten of this article,
37 including those accounts that may be established by the
38 authority for accurate accounting of the expenditure of public
39 funds by that agency.

40 (i) "Government" means state and federal government, and
41 any political subdivision, agency or instrumentality of the state
42 or federal government, corporate or otherwise.

43 (j) "Inmate" means any adult person properly committed to
44 a local or regional jail facility or a correctional facility.

45 (k) "Local jail facility" means any county facility for the
46 confinement, custody, supervision or control of adult persons
47 convicted of misdemeanors, awaiting trial or awaiting transpor-
48 tation to a state correctional facility.

49 (l) "Municipality" means any city, town or village in this
50 state.

51 (m) "Notes" means any notes as defined in section one
52 hundred four, article three, chapter forty-six of this code issued
53 under this article by the authority.

54 (n) "Correctional facility" means any correctional facility,
55 penitentiary or other correctional institution operated by the
56 division of corrections for the incarceration of adults.

57 (o) "Regional jail facility" or "regional jail" means any
58 facility operated by the authority and used jointly by two or
59 more counties for the confinement, custody, supervision or
60 control of adult persons convicted of misdemeanors or awaiting
61 trial or awaiting transportation to a state correctional facility.

62 (p) "Revenues" means all fees, charges, moneys, profits,
63 payments of principal of, or interest on, loans and other
64 investments, grants, contributions and all other income received
65 by the authority.

66 (q) "Security interest" means an interest in the loan
67 portfolio of the authority which is secured by an underlying
68 loan or loans and is evidenced by a note issued by the authority.

69 (r) "Work farm" has the same meaning as that term is used
70 in section twelve, article eight, chapter seven of this code
71 authorizing work farms for individual counties.

72 (s) "Juvenile detention facility" or "juvenile detention
73 center" means a facility operated by the division of juvenile
74 services for the short term preadjudicatory detention of juve-
75 niles, for the confinement of juveniles who are awaiting
76 transportation to or placement at another juvenile detention
77 facility or juvenile correctional facility and for juveniles who
78 are awaiting trial as an adult pursuant to section ten, article five,
79 chapter forty-nine of this code.

80 (t) "Juvenile correctional facility" means a facility operated
81 by the division of juvenile services for the postdispositional
82 confinement of juveniles adjudicated of offenses that would be
83 criminal offenses if committed by an adult.

**§31-20-3. West Virginia regional jail and correctional facility
authority; composition; appointment; terms;
compensation and expenses.**

1 There is hereby created the West Virginia regional jail and
2 correctional facility authority which shall be a body corporate
3 and a government instrumentality. Wherever in this chapter
4 and elsewhere in law reference is made to the West Virginia

5 regional jail and prison authority, that reference means the West
6 Virginia regional jail and correctional facility authority.

7 The authority shall be governed by a board of nine mem-
8 bers, seven of whom are entitled to vote on matters coming
9 before the authority. The complete governing board shall
10 consist of the commissioner of the division of corrections; the
11 director of the division of juvenile services; the secretary of the
12 department of military affairs and public safety; the secretary
13 of the department of administration, or his or her designated
14 representative; three county officials appointed by the governor,
15 no more than two of which may be of the same political party;
16 and two citizens appointed by the governor to represent the
17 areas of law and medicine. The commissioner of the division of
18 corrections and the director of the division of juvenile services
19 shall serve in an advisory capacity and are not entitled to vote
20 on matters coming before the authority. Members of the
21 Legislature are not eligible to serve on the board.

22 The governor shall nominate and, by and with the advice
23 and consent of the Senate, appoint the five appointed members
24 of the authority for staggered terms of four years beginning the
25 first day of July, one thousand nine hundred eighty-nine. Of the
26 members of the board first appointed, one shall be appointed for
27 a term ending the thirtieth day of June, one thousand nine
28 hundred ninety-one, two shall be appointed for terms ending the
29 thirtieth day of June, one thousand nine hundred ninety-two,
30 and two shall be appointed for terms ending the thirtieth day of
31 June, one thousand nine hundred ninety-three. As these original
32 appointments expire, each subsequent appointment shall be for
33 a full four-year term.

34 Any appointed member whose term has expired shall serve
35 until his or her successor has been duly appointed and qualified.
36 Any person appointed to fill a vacancy shall serve only for the

37 unexpired term. Any appointed member is eligible for reap-
38 pointment. Members of the authority are not entitled to com-
39 pensation for services performed as members but are entitled to
40 reimbursement for all reasonable and necessary expenses
41 actually incurred in the performance of their duties.

42 All members of the board of the authority shall execute an
43 official bond in a penalty of ten thousand dollars, conditioned
44 as required by law. Premiums on the bond shall be paid from
45 funds accruing to the authority. The bond shall be approved as
46 to form by the attorney general and as to sufficiency by the
47 governor and, when fully executed and approved, shall be filed
48 in the office of the secretary of state.

§31-20-10. Regional jail and correctional facility authority funds.

1 (a) The regional jail and correctional facility authority may
2 create special funds in the state treasury to identify various
3 revenue sources and payment of specific obligations. These
4 funds may be used for purposes that include, but are not limited
5 to, the construction, renovation or repair of specific facilities,
6 cash control, facility maintenance and the individual operations
7 accounts of facilities operated by the authority. The authority
8 may create other separate accounts within these funds that it
9 determines are necessary for the efficient operation of the
10 authority.

11 (b) Revenues deposited into these funds shall be used to
12 make payments of interest and shall be pledged as security for
13 bonds, security interests or notes issued or lease-purchase
14 obligations entered into with another state entity by the author-
15 ity pursuant to this article.

16 (c) Whenever the authority determines that the balance in
17 these funds is in excess of the immediate requirements of this
18 article, it may request that the excess be invested until needed.

19 In this case the excess shall be invested in a manner consistent
20 with the investment of temporary state funds. Interest earned on
21 any money invested pursuant to this section shall be credited to
22 these funds.

23 (d) If the authority determines that moneys held in these
24 funds are in excess of the amount needed to carry out the
25 purposes of this article, it shall take any action that is necessary
26 to release the excess and transfer it to the general revenue fund
27 of the state treasury.

28 (e) These funds shall consist of the following:

29 (1) Amounts raised by the authority by the sale of bonds or
30 other borrowing authorized by this article;

31 (2) Moneys collected and deposited in the state treasury
32 which are specifically designated by acts of the Legislature for
33 inclusion in these funds;

34 (3) Contributions, grants and gifts from any source, both
35 public and private, which may be used by the authority for any
36 project or projects;

37 (4) All sums paid by the counties pursuant to subsection (h)
38 of this section; and

39 (5) All interest earned on investments made by the state
40 from moneys deposited in these funds.

41 (f) The amounts deposited in these funds shall be accounted
42 for and expended in the following manner:

43 (1) Amounts raised by the sale of bonds or other borrowing
44 authorized by this article shall be deposited in a separate
45 account within these funds and expended for the purpose of
46 construction, renovation and repair of correctional facilities,

47 regional jails and juvenile detention and correctional facilities
48 for which need has been determined by the authority;

49 (2) Amounts deposited from all other sources shall be
50 pledged first to the debt service on any bonded indebtedness,
51 including lease-purchase obligations entered into by the
52 authority with another state entity or other obligation incurred
53 by borrowing of the authority;

54 (3) After any requirements of debt service have been
55 satisfied, the authority shall requisition from these funds the
56 amounts that are necessary to provide for payment of the
57 administrative expenses of this article;

58 (4) The authority shall requisition from these funds after
59 any requirements of debt service have been satisfied the
60 amounts that are necessary for the maintenance and operation
61 of regional jails that are constructed pursuant to the provisions
62 of this article and shall expend those amounts for that purpose.
63 These funds shall make an accounting of all amounts received
64 from each county by virtue of any filing fees, court costs or
65 fines required by law to be deposited in these funds and
66 amounts from the jail improvement funds of the various
67 counties. After the expenses of administration have been
68 deducted, the amounts expended in the respective regions from
69 those sources shall be in proportion to the percentage the
70 amount contributed to these funds by the counties in each
71 region bears to the total amount received by these funds from
72 those sources;

73 (5) Notwithstanding any other provisions of this article,
74 sums paid into these funds by each county pursuant to subsection
75 (h) of this section for each inmate shall be placed in a
76 separate account and shall be requisitioned from these funds to

77 pay for costs incurred at the regional jail facility at which each
78 inmate was incarcerated; and

79 (6) Any amounts deposited in these funds from other
80 sources permitted by this article shall be expended in the
81 respective regions based on particular needs to be determined
82 by the authority.

83 (g) After a regional jail facility becomes available pursuant
84 to this article for the incarceration of inmates, each county
85 within the region shall incarcerate all persons whom the county
86 would have incarcerated in any jail prior to the availability of
87 the regional jail facility in the regional jail facility except those
88 whose incarceration in a local jail facility used as a local
89 holding facility is specified as appropriate under the standards
90 and procedures developed pursuant to section nine of this
91 article and who the sheriff or the circuit court elects to incarcer-
92 ate therein.

93 (h) When inmates are placed in a regional jail facility
94 pursuant to subsection (g) of this section, the county shall pay
95 into the regional jail and correctional facility authority fund a
96 cost per day for each incarcerated inmate to be determined by
97 the regional jail and correctional facility authority according to
98 criteria and by procedures established by legislative rules
99 proposed for promulgation pursuant to article three, chapter
100 twenty-nine-a of this code to cover the costs of operating the
101 regional jail facilities of this state to maintain each inmate. The
102 per diem costs for incarcerating inmates may not include the
103 cost of construction, acquisition or renovation of the regional
104 jail facilities: *Provided*, That each regional jail facility operat-
105 ing in this state shall keep a record of the date and time that an
106 inmate is incarcerated, and a county may not be charged for a
107 second day of incarceration for an individual inmate until that
108 inmate has remained incarcerated for more than twenty-four

109 hours. Thereafter, in cases of continuous incarceration, subse-
110 quent per diem charges shall be made upon a county only as
111 subsequent intervals of twenty-four hours pass from the original
112 time of incarceration.

§31-20-22. Money of the authority.

1 All money accruing to the authority from whatever source
2 derived, except legislative appropriations, and except that
3 authorized to be deposited directly into a regional jail and
4 correctional facility authority fund shall be collected and
5 received by the treasurer of the authority, who shall pay it into
6 the state treasury in the manner required by section two, article
7 two, chapter twelve of this code, to be credited to the fund.

**CHAPTER 59. FEES, ALLOWANCES AND COSTS;
NEWSPAPERS; LEGAL ADVERTISEMENTS.**

ARTICLE 1. FEES AND ALLOWANCES.

***§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

***Clerk's Note:** This section was also amended by H. B. 2199 (Chapter 91), which passed prior to this act, and S. B. 652 (Chapter 93), which passed subsequent to this act.

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 the action as follows:

15 (1) Into the regional jail and correctional facility authority
16 fund in the state treasury established pursuant to the provisions
17 of section ten, article twenty, chapter thirty-one of this code, the
18 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, report to
24 the supreme court of appeals, the number of actions filed by
25 persons unable to pay, and pay into the funds or accounts in this
26 subsection an amount equal to the amount set forth in this
27 subsection of every filing fee received for instituting the
28 divorce action as follows:

29 (1) Into the regional jail and correctional facility authority
30 fund in the state treasury established pursuant to the provisions
31 of section ten, article twenty, chapter thirty-one of this code, the
32 amount of ten dollars;

33 (2) Into the special revenue account of the state treasury,
34 established pursuant to section six hundred four, article two,
35 chapter forty-eight of this code, an amount of thirty dollars;

36 (3) Into the family court fund established under section four
37 hundred three, article thirty, chapter forty-eight of this code, an
38 amount of fifty dollars; and

39 (4) Into the court security fund in the state treasury,
40 established pursuant to the provisions of section fourteen,

41 article three, chapter fifty-one of this code, the amount of five
42 dollars.

43 (c) For each action for divorce, separate maintenance or
44 annulment instituted in the circuit court, the clerk of the court
45 shall, at the end of each month, pay into the funds or accounts
46 in this subsection an amount equal to the amount set forth in
47 this subsection of every filing fee received for instituting the
48 divorce action as follows:

49 (1) Into the regional jail and correctional facility authority
50 fund in the state treasury established pursuant to the provisions
51 of section ten, article twenty, chapter thirty-one of this code, the
52 amount of ten dollars;

53 (2) Into the special revenue account of the state treasury,
54 established pursuant to section six hundred four, article two,
55 chapter forty-eight of this code, an amount of thirty dollars;

56 (3) Into the family court fund established under section four
57 hundred three, article thirty, chapter forty-eight 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 four hundred three, article thirty, chapter forty-
67 eight of this code an amount equal to the amount of every fee
68 received for petitioning for the modification of an order
69 involving child custody, child visitation, child support or
70 spousal support as determined by subdivision (3), subsection

71 (a), section eleven of this article and for petitioning for an
72 expedited modification of a child support order as provided in
73 subdivision (4), subsection (a), section eleven of this article.

74 (e) The clerk of the court from which a protective order is
75 issued shall, at the end of each month, pay into the family court
76 fund established under section four hundred three, article thirty,
77 chapter forty-eight of this code an amount equal to every fee
78 received pursuant to the provisions of section five hundred
79 eight, article twenty-seven, chapter forty-eight of this code.

80 (f) The clerk of each circuit court shall, at the end of each
81 month, pay into the regional jail and correctional facility
82 authority fund in the state treasury an amount equal to forty
83 dollars of every fee for service received in any criminal case
84 against any respondent convicted in such court and shall pay an
85 amount equal to five dollars of every fee into the court security
86 fund in the state treasury established pursuant to the provisions
87 of section fourteen, article three, chapter fifty-one of this code.

CHAPTER 66

**(H. B. 3156 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]**

[Passed April 14, 2001; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-one, article six, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend article fifteen, chapter thirty-one of said code by adding thereto a new section, designated section six-b; and to amend and reenact section fourteen, article

three, chapter thirty-three of said code, all relating to the construction and permanent financing of new regional jail, juvenile detention and correctional facilities; providing for the permanent financing of new regional jail and juvenile detention facilities; authorizing the return of certain investment capital to the investment management board; authorizing the issuance of bonds by the West Virginia economic development authority to prepay certain investment capital and to finance the construction of new regional jail and juvenile detention facilities; and providing for the dedication and transfer of certain amounts from the insurance tax fund to the regional jail and correctional facility debt service fund.

Be it enacted by the Legislature of West Virginia:

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

Chapter

12. Public Moneys and Securities.

31. Corporations.

33. Insurance.

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

ARTICLE 6. WEST VIRGINIA INVESTMENT MANAGEMENT BOARD.

§12-6-21. Investment with regional jail and correctional facility authority.

1 (a) The Legislature finds and declares:

2 (1) That the supreme court of appeals has determined and
3 ordered that the constitution of this state imposes a duty on
4 behalf of the state to make significant improvements in the jail
5 and correctional facility system, including the duty to make
6 capital improvements to facilities and to pay for the cost of
7 those improvements;

8 (2) That construction of capital improvements requires that
9 the cost of the facilities be financed over time; that capital
10 improvements cannot be funded out of the current year appro-
11 priations of the Legislature; and that section fifty-one, article
12 six of the constitution prohibits the Legislature amending the
13 budget bill so as to create a deficit;

14 (3) That while the supreme court of appeals is empowered
15 to interpret the laws, including the constitution of the state,
16 section one, article ten of the constitution grants to the Legisla-
17 ture the power of taxation; section fifty-one, article six of the
18 constitution grants to the Legislature the power of appropria-
19 tion; and section one, article five of the constitution prohibits
20 any branch of government from exercising powers properly
21 belonging to another;

22 (4) That the enacting of new taxes, or the diversion of
23 revenues from other essential departments and functions of
24 government, in order to support capital improvements in jails
25 and correctional facilities, is not in the interests of the people of
26 the state represented in the Legislature, and is specifically
27 rejected by the Legislature in its exercise of its legitimate
28 constitutional powers;

29 (5) That the decision of the supreme court of appeals,
30 imposing a duty on the state to construct and pay for capital
31 improvements to jails and correctional facilities arising out of
32 the Bill of Rights of the United States constitution declared

33 ratified in the year one thousand seven hundred ninety-one, and
34 the state constitution of the year one thousand eight hundred
35 sixty-three, constitutes a prior liability of the state within the
36 meaning of section four, article ten of the constitution and an
37 exception to the constitutional limitation on contracting state
38 debt;

39 (6) That the construction of capital improvements of jail
40 and correctional facilities may be funded through funds
41 available for investment through the West Virginia investment
42 management board, invested in such a manner as to be assured
43 as high a rate of return as would be earned if these funds were
44 otherwise invested, and repaid by the state as provided in this
45 article.

46 (b) The investment management board shall upon request
47 of the regional jail and correctional facility authority transfer
48 moneys as an investment, from funds available for investment
49 from the public employees retirement system, to the regional
50 jail and correctional facility authority. The amount transferred
51 may not exceed one hundred fifty million dollars in the aggregate
52 and shall be used for the purposes of financing construction
53 of regional jails, correctional facilities, juvenile detention
54 facilities, juvenile correctional facilities, or extensions, renovations,
55 improvements or additions thereto, or for the replacement
56 or renovation of existing facilities. If the board has loaned
57 money to the state building commission under subsection (b),
58 section nineteen of this article, the total amount loaned shall be
59 repaid to the board from funds made available under the
60 investment made pursuant to this section. Prior to the expenditure
61 of any of the funds, the regional jail and correctional
62 facility authority shall certify to the joint committee on government
63 and finance a list of projects that are to be funded from the
64 invested funds. This certified list may not thereafter be altered
65 or amended other than by legislative enactment. Funds shall be

66 invested with the regional jail and correctional facility authority
67 as requested by the regional jail and correctional facility
68 authority. The money invested shall earn a return at a rate equal
69 to the annualized rate of return earned by the core fixed-income
70 portfolio of the public employees retirement system over the
71 previous five years, plus one tenth of one percent: *Provided*,
72 That in all events this rate of return may not be less than five
73 percent per annum. The monthly rate of return shall be calcu-
74 lated every quarter. The manner and timing of the investment
75 shall be determined by the board. The total of the amounts
76 invested may not exceed a total of one hundred fifty million
77 dollars during fiscal year one thousand nine hundred ninety-
78 eight, and fiscal year one thousand nine hundred ninety-nine,
79 cumulatively. The authority to make the investment authorized
80 by this section expires on the thirtieth day of June, one thousand
81 nine hundred ninety-nine.

82 (c) There is created in the state treasury a regional jail and
83 correctional facility investment fund dedicated to the payment
84 of investment earnings and the return of capital invested under
85 this section. The treasurer shall administer the fund. The fund
86 is an interest-bearing account with interest earned credited to
87 and deposited back into the fund. The fund consists of amounts
88 required to be deposited by section fourteen, article three,
89 chapter thirty-three of this code.

90 (d) The treasurer shall, monthly, transfer amounts from the
91 regional jail and correctional facility investment fund to the
92 board that are sufficient to allow investment earnings to be paid
93 and the capital invested returned in substantially equal amounts
94 by the thirty-first day of August, two thousand twenty-three:
95 *Provided*, That the amount of investment earnings paid and the
96 capital invested returned during the fiscal year beginning the
97 first day of July, one thousand nine hundred ninety-eight, may
98 not exceed ten million dollars. Payment representing invest-

99 ment earnings and the return of capital invested shall begin six
100 months from the date the initial funds are invested, or by the
101 tenth day of January, one thousand nine hundred ninety-nine,
102 whichever is later.

103 (e) The board shall calculate the amount of the projected
104 annual investment earnings to be paid and the capital invested
105 to be returned and certify the amount to the treasurer on the first
106 day of December of each year, until all investment earnings are
107 paid and the total capital invested is returned.

108 (f) As a condition precedent to the transfer and investment
109 of moneys by the investment management board pursuant to
110 subsection (b) of this section, either the investment manage-
111 ment board or the regional jail and correctional authority shall
112 have first caused a judicial determination to be made by an
113 appropriate action initiated in the West Virginia supreme court
114 of appeals regarding the transfer of moneys by the investment
115 management board to the regional jail and correctional facility
116 authority as an investment from funds available for investment
117 from the public employees retirement system, and to otherwise
118 determine the constitutionality of the provisions of Enrolled
119 House Bill 4702, as enacted by the Legislature in the year one
120 thousand nine hundred ninety-eight. This judicial determination
121 shall be brought as soon as practicable, but not later than thirty
122 days following the effective date of the amendments to this
123 section made by the Legislature in the year one thousand nine
124 hundred ninety-eight.

125 (g) The Legislature recognizes the fiduciary liability and
126 responsibility imposed on the board by this article and by
127 article six, chapter forty-four of this code. The board, its
128 trustees and employees, have no liability, either personally or
129 corporately with respect to the investment provided for in this
130 section and the loans made under section nineteen of this
131 article, if the investment and loans are made in accordance with

132 the respective provisions of this section and section nineteen of
133 this article.

134 (h) The regional jail and correctional facility authority shall
135 expend the funds invested under the provisions of this section
136 to proceed with the projects identified pursuant to subsection
137 (b) of this section.

138 (i) The regional jail and correctional facility authority may
139 return the total remaining capital invested upon thirty days
140 written notice to the board and at the time of such return shall
141 pay the investment earnings accrued to the return date.

CHAPTER 31. CORPORATIONS.

ARTICLE 15. WEST VIRGINIA ECONOMIC DEVELOPMENT AUTHORITY.

§31-15-6b. Special power of authority to issue bonds or notes to repay and refinance capital investment of investment management board in regional jail and correctional facility authority; authorizing issuance of bonds or notes to finance local and regional jail facilities, including juvenile detention centers; creation of regional jail and correctional facility debt service fund.

1 (a) The Legislature finds and declares that the supreme
2 court of appeals has determined and ordered that the constitu-
3 tion of this state imposes a duty on behalf of the state to make
4 significant improvements in the jail and correctional facility
5 system, including the duty to make capital improvements to
6 facilities and to pay for the cost of those improvements; that
7 construction of capital improvements requires that the cost of
8 the facilities be financed over time; that capital improvements
9 cannot be funded out of current year appropriations of the

10 Legislature; and that section fifty-one, article six of the consti-
11 tution prohibits the Legislature amending the budget bill so as
12 to create a deficit; that the enacting of new taxes, or the
13 diversion of revenues from other essential departments and
14 functions of government, in order to support capital improve-
15 ments in jails and correctional facilities, including juvenile
16 detention centers, is not in the interests of the people of the state
17 represented in the Legislature, and is specifically rejected by
18 the Legislature in its exercise of its legitimate constitutional
19 powers; that there have been previously funded certain jail and
20 correctional facilities through funds available for investment
21 through the West Virginia investment management board, the
22 proceeds of which have and are being used by the regional jail
23 and correctional facility authority to finance the cost of capital
24 improvements to jail and correctional facilities, the repayment
25 of such investment being made from transfers to the regional
26 jail and correctional facility investment fund established under
27 section twenty-one, article six, chapter twelve of this code, from
28 funds on deposit in the insurance tax fund established under
29 subsection (b), section fourteen, article three, chapter thirty-
30 three of this code, such transfers undertaken in the manner set
31 forth in subsection (c), section fourteen, article three, chapter
32 thirty-three of this code; that the supreme court of appeals has
33 previously made a judicial determination that the insurance tax
34 fund is a special revenue fund from which repayment of the
35 investment may be made without violating any constitutional
36 limitation on contracting state debt; that the rate of return being
37 paid under subsection (b), section twenty-one, article six,
38 chapter twelve for the investment is subject to annual adjust-
39 ment and theretofore subject to the volatility of the financial
40 markets and it is anticipated that the rate of return paid on such
41 investment will be in excess of the interest rate that would be
42 payable with respect to bonds issued under this article to repay
43 and refinance such investment; that a lower interest rate payable

44 with respect to bonds issued under this article issued to repay
45 and refinance such investment would provide sufficient money
46 for repayment of the investment in full as well as additional
47 money for capital expenditures for jail and correctional facilities,
48 including juvenile detention centers, without increasing the
49 amounts currently transferable from the insurance tax fund for
50 repayment of the investment; and that the use of the insurance
51 tax fund, as a special revenue fund, for the repayment of debt
52 service on bonds or notes issued under this article to finance
53 capital expenditures for jail and correctional facilities, including
54 juvenile detention centers, is a means by which the state may
55 make significant improvements to the jail and correctional
56 facility system without enacting new taxes or diverting revenues
57 from other essential departments and functions of government.
58

59 (b) In order to provide (1) for the repayment of all or a
60 portion of the investment, and (2) for the financing of construction
61 or improvements to regional jail and correctional facilities,
62 including juvenile detention centers, bonds of the authority may
63 be issued in accordance with the provisions of this article.

64 (c) There is hereby created a special revenue fund in the
65 state treasury which is designated the "regional jail and
66 correctional facility debt service fund." Moneys deposited into
67 the fund shall be used to make payments of principal, redemption
68 premium, if any, and interest payments for bonds issued for
69 the purposes set forth in this section. Separate accounts may be
70 established within the special revenue fund for the purpose of
71 identification of payment of specific obligations. The fund shall
72 consist of amounts transferred from the insurance tax fund in
73 the manner set forth in subsection (c), section fourteen, article
74 three, chapter thirty-three of this code. The authority may
75 further provide in the resolution and in the trust agreement for
76 priorities on the revenues paid into the regional jail and

77 correctional facility debt service fund as may be necessary for
78 the protection of the prior rights of the holders of bonds issued
79 at different times under the provisions of this article.

CHAPTER 33. INSURANCE.

ARTICLE 3. LICENSING, FEES AND TAXATION OF INSURERS.

***§33-3-14. Annual financial statement and premium tax return;
remittance by insurer of premium tax, less certain
deductions; special revenue fund created.**

1 (a) Every insurer transacting insurance in West Virginia
2 shall file with the commissioner, on or before the first day of
3 March, each year, a financial statement made under oath of its
4 president or secretary and on a form prescribed by the commis-
5 sioner. The insurer shall also, on or before the first day of
6 March of each year subject to the provisions of section
7 fourteen-c of this article, under the oath of its president or
8 secretary, make a premium tax return for the previous calendar
9 year, on a form prescribed by the commissioner showing the
10 gross amount of direct premiums, whether designated as a
11 premium or by some other name, collected and received by it
12 during the previous calendar year on policies covering risks
13 resident, located or to be performed in this state and compute
14 the amount of premium tax chargeable to it in accordance with
15 the provisions of this article, deducting the amount of quarterly
16 payments as required to be made pursuant to the provisions of
17 section fourteen-c of this article, if any, less any adjustments to
18 the gross amount of the direct premiums made during the
19 calendar year, if any, and transmit with the return to the
20 commissioner a remittance in full for the tax due. The tax is the
21 sum equal to two percent of the taxable premium and also
22 includes any additional tax due under section fourteen-a of this
23 article. All taxes received by the commissioner shall be paid

***Clerk's Note:** This section was also amended by H. B. 3009 (Chapter 153), which passed prior to this act.

24 into the insurance tax fund created in subsection (b) of this
25 section.

26 (b) There is created in the state treasury a special revenue
27 fund, administered by the treasurer, designated the “insurance
28 tax fund.” This fund is not part of the general revenue fund of
29 the state. It consists of all amounts deposited in the fund
30 pursuant to subsection (a) of this section, sections fifteen and
31 seventeen of this article, any appropriations to the fund, all
32 interest earned from investment of the fund and any gifts, grants
33 or contributions received by the fund.

34 (c) The treasurer shall dedicate and transfer from the
35 insurance tax fund to the regional jail and correctional facility
36 investment fund created under the provisions of section twenty-
37 one, article six, chapter twelve of this code, on or before the
38 tenth day of each month, an amount equal to one twelfth of the
39 projected annual investment earnings to be paid and the capital
40 invested to be returned, as certified to the treasurer by the
41 investment management board: *Provided*, That the amount
42 dedicated and transferred may not exceed twenty million dollars
43 in any fiscal year. In the event there are insufficient funds
44 available in any month to transfer the amount required pursuant
45 to this subsection to the regional jail and correctional facility
46 investment fund, the deficiency shall be added to the amount
47 transferred in the next succeeding month in which revenues are
48 available to transfer the deficiency. Each month a lien on the
49 revenues generated from the insurance premium tax, the
50 annuity tax and the minimum tax, provided in this section and
51 sections fifteen and seventeen of this article, up to a maximum
52 amount equal to one twelfth of the projected annual principal
53 and return is granted to the investment management board to
54 secure the investment made with the regional jail and correc-
55 tional facility authority pursuant to section twenty, article six,
56 chapter twelve of this code. The treasurer shall, no later than the

57 last business day of each month, transfer amounts the treasurer
58 determines are not necessary for making refunds under this
59 article to meet the requirements of subsection (d), section
60 twenty-one, article six, chapter twelve of this code, to the credit
61 of the general revenue fund. Commencing on the first day of the
62 month the investment created under the provisions of section
63 twenty-one, article six, chapter twelve of this code, is returned
64 to the investment management board, the treasurer shall
65 dedicate and transfer from the insurance tax fund to the regional
66 jail and correctional facility debt service fund created under the
67 provisions of section six-b, article fifteen, chapter thirty-one of
68 this code, on or before the tenth day of each month, an amount
69 equal to one tenth of the projected annual principal, interest and
70 coverage requirements on any and all revenue bonds and
71 refunding bonds issued, or to be issued, after the first day of
72 May, two thousand one, as certified to the treasurer by the
73 economic development authority: *Provided, however,* That the
74 amount transferred may not exceed sixteen million dollars in
75 any fiscal year. In the event there are insufficient funds avail-
76 able in any month to transfer the amount required pursuant to
77 this subsection to the regional jail and correctional facility debt
78 service fund, the deficiency shall be added to the amount
79 transferred in the next succeeding month in which revenues are
80 available to transfer the deficiency. A lien on the revenues
81 generated from the insurance premium tax, the annuity tax and
82 the minimum tax, provided in this section and sections fifteen
83 and seventeen of this article, not to exceed twenty million
84 dollars annually, is granted to the economic development
85 authority to secure the bonds issued by the economic develop-
86 ment authority on behalf of the regional jail and correctional
87 facility authority pursuant to section six-b, article fifteen,
88 chapter thirty-one of this code. The treasurer shall, no later than
89 the last business day of the month in which the last annually
90 required transfer is made to the regional jail and correctional

91 facility debt service fund, transfer amounts the treasurer
92 determines are not necessary for making transfers under this
93 article to meet the requirements of subsection (c), section six-b,
94 article fifteen, chapter thirty-one of this code, as appropriated
95 by the Legislature.

96 (d) The amendment to this section enacted during the
97 regular session of the Legislature in the year one thousand nine
98 hundred ninety-eight is effective on the first day of July, one
99 thousand nine hundred ninety-eight.

CHAPTER 67

(S. B. 696 — By Senator Love)

[Passed April 14, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal sections six, seven and twenty-five, article twenty, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section four, article fifteen, chapter seventeen of said code, all relating to eliminating obsolete provisions involving regional jail commissions; and transferring certain powers and duties associated with work by prisoners from the regional jail authority to the executive director of the regional jail authority or his or her designee.

Be it enacted by the Legislature of West Virginia:

That sections six, seven and twenty-five, article twenty, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that section four, article

fifteen, chapter seventeen of said code be amended and reenacted to read as follows:

ARTICLE 15. COUNTY CONVICT ROAD FORCE.

§17-15-4. Work by prisoners; relief of sheriffs and others from liability for injuries, etc.

1 (a) Any person convicted of a criminal offense and sen-
2 tenced to confinement in a county or regional jail shall, as
3 incident to such sentence of confinement, be required to
4 perform labor within the jail, as a trustee or otherwise, or in and
5 upon the buildings, grounds, institutions, roads, bridges,
6 streams or other public works of the county or the area within
7 which the regional jail is located if he or she meets the follow-
8 ing criteria:

9 (1) Such person is at least eighteen years of age;

10 (2) Such person is physically and mentally sound and has
11 not been exempted for medical reasons from such work by a
12 licensed physician or other medical professional; and

13 (3) Such person is considered by the county commission,
14 the sheriff or the executive director of the West Virginia
15 regional jail authority or designee not to pose a threat to the
16 community if released for work purposes.

17 (b) The work described in subsection (a) of this section
18 shall be performed under the supervision, care and custody of
19 the county commission, the executive director of the West
20 Virginia regional jail authority or designee, the sheriff, his or
21 her deputies, correctional officers or other persons charged with
22 inmate supervision to perform maintenance or control litter in
23 this state.

24 (c) In order to effectuate the provisions of this section, the
25 county commission, the sheriff or the executive director of the
26 West Virginia regional jail and correctional facility authority or
27 designee shall promulgate rules for the safe and useful employ-
28 ment of inmate labor.

29 (d) Notwithstanding any provision of this code to the
30 contrary, the county commission, its members and agents, the
31 executive director of the West Virginia regional jail authority
32 or designee its members or agents, the sheriff, his or her
33 deputies, correctional officers and agents shall be immune from
34 liability of any kind for accidents, injuries or death to such
35 inmate except for accident, injury or death resulting directly
36 from gross negligence or malfeasance.

37 (e) The sheriff of the county in which the work is to be
38 performed, with the approval of the county commission or the
39 executive director of the West Virginia regional jail authority
40 or designee, may hire or appoint any personnel necessary for
41 the supervision of inmate labor.

42 (f) Nothing in this section shall be construed to allow the
43 use of inmate labor for private projects or as contract employ-
44 ees of for profit businesses.

45 (g) Any inmate who performs work pursuant to the provi-
46 sions of this section shall receive, as sole and full compensation
47 therefor, a reduction in his or her term of incarceration of not
48 more than twenty-five percent of the original sentence exclud-
49 ing any other statutorily granted "good time". Each eight-hour
50 period of approved work shall entitle an inmate to one day's
51 sentence reduction: *Provided*, That any "good time" earned
52 pursuant to the provisions of this section shall be in addition to
53 any other reduction of sentence the inmate may accumulate.

54 (h) Any person being held as a detainee or for contempt
55 may voluntarily participate in such labor as provided for in this
56 section under the terms and conditions hereinbefore set forth.

CHAPTER 68

**(Com. Sub. for H. B. 3192 — By Mr. Speaker, Mr. Kiss, and
Delegates Staton, Michael, Manuel, Givens and Webster)**

[Passed April 14, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eight, article fifteen, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend article twenty, chapter thirty-one by adding thereto a new section, designated section five-d, all relating to good time for jail inmates; providing that inmates of regional jails are eligible for good time for labor performed; providing that inmates of county or regional jails are eligible for good time for achieving certain educational levels; requiring director of regional jail authority to promulgate rules related to discipline of inmates; permitting sheriffs to adopt rules; and requiring that every person committed to jail receive a copy of the disciplinary rules.

Be it enacted by the Legislature of West Virginia:

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

Chapter**17. Roads and Highways.****31. Corporations.****CHAPTER 17. ROADS AND HIGHWAYS.****ARTICLE 15. COUNTY CONVICT ROAD FORCE.****§17-15-8. Credit on sentence for road work by county prisoner.**

1 Every person sentenced to labor as provided for by this
2 article and who has faithfully complied with all the rules and
3 regulations prescribed by the sheriff or administrator of the
4 regional jail facility governing the labor is entitled to five days'
5 deduction for each month's jail sentence that is imposed upon
6 him or her.

CHAPTER 31. CORPORATIONS.**ARTICLE 20. WEST VIRGINIA REGIONAL JAIL AND CORRECTIONAL
FACILITY AUTHORITY.****§31-20-5d. Good time credit.**

1 (a) Any person convicted of a criminal offense and sen-
2 tenced to confinement in a county or regional jail is to be
3 granted commutation from his or her sentence for good conduct
4 in accordance with this section.

5 (b) The commutation of sentence or good time is to be
6 deducted from the fixed term of determinate sentences. An
7 inmate under two or more consecutive sentences is allowed
8 good time as if the several sentences, when the maximum terms
9 thereof are added together, were all one sentence.

10 (c) Every inmate sentenced to a regional jail for a term of
11 confinement exceeding six months who, in the judgment of the
12 administrator of the regional jail facility, faithfully complies

13 with all rules and regulations of the regional jail during his or
14 her term of confinement is entitled to a deduction of five days
15 from each month of his or her sentence. No inmate may be
16 granted any good time under the provisions of this section for
17 time spent on bond or for time served on parole or in any other
18 status in which he or she is not physically incarcerated.

19 (d) Each inmate sentenced to a term of confinement in a
20 county or regional jail facility who participates in a general
21 equivalency diploma program is to be granted three days of
22 good time for the completion of each educational literacy level,
23 as demonstrated by achieving a passing score on standardized
24 tests required by the department of education, and ten days of
25 good time for completion of the requirements for a general
26 equivalency diploma or high school diploma.

27 (e) The sheriff or administrator of a regional jail facility
28 may, with the approval of the governor, allow extra good time
29 for inmates who perform exceptional work or service.

30 (f) The regional jail and correctional facility authority shall
31 promulgate disciplinary rules for the regional jail facilities. The
32 rules are to describe prohibited acts, procedures for charging
33 individual inmates for violations of the rules and for determin-
34 ing the guilt or innocence of inmates charged with the viola-
35 tions, and sanctions that may be imposed for the violations.
36 Each sheriff who is responsible for operating a county jail may
37 adopt the rules promulgated by the regional jail and correctional
38 facility authority. For each violation by an inmate, any part or
39 all of the good time that has been granted to the inmate may be
40 forfeited and revoked by the sheriff or administrator of the
41 regional jail facility. The administrator, when appropriate and
42 with approval of the executive director, or the sheriff may
43 restore any good time forfeited for a violation of the rules
44 promulgated or adopted pursuant to this subsection.

45 (g) Each inmate sentenced to a term of confinement in a
46 county or regional jail in excess of six months shall, within
47 seventy-two hours of being received into a county or regional
48 jail, be given a copy of the disciplinary rules, a statement
49 setting forth the term or length of his or her sentence or
50 sentences, and the time of his or her minimum discharge.

CHAPTER 69

**(Com. Sub. for H. B. 2405 — By Delegates Givens, Wills,
Caputo, R. Thompson, Webster and Schadler)**

[Passed April 14, 2001; in effect July 1, 2001. Approved by the Governor.]

AN ACT to amend and reenact section two, article five, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section three-a, article two, chapter fifty of said code; to amend and reenact section twenty-eight, article two, chapter sixty-one of said code; to amend article eleven of said chapter by adding a new section, designated section twenty-two; to amend and reenact section one-a, article eleven-a, chapter sixty-two of said code; to amend and reenact sections three, five, six, seven and eleven, article eleven-b of said chapter; to amend said article by adding thereto a new section, designated section thirteen; to amend said chapter by adding thereto a new article, designated article eleven-c; and to amend and reenact section nine, article twelve of said chapter, all relating to community corrections and sentencing alternatives generally; allowing imposition of community corrections program participation for convictions of driving under the influence; providing exceptions to imposition of community

corrections programs; allowing magistrate courts to impose participation in a community corrections program; requiring a preimposition hearing to determine ability to pay without undue hardship; allowing magistrates to impose home incarceration through a community corrections program; creating enhanced second offense penalty for domestic battery and assault; increasing fine for third offense domestic battery and assault; allowing diverted matters to allow enhancement; authorizing municipal judges to impose home incarceration; expanding types of allowable electronic monitoring devices; authorizing certain restitution and costs; requiring the court to consider ability to pay in assessing costs of incarceration and home incarceration fees; allocation of fees allowing circuit judges, magistrates and municipal judges to credit pre-conviction time spent on home incarceration towards a sentence; allowing county commissions to appropriate excess money from home incarceration services funds to a community corrections program; providing for the creation of community corrections programs; creating the community corrections subcommittee of the governor's committee on crime, delinquency and corrections; creating working group on domestic violence; defining duties of the community corrections subcommittee; codifying prosecutorial authority to enter into pretrial diversion agreements; providing exceptions to prosecutorial authority to enter into pretrial diversion agreements; authorizing drug courts; providing definitions, terms and eligibility requirements for drug courts; creating the West Virginia community corrections fund as a special revenue account; requiring community criminal justice boards; requiring community criminal justice accounts; allowing judges, magistrates and municipal judges to assess a fee for the participation in or supervision of a community corrections program; authorizing the ordering of fees for participation in a community corrections program; requiring courts to consider ability to pay in assessing a participation or supervision fee; requiring a fee of persons on

probation and home incarceration to fund community corrections programs; and allowing those not under court supervision to participate in or be supervised by a community corrections program under certain circumstances.

Be it enacted by the Legislature of West Virginia:

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

Chapter

17C. Traffic Regulations and Laws of the Road.

50. Magistrate Courts.

61. Crimes and Their Punishment.

62. Criminal Procedure.

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

ARTICLE 5. SERIOUS TRAFFIC OFFENSES.

§17C-5-2. Driving under influence of alcohol, controlled substances or drugs; penalties.

1 (a) Any person who:

2 (1) Drives a vehicle in this state while he or she:

3 (A) Is under the influence of alcohol; or

4 (B) Is under the influence of any controlled substance; or

5 (C) Is under the influence of any other drug; or

6 (D) Is under the combined influence of alcohol and any
7 controlled substance or any other drug; or

8 (E) Has an alcohol concentration in his or her blood of ten
9 hundredths of one percent or more, by weight; and

10 (2) When so driving does any act forbidden by law or fails
11 to perform any duty imposed by law in the driving of the
12 vehicle, which act or failure proximately causes the death of
13 any person within one year next following the act or failure;
14 and

15 (3) Commits the act or failure in reckless disregard of the
16 safety of others, and when the influence of alcohol, controlled
17 substances or drugs is shown to be a contributing cause to the
18 death, is guilty of a felony and, upon conviction thereof, shall
19 be imprisoned in a state correctional facility for not less than
20 one nor more than ten years and shall be fined not less than one
21 thousand dollars nor more than three thousand dollars.

22 (b) Any person who:

23 (1) Drives a vehicle in this state while he or she:

24 (A) Is under the influence of alcohol; or

25 (B) Is under the influence of any controlled substance; or

26 (C) Is under the influence of any other drug; or

27 (D) Is under the combined influence of alcohol and any
28 controlled substance or any other drug; or

29 (E) Has an alcohol concentration in his or her blood of ten
30 hundredths of one percent or more, by weight; and

31 (2) When so driving does any act forbidden by law or fails
32 to perform any duty imposed by law in the driving of the
33 vehicle, which act or failure proximately causes the death of
34 any person within one year next following the act or failure, is
35 guilty of a misdemeanor and, upon conviction thereof, shall be
36 confined in the county or regional jail for not less than ninety
37 days nor more than one year and shall be fined not less than
38 five hundred dollars nor more than one thousand dollars.

39 (c) Any person who:

40 (1) Drives a vehicle in this state while he or she:

41 (A) Is under the influence of alcohol; or

42 (B) Is under the influence of any controlled substance; or

43 (C) Is under the influence of any other drug; or

44 (D) Is under the combined influence of alcohol and any
45 controlled substance or any other drug; or

46 (E) Has an alcohol concentration in his or her blood of ten
47 hundredths of one percent or more, by weight; and

48 (2) When so driving does any act forbidden by law or fails
49 to perform any duty imposed by law in the driving of the
50 vehicle, which act or failure proximately causes bodily injury
51 to any person other than himself or herself, is guilty of a

52 misdemeanor and, upon conviction thereof, shall be confined in
53 the county or regional jail for not less than one day nor more
54 than one year, which jail term is to include actual confinement
55 of not less than twenty-four hours, and shall be fined not less
56 than two hundred dollars nor more than one thousand dollars.

57 (d) Any person who:

58 (1) Drives a vehicle in this state while he or she:

59 (A) Is under the influence of alcohol; or

60 (B) Is under the influence of any controlled substance; or

61 (C) Is under the influence of any other drug; or

62 (D) Is under the combined influence of alcohol and any
63 controlled substance or any other drug; or

64 (E) Has an alcohol concentration in his or her blood of ten
65 hundredths of one percent or more, by weight;

66 (2) Is guilty of a misdemeanor and, upon conviction
67 thereof, shall be confined in the county or regional jail for not
68 less than one day nor more than six months, which jail term is
69 to include actual confinement of not less than twenty-four
70 hours, and shall be fined not less than one hundred dollars nor
71 more than five hundred dollars.

72 (e) Any person who, being an habitual user of narcotic
73 drugs or amphetamine or any derivative thereof, drives a
74 vehicle in this state, is guilty of a misdemeanor and, upon
75 conviction thereof, shall be confined in the county or regional
76 jail for not less than one day nor more than six months, which
77 jail term is to include actual confinement of not less than
78 twenty-four hours, and shall be fined not less than one hundred
79 dollars nor more than five hundred dollars.

80 (f) Any person who:

81 (1) Knowingly permits his or her vehicle to be driven in this
82 state by any other person who:

83 (A) Is under the influence of alcohol; or

84 (B) Is under the influence of any controlled substance; or

85 (C) Is under the influence of any other drug; or

86 (D) Is under the combined influence of alcohol and any
87 controlled substance or any other drug; or

88 (E) Has an alcohol concentration in his or her blood of ten
89 hundredths of one percent or more, by weight;

90 (2) Is guilty of a misdemeanor and, upon conviction
91 thereof, shall be confined in the county or regional jail for not
92 more than six months and shall be fined not less than one
93 hundred dollars nor more than five hundred dollars.

94 (g) Any person who knowingly permits his or her vehicle
95 to be driven in this state by any other person who is an habitual
96 user of narcotic drugs or amphetamine or any derivative
97 thereof, is guilty of a misdemeanor and, upon conviction
98 thereof, shall be confined in the county or regional jail for not
99 more than six months and shall be fined not less than one
100 hundred dollars nor more than five hundred dollars.

101 (h) Any person under the age of twenty-one years who
102 drives a vehicle in this state while he or she has an alcohol
103 concentration in his or her blood of two hundredths of one
104 percent or more, by weight, but less than ten hundredths of one
105 percent, by weight, for a first offense under this subsection, is
106 guilty of a misdemeanor and, upon conviction thereof, shall be
107 fined not less than twenty-five dollars nor more than one

108 hundred dollars. For a second or subsequent offense under this
109 subsection, the person is guilty of a misdemeanor and, upon
110 conviction thereof, shall be confined in the county or regional
111 jail for twenty-four hours, and shall be fined not less than one
112 hundred dollars nor more than five hundred dollars. A person
113 who is charged with a first offense under the provisions of this
114 subsection may move for a continuance of the proceedings from
115 time to time to allow the person to participate in the vehicle
116 alcohol test and lock program as provided for in section three-a,
117 article five-a of this chapter. Upon successful completion of the
118 program, the court shall dismiss the charge against the person
119 and expunge the person's record as it relates to the alleged
120 offense. In the event the person fails to successfully complete
121 the program, the court shall proceed to an adjudication of the
122 alleged offense. A motion for a continuance under this subsec-
123 tion may not be construed as an admission or be used as
124 evidence.

125 A person arrested and charged with an offense under the
126 provisions of subsection (a), (b), (c), (d), (e), (f), (g) or (i) of
127 this section may not also be charged with an offense under this
128 subsection arising out of the same transaction or occurrence.

129 (i) Any person who:

130 (1) Drives a vehicle in this state while he or she:

131 (A) Is under the influence of alcohol; or

132 (B) Is under the influence of any controlled substance; or

133 (C) Is under the influence of any other drug; or

134 (D) Is under the combined influence of alcohol and any
135 controlled substance or any other drug; or

136 (E) Has an alcohol concentration in his or her blood of ten
137 hundredths of one percent or more, by weight; and

138 (2) The person when so driving has on or within the motor
139 vehicle one or more other persons who are unemancipated
140 minors who have not reached their sixteenth birthday, is guilty
141 of a misdemeanor and, upon conviction thereof, shall be
142 confined in the county or regional jail for not less than two days
143 nor more than twelve months, which jail term is to include
144 actual confinement of not less than forty-eight hours, and shall
145 be fined not less than two hundred dollars nor more than one
146 thousand dollars.

147 (j) A person violating any provision of subsection (b), (c),
148 (d), (e), (f), (g) or (i) of this section, for the second offense
149 under this section, is guilty of a misdemeanor and, upon
150 conviction thereof, shall be confined in the county or regional
151 jail for not less than six months nor more than one year, and the
152 court may, in its discretion, impose a fine of not less than one
153 thousand dollars nor more than three thousand dollars.

154 (k) A person violating any provision of subsection (b), (c),
155 (d), (e), (f), (g) or (i) of this section, for the third or any
156 subsequent offense under this section, is guilty of a felony and,
157 upon conviction thereof, shall be imprisoned in a state correc-
158 tional facility for not less than one nor more than three years,
159 and the court may, in its discretion, impose a fine of not less
160 than three thousand dollars nor more than five thousand dollars.

161 (l) For purposes of subsections (j) and (k) of this section
162 relating to second, third and subsequent offenses, the following
163 types of convictions are to be regarded as convictions under this
164 section:

165 (1) Any conviction under the provisions of subsection (a),
166 (b), (c), (d), (e) or (f) of the prior enactment of this section for

167 an offense which occurred on or after the first day of Septem-
168 ber, one thousand nine hundred eighty-one, and prior to the
169 effective date of this section;

170 (2) Any conviction under the provisions of subsection (a)
171 or (b) of the prior enactment of this section for an offense which
172 occurred within a period of five years immediately preceding
173 the first day of September, one thousand nine hundred eighty-
174 one; and

175 (3) Any conviction under a municipal ordinance of this
176 state or any other state or a statute of the United States or of any
177 other state of an offense which has the same elements as an
178 offense described in subsection (a), (b), (c), (d), (e), (f) or (g) of
179 this section, which offense occurred after the tenth day of June,
180 one thousand nine hundred eighty-three.

181 (m) A person may be charged in a warrant or indictment or
182 information for a second or subsequent offense under this
183 section if the person has been previously arrested for or charged
184 with a violation of this section which is alleged to have oc-
185 curred within the applicable time periods for prior offenses,
186 notwithstanding the fact that there has not been a final adjudica-
187 tion of the charges for the alleged previous offense. In that case,
188 the warrant or indictment or information must set forth the date,
189 location and particulars of the previous offense or offenses. No
190 person may be convicted of a second or subsequent offense
191 under this section unless the conviction for the previous offense
192 has become final.

193 (n) The fact that any person charged with a violation of
194 subsection (a), (b), (c), (d) or (e) of this section, or any person
195 permitted to drive as described under subsection (f) or (g) of
196 this section, is or has been legally entitled to use alcohol, a
197 controlled substance or a drug does not constitute a defense

198 against any charge of violating subsection (a), (b), (c), (d), (e),
199 (f) or (g) of this section.

200 (o) For purposes of this section, the term “controlled
201 substance” has the meaning ascribed to it in chapter sixty-a of
202 this code.

203 (p) The sentences provided herein upon conviction for a
204 violation of this article are mandatory and may not be subject
205 to suspension or probation: *Provided*, That the court may apply
206 the provisions of article eleven-a, chapter sixty-two of this code
207 to a person sentenced or committed to a term of one year or
208 less. An order for home detention by the court pursuant to the
209 provisions of article eleven-b, chapter sixty-two of this code
210 may be used as an alternative sentence to any period of incar-
211 ceration required by this section. An order for supervision or
212 participation in a community corrections program created
213 pursuant to article eleven-c, chapter sixty-two of this code may
214 be used as an alternative sentence to any period of incarceration
215 required by this section.

CHAPTER 50. MAGISTRATE COURTS.

ARTICLE 2. JURISDICTION AND AUTHORITY.

§50-2-3a. Sentencing; probation.

1 (a) In addition to sentencing authority granted in other
2 provisions of this code to magistrate courts, magistrate courts
3 have authority to suspend sentences and impose periods of
4 unsupervised probation for a period not to exceed two years,
5 except for offenses for which the penalty includes mandatory
6 incarceration and offenses defined in sections eight and nine,
7 article eight-b, chapter sixty-one of this code and subsection (c),
8 section five, article eight-d of said chapter.

9 (b) Notwithstanding any other provision of law to the
10 contrary, magistrate courts have the authority to impose periods
11 of supervision or participation in a community corrections
12 program created pursuant to article eleven-c, chapter sixty-two
13 of this code. Periods of supervision or participation in commu-
14 nity corrections programs imposed pursuant to this subsection
15 are not to exceed two years.

16 (c) Release on probation is subject to the following condi-
17 tions:

18 (1) That the probationer may not, during the term of his or
19 her probation, violate any criminal law of this state, any other
20 state of the United States or the United States;

21 (2) That he or she may not, during the term of his or her
22 probation, leave the state without the consent of the court which
23 placed him or her on probation;

24 (3) That he or she shall comply with the rules or terms
25 prescribed by the court;

26 (4) That he or she shall make reasonable restitution if
27 financially able to do so, in whole or in any part, immediately
28 or within the period of probation: *Provided*, That the magistrate
29 conducts a hearing prior to imposition of probation and makes
30 a determination on the record that the offender is able to pay
31 restitution without undue hardship; and

32 (5) That he or she shall pay any fine and the costs assessed
33 as the court may direct: *Provided*, That the magistrate conducts
34 a hearing prior to imposition of probation and makes a determi-
35 nation on the record that the offender is able to pay the costs
36 without undue hardship.

37 (d) On motion by the prosecuting attorney, and upon a
38 hearing and a finding that reasonable cause exists to believe that
39 a violation of any condition of probation has occurred, the
40 magistrate may revoke probation and order execution of the
41 sentence originally imposed.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

Article

2. Crimes Against the Person.

11. General Provisions Concerning Crimes.

ARTICLE 2. CRIMES AGAINST THE PERSON.

§61-2-28. Domestic violence — Criminal acts.

1 (a) Domestic battery. — Any person who unlawfully and
2 intentionally makes physical contact of an insulting or provok-
3 ing nature with his or her family or household member or
4 unlawfully and intentionally causes physical harm to his or her
5 family or household member, is guilty of a misdemeanor and,
6 upon conviction thereof, shall be confined in a county or
7 regional jail for not more than twelve months, or fined not more
8 than five hundred dollars, or both.

9 (b) Domestic assault. — Any person who unlawfully
10 attempts to commit a violent injury against his or her family or
11 household member or unlawfully commits an act which places
12 his or her family or household member in reasonable apprehen-
13 sion of immediately receiving a violent injury, is guilty of a
14 misdemeanor and, upon conviction thereof, shall be confined in
15 a county or regional jail for not more than six months, or fined
16 not more than one hundred dollars, or both.

17 (c) Second offense. — Any person who has previously been
18 convicted of a violation of subsection (a) or (b) of this section,
19 a violation of the provisions of subsection (b) or (c), section

20 nine of this article where the victim was his or her family or
21 household member or who has previously been granted a period
22 of pretrial diversion pursuant to section twenty-two, article
23 eleven of this chapter for a violation of subsection (a) or (b) of
24 this section or subsection (b) or (c), section nine of this article
25 where the victim was his or her family or household member
26 shall be guilty of a misdemeanor. A person convicted of a
27 violation of subsection (a) of this section after having been
28 previously convicted of a violation of subsection (a) or (b) of
29 this section, after having been convicted of a violation of
30 subsection (b) or (c), section nine of this article where the
31 victim was his or her family or household member or who has
32 previously been granted a period of pretrial diversion pursuant
33 to section twenty-two, article eleven of this chapter for a
34 violation of subsection (a) or (b) of this section or subsection
35 (b) or (c), section nine of this article where the victim was his
36 or her family or household member shall be confined in a
37 county or regional jail for not less than sixty days nor more than
38 one year, or fined not more than one thousand dollars, or both.
39 A person convicted of a violation of subsection (b) of this
40 section after having been previously convicted of a violation of
41 subsection (a) or (b) of this section, after having been convicted
42 of a violation of subsection (b) or (c), section nine of this article
43 where the victim was his or her family or household member or
44 having previously been granted a period of pretrial diversion
45 pursuant to section twenty-two, article eleven of this chapter for
46 a violation of subsection (a) or (b) of this section or subsection
47 (b) or (c), section nine of this article where the victim was his
48 or her family or household member shall be confined in a
49 county or regional jail for not less than thirty days nor more
50 than six months, or fined not more than five hundred dollars, or
51 both.

52 (d) Third offense. — Any person who has been convicted
53 of a third or subsequent violation of the provisions of subsec-
54 tion (a) or (b) of this section, a third or subsequent violation of
55 the provisions of section nine of this article where the victim is
56 a family or household member or who has previously been
57 granted a period of pretrial diversion pursuant to section
58 twenty-two, article eleven of this chapter for a violation of
59 subsection (a) or (b) of this section, a violation of the provisions
60 of section nine of this article where the victim is a family or
61 household member, or any combination of convictions or
62 diversions for these offenses, is guilty of a felony if the offense
63 occurs within ten years of a prior conviction of any of these
64 offenses and, upon conviction thereof, shall be confined in a
65 state correctional facility not less than one nor more than five
66 years or fined not more than two thousand five hundred dollars,
67 or both.

68 (e) As used in this section, “family or household member”
69 means “family or household member” as defined in 48-27-203
70 of this code.

71 (f) A person charged with a violation of this section may
72 not also be charged with a violation of subsection (b) or (c),
73 section nine of this article for the same act.

74 (g) No law-enforcement officer may be subject to any civil
75 or criminal action for false arrest or unlawful detention for
76 effecting an arrest pursuant to this section or pursuant to 48-27-
77 1002 of this code.

ARTICLE 11. GENERAL PROVISIONS CONCERNING CRIMES.

§61-11-22. Pretrial diversion agreements; conditions; drug court programs.

1 (a) A prosecuting attorney of any county of this state or a
2 person acting as a special prosecutor may enter into a pretrial
3 diversion agreement with a person under investigation or
4 charged with an offense against the state of West Virginia,
5 when he or she considers it to be in the interests of justice. The
6 agreement is to be in writing and is to be executed in the
7 presence of the person's attorney, unless the person has
8 executed a waiver of counsel.

9 (b) Any agreement entered into pursuant to the provisions
10 of subsection (a) of this section may not exceed twenty-four
11 months in duration. The duration of the agreement must be
12 specified in the agreement. The terms of any agreement entered
13 into pursuant to the provisions of this section may include
14 conditions similar to those set forth in section nine, article
15 twelve, chapter sixty-two of this code relating to conditions of
16 probation. The agreement may require supervision by a
17 probation officer of the circuit court, with the consent of the
18 court. An agreement entered into pursuant to this section must
19 include a provision that the applicable statute of limitations be
20 tolled for the period of the agreement.

21 (c) A person who has entered into an agreement for pretrial
22 diversion with a prosecuting attorney and who has successfully
23 complied with the terms of the agreement is not subject to
24 prosecution for the offense or offenses described in the agree-
25 ment or for the underlying conduct or transaction constituting
26 the offense or offenses described in the agreement, unless the
27 agreement includes a provision that upon compliance the person
28 agrees to plead guilty or nolo contendere to a specific related
29 offense, with or without a specific sentencing recommendation
30 by the prosecuting attorney.

31 (d) No person charged with a violation of the provisions of
32 section two, article five, chapter seventeen-c of this code may

33 participate in a pretrial diversion program. No person charged
34 with a violation of the provisions of section twenty-eight,
35 article two of this chapter may participate in a pretrial diversion
36 program unless the program is part of a community corrections
37 program approved pursuant to the provisions of article eleven-c,
38 chapter sixty-two of this code. No person indicted for a felony
39 crime of violence against the person where the alleged victim
40 is a family or household member as defined in 48-27-203 of
41 this code or indicted for a violation of the provisions of sections
42 three, four or seven, article eight-b of this chapter is eligible to
43 participate in a pretrial diversion program. No defendant
44 charged with a violation of the provisions of section twenty-
45 eight, article two of this chapter or subsections (b) or (c),
46 section nine, article two of this chapter where the alleged victim
47 is a family or household member is eligible for pretrial diver-
48 sion programs if he or she has a prior conviction for the offense
49 charged or if he or she has previously been granted a period of
50 pretrial diversion pursuant to this section for the offense
51 charged. Notwithstanding any provision of this code to the
52 contrary, defendants charged with violations of the provisions
53 of section twenty-eight, article two, chapter sixty-one of this
54 code or the provisions of subsections (b) or (c), section nine,
55 article two of said chapter where the alleged victim is a family
56 or household member as defined by the provisions of 48-27-203
57 of this code are ineligible for participation in a pretrial diver-
58 sion program before the first day of July, two thousand two, and
59 before the community corrections subcommittee of the gover-
60 nor's committee on crime, delinquency and correction estab-
61 lished pursuant to the provisions of section two, article eleven-
62 c, chapter sixty-two of this code, in consultation with the
63 working group of the subcommittee, has approved guidelines
64 for a safe and effective program for diverting defendants
65 charged with domestic violence.

66 (e) The provisions of section twenty-five of this article are
67 inapplicable to defendants participating in pretrial diversion
68 programs who are charged with a violation of the provisions of
69 section twenty-eight, article two, chapter sixty-one of this code.
70 The community corrections subcommittee of the governor's
71 committee on crime, delinquency and correction established
72 pursuant to the provisions of section two, article eleven-c,
73 chapter sixty-two of this code shall, upon approving any
74 program of pretrial diversion for persons charged with viola-
75 tions of the provisions of section twenty-eight, article two,
76 chapter sixty-one of this code, establish and maintain a central
77 registry of the participants in the programs which may be
78 accessed by judicial officers and court personnel.

79 (f) (1) The chief judge of a circuit court in cooperation with
80 the prosecuting attorneys, the public defenders, if any, in the
81 circuit, and the community criminal justice board if the
82 program is to be operated pursuant to the provisions of article
83 eleven-c, chapter sixty-two of this code may establish and
84 operate a drug court program as a diversion program or an
85 alternative sentencing program, or both, to address offenses that
86 stem from substance use or abuse.

87 (2) For the purposes of this section, "drug court program"
88 means a program designed to achieve a reduction in recidivism
89 and substance abuse among nonviolent, substance abusing
90 offenders by increasing their likelihood for successful rehabili-
91 tation through early, continuous, and intense supervised
92 treatment, mandatory periodic drug testing and the use of
93 appropriate sanctions and other rehabilitation services.

94 (3) A drug court program is to provide, at a minimum:

95 (A) For successful completion of a diversion or plea
96 agreement in lieu of incarceration;

- 97 (B) Access by all participating parties of a case to informa-
98 tion on the offender's progress;
- 99 (C) Vigilant supervision and monitoring procedures;
- 100 (D) Random substance abuse testing;
- 101 (E) Provisions for dealing with noncompliance, modifica-
102 tion of the treatment plan, and revocation proceedings;
- 103 (F) For its operation only when appropriate facilities and
104 outpatient services are available; and
- 105 (G) For payment of court costs, treatment costs, supervision
106 fees, and program user fees by the offender, unless payment of
107 the costs and fees would impose an undue hardship.
- 108 (4) An offender is eligible for a drug court program only if:
- 109 (A) The underlying offense does not involve a felony crime
110 of violence, unless there is a specific treatment program
111 available designed to address violent offenders;
- 112 (B) The offender has no prior felony conviction in this state
113 or another state for a felony crime of violence; and
- 114 (C) The offender admits to having a substance abuse
115 addiction.
- 116 (5) The court may provide additional eligibility criteria it
117 considers appropriate.

CHAPTER 62. CRIMINAL PROCEDURE.

Article

- 11A. Release for Work or Other Purposes.
- 11B. Home Incarceration Act.
- 11C. The West Virginia Community Corrections Act.
- 12. Probation and Parole.

ARTICLE 11A. RELEASE FOR WORK OR OTHER PURPOSES.**§62-11A-1a. Other sentencing alternatives.**

1 (a) Any person who has been convicted in a circuit court or
2 in a magistrate court under any criminal provision of this code
3 of a misdemeanor or felony, which is punishable by imposition
4 of a fine or confinement in the county or regional jail or a state
5 correctional facility, or both fine and confinement, may, in the
6 discretion of the sentencing judge or magistrate, as an alterna-
7 tive to the sentence imposed by statute for the crime, be
8 sentenced under one of the following programs:

9 (1) The weekend jail program under which persons would
10 be required to spend weekends or other days normally off from
11 work in jail;

12 (2) The work program under which sentenced persons
13 would be required to spend the first two or more days of their
14 sentence in jail and then, in the discretion of the court, would be
15 assigned to a county agency to perform labor within the jail, or
16 in and upon the buildings, grounds, institutions, bridges, roads,
17 including orphaned roads used by the general public and public
18 works within the county. Eight hours of labor are to be credited
19 as one day of the sentence imposed. Persons sentenced under
20 this program may be required to provide their own transporta-
21 tion to and from the work site, lunch and work clothes; or

22 (3) The community service program under which persons
23 sentenced would spend no time in jail but would be sentenced
24 to a number of hours or days of community service work with
25 government entities or charitable or nonprofit entities approved
26 by the circuit court. Regarding any portion of the sentence
27 designated as confinement, eight hours of community service
28 work is to be credited as one day of the sentence imposed.
29 Regarding any portion of the sentence designated as a fine, the

30 fine is to be credited at an hourly rate equal to the prevailing
31 federal minimum wage at the time the sentence was imposed.
32 In the discretion of the court, the sentence credits may run
33 concurrently or consecutively. Persons sentenced under this
34 program may be required to provide their own transportation to
35 and from the work site, lunch and work clothes;

36 (4) A day-reporting center program if the program has been
37 implemented in the sentencing court's jurisdiction or in the area
38 where the offender resides. For purposes of this subdivision
39 "day-reporting center" means a court-operated or court-ap-
40 proved facility where persons ordered to serve a sentence in this
41 type of facility are required to report under the terms and
42 conditions set by the court for purposes which include, but are
43 not limited to, counseling, employment training, alcohol or drug
44 testing or other medical testing.

45 (b) In no event may the duration of the alternate sentence
46 exceed the maximum period of incarceration otherwise allowed.

47 (c) In imposing a sentence under the provisions of this
48 section, the court shall first make the following findings of fact
49 and incorporate them into the court's sentencing order:

50 (1) The person sentenced was not convicted of an offense
51 for which a mandatory period of confinement is imposed by
52 statute;

53 (2) In circuit court cases, that the person sentenced is not a
54 habitual criminal within the meaning of sections eighteen and
55 nineteen, article eleven, chapter sixty-one of this code;

56 (3) In circuit court cases, that the offense underlying the
57 sentence is not a felony offense for which violence or the threat
58 of violence to the person is an element of the offense;

59 (4) In circuit court cases, that adequate facilities for the
60 administration and supervision of alternative sentencing
61 programs are available through the court's probation officers or
62 the county sheriff or, in magistrate court cases, that adequate
63 facilities for the administration and supervision of alternative
64 sentencing programs are available through the county sheriff;
65 and

66 (5) That an alternative sentence under provisions of this
67 article will best serve the interests of justice.

68 (d) Persons sentenced by the circuit court under the
69 provisions of this article remain under the administrative
70 custody and supervision of the court's probation officers or the
71 county sheriff. Persons sentenced by a magistrate remain under
72 the administrative custody and supervision of the county
73 sheriff.

74 (e) Persons sentenced under the provisions of this section
75 may be required to pay the costs of their incarceration, includ-
76 ing meal costs: *Provided*, That the judge or magistrate consid-
77 ers the person's ability to pay the costs.

78 (f) Persons sentenced under the provisions of this section
79 remain under the jurisdiction of the court. The court may
80 withdraw any alternative sentence at any time by order entered
81 with or without notice and require that the remainder of the
82 sentence be served in the county jail, regional jail or a state
83 correctional facility: *Provided*, That no alternative sentence
84 directed by the sentencing judge or magistrate or administered
85 under the supervision of the sheriff, his or her deputies, a jailer
86 or a guard, may require the convicted person to perform duties
87 which would be considered detrimental to the convicted
88 person's health as attested by a physician.

89 (g) No provision of this section may be construed to limit
90 a circuit judge or magistrate's ability to impose a period of
91 supervision or participation in a community corrections
92 program created pursuant to article eleven-c, chapter sixty-two
93 of this code.

ARTICLE 11B. HOME INCARCERATION ACT.

§62-11B-3. Definitions.

§62-11B-5. Requirements for order for home incarceration.

§62-11B-6. Circumstances under which home incarceration may not be ordered;
exceptions.

§62-11B-7. Home incarceration fees; special fund.

§62-11B-11. Discretion of the court; provisions of article not exclusive.

§62-11B-13. Home incarceration for municipal court offenders.

§62-11B-3. Definitions.

1 As used in this article:

2 (1) "Home" means the actual living area of the temporary
3 or permanent residence of an offender. The term includes, but
4 is not limited to, a hospital, health care facility, hospice, group
5 home, residential treatment facility and boarding house.

6 (2) "Monitoring device" means an electronic device that is:

7 (A) Limited in capability to the recording or transmitting of
8 information regarding an offender's presence or absence from
9 the offender's home and his or her use or lack of use of alcohol
10 or controlled substances;

11 (B) Minimally intrusive upon the privacy of other persons
12 residing in the offender's home; and

13 (C) Incapable of recording or transmitting:

14 (i) Visual images;

15 (ii) Oral or wire communications or any auditory sound; or

16 (iii) Information regarding the offender's activities while
17 inside the offender's home without the offender's knowledge or
18 consent.

19 (3) "Offender" means any adult convicted of a crime
20 punishable by imprisonment or detention in a county jail or
21 state penitentiary; or a juvenile convicted of a delinquent act
22 that would be a crime punishable by imprisonment or incarceration
23 in the state penitentiary or county jail, if committed by an
24 adult.

§62-11B-5. Requirements for order for home incarceration.

1 An order for home incarceration of an offender under
2 section four of this article is to include, but not be limited to,
3 the following:

4 (1) A requirement that the offender be confined to the
5 offender's home at all times except when the offender is:

6 (A) Working at employment approved by the circuit court
7 or magistrate, or traveling to or from approved employment;

8 (B) Unemployed and seeking employment approved for the
9 offender by the circuit court or magistrate;

10 (C) Undergoing medical, psychiatric, mental health
11 treatment, counseling or other treatment programs approved for
12 the offender by the circuit court or magistrate;

13 (D) Attending an educational institution or a program
14 approved for the offender by the circuit court or magistrate;

15 (E) Attending a regularly scheduled religious service at a
16 place of worship;

17 (F) Participating in a community work release or commu-
18 nity service program approved for the offender by the circuit
19 court, in circuit court cases; or

20 (G) Engaging in other activities specifically approved for
21 the offender by the circuit court or magistrate.

22 (2) Notice to the offender of the penalties which may be
23 imposed if the circuit court or magistrate subsequently finds the
24 offender to have violated the terms and conditions in the order
25 of home incarceration.

26 (3) A requirement that the offender abide by a schedule,
27 prepared by the probation officer in circuit court cases, or by
28 the supervisor or sheriff in magistrate court cases, specifically
29 setting forth the times when the offender may be absent from
30 the offender's home and the locations the offender is allowed
31 to be during the scheduled absences.

32 (4) A requirement that the offender is not to commit
33 another crime during the period of home incarceration ordered
34 by the circuit court or magistrate.

35 (5) A requirement that the offender obtain approval from
36 the probation officer or supervisor or sheriff before the offender
37 changes residence or the schedule described in subdivision (3)
38 of this section.

39 (6) A requirement that the offender maintain:

40 (A) A working telephone in the offender's home;

41 (B) If ordered by the circuit court or as ordered by the
42 magistrate, an electronic monitoring device in the offender's
43 home, or on the offender's person, or both; and

44 (C) Electric service in the offender's home if use of a
45 monitoring device is ordered by the circuit court or any time
46 home incarceration is ordered by the magistrate.

47 (7) A requirement that the offender pay a home incarceration
48 tion fee set by the circuit court or magistrate. If a magistrate
49 orders home incarceration for an offender, the magistrate shall
50 follow a fee schedule established by the supervising circuit
51 judge in setting the home incarceration fee. The magistrate or
52 circuit judge shall consider the person's ability to pay in
53 determining the imposition and amount of the fee;

54 (8) A requirement that the offender pay a fee authorized by
55 the provisions of section four, article eleven-c of this chapter:
56 *Provided*, That the magistrate or circuit judge considers the
57 person's ability to pay in determining the imposition and
58 amount of the fee; and

59 (9) A requirement that the offender abide by other condi-
60 tions set by the circuit court or by the magistrate.

**§62-11B-6. Circumstances under which home incarceration may
not be ordered; exceptions.**

1 (a) A circuit court or magistrate may not order home
2 incarceration for an offender unless the offender agrees to abide
3 by all of the requirements set forth in the court's order issued
4 under this article.

5 (b) A circuit court or magistrate may not order home
6 incarceration for an offender who is being held under a
7 detainer, warrant or process issued by a court of another
8 jurisdiction.

9 (c) A magistrate may not order home incarceration for an
10 offender unless electronic monitoring is available and only if

11 the county of the offender's home has an established program
12 of electronic monitoring that is equipped, operated and staffed
13 by the county supervisor or sheriff for the purpose of supervis-
14 ing participants in a home incarceration program: *Provided,*
15 That electronic monitoring may not be required in a specific
16 case if a circuit court upon petition thereto finds by order that
17 electronic monitoring is not necessary.

18 (d) A magistrate may only order home incarceration for an
19 offender convicted of a crime of violence against the person if
20 the offender does not occupy the same home as the victim of
21 the crime.

22 (e) Home incarceration is not available as a sentence if the
23 language of a criminal statute expressly prohibits its applica-
24 tion.

25 (f) Notwithstanding the provisions of subsection (c) of this
26 section, a magistrate may order home incarceration through the
27 imposition of supervision or participation in a community
28 corrections program created pursuant to article eleven-c,
29 chapter sixty-two of this code.

§62-11B-7. Home incarceration fees; special fund.

1 All home incarceration fees ordered by the circuit court
2 pursuant to subdivision seven, section five of this article are to
3 be paid to the circuit clerk, who shall monthly remit the fees to
4 the sheriff. All home incarceration fees ordered by a magistrate
5 pursuant to subdivision seven, section five of this article are to
6 be paid to the magistrate court clerk, who shall monthly remit
7 the fees to the county sheriff. The county sheriff shall establish
8 a special fund designated the home incarceration services fund,
9 in which the sheriff shall deposit all home incarceration fees
10 collected pursuant to this section and remitted by the clerks.
11 The county commission shall appropriate money from the fund

12 to administer a home incarceration program, including the
13 purchase of electronic monitoring devices and other supervision
14 expenses, and may as necessary supplement the fund with
15 additional appropriations. The county commission may also
16 appropriate any excess money from the fund to defray the costs
17 of housing county inmates or for community corrections
18 programs, if the sheriff or other person designated to administer
19 the fund certifies in writing to the county commission that a
20 surplus exists in the fund at the end of the fiscal year.

§62-11B-11. Discretion of the court; provisions of article not exclusive.

1 (a) Home incarceration pursuant to the provisions of this
2 article may be imposed at the discretion of the circuit court or
3 magistrate court as an alternative means of incarceration for any
4 offense. Except for offenses for which the penalty includes
5 mandatory incarceration, home incarceration may not be
6 considered an exclusive means of alternative sentencing.

7 (b) Upon conviction of a person, the circuit court, magis-
8 trate court or municipal court may, in its discretion, grant credit
9 for time spent on home incarceration as a condition of bail
10 toward any sentence imposed, if the person is found to have
11 complied with the terms of bail.

§62-11B-13. Home incarceration for municipal court offenders.

1 Notwithstanding any provision of this article to the con-
2 trary, when a person is convicted under a municipal ordinance
3 for which a period of incarceration may be imposed, the
4 municipal court may enter an order for home incarceration as
5 an alternative sentence to incarceration in a county or regional
6 jail. A home incarceration sentence ordered by a municipal
7 court pursuant to the provisions of this section is subject to the
8 same requirements and conditions as a home incarceration

9 sentence imposed by a circuit court or magistrate court pursuant
10 to the provisions of this article. All home incarceration fees
11 ordered by the municipal court pursuant to subdivision (7),
12 section five of this article are to be paid to the municipal clerk,
13 who shall monthly remit the fees to the sheriff.

ARTICLE 11C. THE WEST VIRGINIA COMMUNITY CORRECTIONS ACT.

§62-11C-1. Legislative intent.

§62-11C-2. Community corrections subcommittee.

§62-11C-3. Duties of the governor's committee and the community corrections
subcommittee.

§62-11C-4. Special revenue account.

§62-11C-5. Establishment of programs.

§62-11C-6. Community criminal justice boards.

§62-11C-7. Supervision or participation fee.

§62-11C-8. Local community criminal justice accounts.

§62-11C-9. Use of community corrections programs for those not under court
supervision.

§62-11C-1. Legislative intent.

1 (a) The Legislature hereby declares that the purpose of this
2 article is to enable any county or Class I or II municipality or
3 any combination of counties and Class I or II municipalities to
4 develop, establish and maintain community-based corrections
5 programs to provide the judicial system with sentencing
6 alternatives for those offenders who may require less than
7 institutional custody.

8 (b) The goals of developing community-based corrections
9 programs include:

10 (1) Allowing individual counties or combinations of a
11 county or counties and a Class I or II municipality greater
12 flexibility and involvement in responding to the problem of
13 crime in their communities;

14 (2) Providing more effective protection of society and
15 promoting efficiency and economy in the delivery of correc-
16 tional services;

17 (3) Providing increased opportunities for offenders to make
18 restitution to victims of crime through financial reimbursement;

19 (4) Permitting counties or combinations of a county or
20 counties and a Class I or II municipality to operate programs
21 specifically designed to meet the rehabilitative needs of
22 offenders;

23 (5) Providing appropriate sentencing alternatives with the
24 goal of reducing the incidence of repeat offenders;

25 (6) Permitting counties or combinations of a county or
26 counties and a Class I or II municipality to designate
27 community-based programs to address local criminal justice
28 needs;

29 (7) Diverting offenders from the state regional jail or
30 correctional facilities by punishing them with community-based
31 sanctions, thereby reserving state regional jail or correctional
32 facilities for those offenders who are deemed to be most
33 dangerous to the community; and

34 (8) Promoting accountability of offenders to their commu-
35 nity.

§62-11C-2. Community corrections subcommittee.

1 (a) A community corrections subcommittee of the gover-
2 nor's committee on crime, delinquency and correction is hereby
3 created and assigned responsibility for screening community
4 corrections programs submitted by community criminal justice
5 boards for approval for funding by the governor's committee
6 and for making recommendations as to the disbursement of

7 funds for approved community corrections programs. The
8 subcommittee is to be comprised of fifteen members of the
9 governor's committee including: a representative of the division
10 of corrections, a representative of the regional jail and correc-
11 tional facility authority, a person representing the interests of
12 victims of crime, an attorney employed by a public defender
13 corporation, an attorney who practices criminal law, a prosecu-
14 tor and a representative of the West Virginia coalition against
15 domestic violence. At the discretion of the West Virginia
16 supreme court of appeals, the administrator of the supreme
17 court of appeals, a probation officer and a circuit judge may
18 serve on the subcommittee as ex officio, nonvoting members.

19 (b) The subcommittee shall elect a chairperson and a vice
20 chairperson. Special meetings may be held upon the call of the
21 chairperson, vice chairperson or a majority of the members of
22 the subcommittee. A majority of the members of the subcom-
23 mittee constitute a quorum.

24 (c) A working group of the community corrections subcom-
25 mittee is hereby created to study safe and effective pretrial
26 diversion programs for persons charged with domestic violence
27 offenses and to recommend, based upon its findings, programs
28 considered to be safe and effective in reducing incidences of
29 domestic violence and educating persons charged with a
30 domestic violence offense. The working group is to be com-
31 prised of the following members of the subcommittee: (1) If
32 approved by the West Virginia supreme court of appeals, the
33 circuit judge; (2) the prosecuting attorney; (3) the public
34 defender or the criminal defense attorney; (4) the probation
35 officer; and (5) the representative of the West Virginia coalition
36 against domestic violence. The working group is to report its
37 findings and recommendations to the subcommittee on or
38 before the first day of July, two thousand two.

§62-11C-3. Duties of the governor's committee and the community corrections subcommittee.

1 (a) Upon recommendation of the community corrections
2 subcommittee, the governor's committee shall propose for
3 legislative promulgation in accordance with the provisions of
4 article three, chapter twenty-nine-a of this code, emergency and
5 legislative rules to:

6 (1) Establish standards for approval of community correc-
7 tions programs submitted by community criminal justice
8 boards;

9 (2) Establish minimum standards for community correc-
10 tions programs to be funded, including requiring annual
11 program evaluations;

12 (3) Make any necessary adjustments to the fees established
13 in section four of this article;

14 (4) Establish reporting requirements for community
15 corrections programs; and

16 (5) Carry out the purpose and intent of this article.

17 (b) Upon recommendation of the community corrections
18 subcommittee, the governor's committee shall:

19 (1) Maintain records of community corrections programs
20 including the corresponding community criminal justice board
21 contact information and annual program evaluations, when
22 available;

23 (2) Seek funding for approved community corrections
24 programs from sources other than the fees collected pursuant to
25 section four of this article; and

26 (3) Provide funding for approved community corrections
27 programs, as available.

28 (c) The governor's committee shall submit, on or before the
29 thirtieth day of September of each year, to the governor, the
30 Speaker of the House of Delegates, the President of the Senate,
31 and upon request to any individual member of the Legislature,
32 a report on its activities during the previous year and an
33 accounting of funds paid into and disbursed from the special
34 revenue account established pursuant to section four of this
35 article.

§62-11C-4. Special revenue account.

1 (a) There is hereby created in the state treasury a special
2 revenue account to be known as the "West Virginia community
3 corrections fund." Expenditures from the fund are for the
4 purposes set forth in subsection (d) of this section and are not
5 authorized from collections but are to be made only in accor-
6 dance with appropriation by the Legislature and in accordance
7 with the provisions of article three, chapter twelve of this code
8 and upon the fulfillment of the provisions set forth in article
9 two, chapter five-a of this code: *Provided*, That for the fiscal
10 year ending the thirtieth day of June, two thousand two,
11 expenditures are authorized from collections rather than
12 pursuant to an appropriation by the Legislature. The West
13 Virginia community corrections fund may receive any gifts,
14 grants, contributions or other money from any source which is
15 specifically designated for deposit in the fund.

16 (b) Beginning on the effective date of this article, in
17 addition to the fee required in section nine, article twelve of this
18 chapter, a fee not to exceed thirty dollars per month, unless
19 modified by legislative rule as provided in section three of this
20 article, is also to be collected from those persons on probation.

21 This fee is to be based upon the person's ability to pay. The
22 magistrate or circuit judge shall conduct a hearing prior to
23 imposition of probation and make a determination on the record
24 that the offender is able to pay the fee without undue hardship.
25 The magistrate clerk or circuit clerk shall collect all fees
26 imposed pursuant to this subsection and deposit them in a
27 separate account. Within ten calendar days following the
28 beginning of the calendar month, the magistrate clerk or circuit
29 clerk shall forward the amount deposited to the state treasurer
30 to be credited to the West Virginia community corrections fund.

31 (c) Beginning on the effective date of this article, in
32 addition to the fee required in section five, article eleven-b of
33 this chapter, a fee not to exceed five dollars per day, unless
34 modified by legislative rule as provided in section three of this
35 article, is also to be collected from those persons on home
36 incarceration. The circuit judge, magistrate or municipal court
37 judge shall consider the person's ability to pay in determining
38 the imposition and amount of the fee. The circuit clerk, magis-
39 trate clerk or municipal court clerk shall collect all fees
40 imposed pursuant to this subsection and deposit them in a
41 separate account. Within ten calendar days following the
42 beginning of the calendar month, the circuit clerk or municipal
43 court clerk shall forward the amount deposited to the state
44 treasurer to be credited to the West Virginia community
45 corrections fund.

46 (d) The moneys of the West Virginia community correc-
47 tions fund are to be disbursed by the governor's committee on
48 crime, delinquency and correction, upon recommendation by
49 the community corrections subcommittee, for the funding of
50 community corrections programs and to pay expenses of the
51 governor's committee in administering the provisions of this
52 article, which expenses may not in any fiscal year exceed ten

53 percent of the funds deposited to the special revenue account
54 during that fiscal year.

55 (e) Any disbursements from the West Virginia community
56 corrections fund allocated for community corrections programs
57 by the governor's committee may be made contingent upon
58 local appropriations or gifts in money or in kind for the support
59 of the programs. Any county commission of any county or the
60 governing body of a municipality may appropriate and expend
61 money for establishing and maintaining community corrections
62 programs.

63 (f) Nothing in this article may be construed to mandate
64 funding for the West Virginia community corrections fund or
65 to require any appropriation by the Legislature.

§62-11C-5. Establishment of programs.

1 (a) Any county or combination of counties or a county or
2 counties and a Class I or II municipality may establish and
3 operate community corrections programs, as provided for in
4 this section, to be used as alternative sentencing options for
5 those offenders sentenced within the jurisdiction of the county
6 or counties which establish and operate the program.

7 (b) Any county or combination of counties or a county or
8 counties and a Class I or II municipality that seek to establish
9 programs as authorized in this section shall submit plans and
10 specifications for the programs to be established, including
11 proposed budgets, for review and approval by the community
12 corrections subcommittee established in section three of this
13 article.

14 (c) Any county or combination of counties or a county or
15 counties and a Class I or II municipality may establish and
16 operate an approved community corrections program to provide

17 alternative sanctioning options for an offender who is convicted
18 of an offense for which he or she may be sentenced to a period
19 of incarceration in a county or regional jail or a state correc-
20 tional facility and for which probation or home incarceration
21 may be imposed as an alternative to incarceration.

22 (d) Community corrections programs authorized by
23 subsection (a) of this section may provide, but are not limited
24 to providing, any of the following services:

25 (1) Probation supervision programs;

26 (2) Day fine programs;

27 (3) Community service restitution programs;

28 (4) Home incarceration programs;

29 (5) Substance abuse treatment programs;

30 (6) Sex offender containment programs;

31 (7) Licensed domestic violence offender treatment pro-
32 grams;

33 (8) Day reporting centers;

34 (9) Educational or counseling programs; or

35 (10) Drug courts.

36 (e) A county or combination of counties or a county or
37 counties and a Class I or II municipality which establish and
38 operate community corrections programs as provided for in this
39 section may contract with other counties to provide community
40 corrections services.

41 (f) For purposes of this section, the phrase “may be
42 sentenced to a period of incarceration” means that the statute
43 defining the offense provides for a period of incarceration as a
44 possible penalty.

45 (g) No provision of this article may be construed to allow
46 a person participating in or under the supervision of a commu-
47 nity corrections program to earn “good time” or any other
48 reduction in sentence.

§62-11C-6. Community criminal justice boards.

1 (a) Each county or combination of counties or a county or
2 counties and a Class I or II municipality that seek to establish
3 community-based corrections services shall establish a commu-
4 nity criminal justice board.

5 (b) The community criminal justice board is to consist of no
6 more than fifteen voting members.

7 (c) All members of the community criminal justice board
8 are to be residents of the county or counties represented.

9 (d) The community criminal justice board is to consist of
10 the following members:

11 (1) The sheriff or chief of police, or if the board represents
12 more than one county or municipality, at least one sheriff or
13 chief of police from the counties represented;

14 (2) The prosecutor, or if the board represents more than one
15 county, at least one prosecutor from the counties represented;

16 (3) If a public defender corporation exists in the county or
17 counties represented, at least one attorney employed by any
18 public defender corporation existing in the counties represented

19 or, if no public defender office exists, one criminal defense
20 attorney from the counties represented;

21 (4) One member to be appointed by the local board of
22 education, or if the board represents more than one county, at
23 least one member appointed by a board of education of the
24 counties represented;

25 (5) One member with a background in mental health care
26 and services to be appointed by the commission or commissions
27 of the county or counties represented by the board;

28 (6) Two members who can represent organizations or
29 programs advocating for the rights of victims of crimes with
30 preference given to organizations or programs advocating for
31 the rights of victims of the crimes of domestic violence or
32 driving under the influence; and

33 (7) Three at-large members to be appointed by the commis-
34 sion or commissions of the county or counties represented by
35 the board.

36 (e) At the discretion of the West Virginia supreme court of
37 appeals, any or all of the following people may serve on a
38 community criminal justice board as ex officio, nonvoting
39 members:

40 (1) A circuit judge from the county or counties represented;

41 (2) A magistrate from the county or counties represented;

42 or

43 (3) A probation officer from the county or counties repre-
44 sented.

45 (f) Community criminal justice boards may:

46 (1) Provide for the purchase, development and operation of
47 community corrections services;

48 (2) Coordinate with local probation departments in estab-
49 lishing and modifying programs and services for offenders;

50 (3) Evaluate and monitor community corrections programs,
51 services and facilities to determine their impact on offenders;
52 and

53 (4) Develop and apply for approval of community correc-
54 tions programs by the governor's committee on crime, delin-
55 quency and correction.

56 (g) If a community criminal justice board represents more
57 than one county, the appointed membership of the board,
58 excluding any ex officio members, shall include an equal
59 number of members from each county, unless the county
60 commissions of each county agree in writing otherwise.

61 (h) If a community criminal justice board represents more
62 than one county, the board shall, in consultation with the county
63 commissions of each county represented, designate one county
64 commission as the fiscal agent of the board.

65 (i) Any political subdivision of this state operating a
66 community corrections program shall, regardless of whether or
67 not the program has been approved by the governor's commit-
68 tee on crime, delinquency and correction, provide to the
69 governor's committee required information regarding the
70 program's operations as required by legislative rule.

§62-11C-7. Supervision or participation fee.

1 (a) A circuit judge, magistrate or municipal court judge
2 may require the payment of a supervision or participation fee
3 from any person required to be supervised by or participate in

4 a community corrections program. The circuit judge, magistrate
5 or municipal court judge shall consider the person's ability to
6 pay in determining the imposition and amount of the fee.

7 (b) All fees ordered by the circuit court pursuant to this
8 section are to be paid to the circuit clerk, who shall monthly
9 remit the fees to the treasurer of the county designated as the
10 fiscal agent for the board pursuant to section six of this article.
11 All fees ordered by the magistrate court pursuant to this section
12 are to be paid to the magistrate clerk, who shall monthly remit
13 the fees to the treasurer of the county designated as the fiscal
14 agent for the board pursuant to section six of this article. All
15 fees ordered by the municipal court judge pursuant to this
16 section are to be paid to the municipal court clerk who shall
17 monthly remit the fees to the treasurer of the county designated
18 as the fiscal agent for the board pursuant to section six of this
19 article.

§62-11C-8. Local community criminal justice accounts.

1 (a) The treasurer of the county designated as the fiscal
2 agent for the board pursuant to section six of this article shall
3 establish a separate fund designated the community criminal
4 justice fund. He or she shall deposit all fees remitted by the
5 municipal, magistrate and circuit clerks pursuant to section
6 seven of this article and all funds appropriated by a county
7 commission pursuant to section seven, article eleven-b of this
8 chapter, or any other provision of this code and all funds
9 provided by the governor's committee for approved community
10 corrections programs in the community criminal justice fund.
11 Funds in the community criminal justice account are to be
12 expended by order of the designated county's commission upon
13 recommendation of the community criminal justice board in
14 furtherance of the operation of an approved community
15 corrections program.

16 (b) A county commission representing the same county as
17 a community criminal justice board may require the community
18 criminal justice board to render an accounting, at intervals the
19 county commission may designate, of the use of money,
20 property, goods and services made available to the board by the
21 county commission and to make available at quarterly intervals
22 an itemized statement of receipts and disbursements, and its
23 books, records and accounts during the preceding quarter, for
24 audit and examination pursuant to article nine, chapter six of
25 this code.

**§62-11C-9. Use of community corrections programs for those not
under court supervision.**

1 (a) Subject to the availability of community corrections
2 programs in the county, a written pretrial diversion agreement,
3 entered into pursuant to the provisions of section twenty-two,
4 article eleven, chapter sixty-one of this code, may require
5 participation or supervision in a community corrections
6 program as part of the prosecution and resolution of charges.

7 (b) Any pretrial diversion program for a defendant charged
8 with a violation of the provisions of section twenty-eight,
9 article two, chapter sixty-one of this code, subsections (b) or
10 (c), section nine, article two of said chapter where the alleged
11 victim is a family or household member or the provisions of
12 section two, article five, chapter seventeen-c of this code is to
13 require the person charged to appear before the presiding judge
14 or magistrate and either acknowledge his or her understanding
15 of the terms of the agreement or tender a plea of guilty or nolo
16 contendere to the charge or charges. Upon the defendant's
17 motion, the court shall continue the matter for the period of
18 time necessary for the person charged to complete the pretrial
19 diversion program. If the person charged successfully com-
20 pletes the pretrial diversion program, the matter is to be

21 resolved pursuant to the terms of the pretrial diversion agree-
22 ment. If the person charged fails to successfully complete the
23 pretrial diversion program, the matter, if no plea of guilty or
24 nolo contendere has been tendered, is to be returned to the
25 court's docket for resolution. If the person charged has tendered
26 a plea of guilty or nolo contendere and fails to successfully
27 complete the pretrial diversion program, the court shall accept
28 the tendered plea of guilty or nolo contendere and proceed to
29 sentencing.

30 (c) No provision of this article may be construed to limit the
31 prosecutor's discretion to prosecute an individual who has not
32 fulfilled the terms of a written pretrial diversion agreement by
33 not completing the required supervision or participation in a
34 community corrections program.

ARTICLE 12. PROBATION AND PAROLE.

§62-12-9. Conditions of release on probation.

1 (a) Release on probation is conditioned upon the following:

2 (1) That the probationer may not, during the term of his or
3 her probation, violate any criminal law of this or any other state
4 or of the United States;

5 (2) That he or she may not, during the term of his or her
6 probation, leave the state without the consent of the court which
7 placed him or her on probation;

8 (3) That he or she complies with the conditions prescribed
9 by the court for his or her supervision by the probation officer;

10 (4) That in every case wherein the probationer has been
11 convicted of an offense defined in section twelve, article eight,
12 chapter sixty-one of this code or article eight-b or eight-d of

13 said chapter, against a child, the probationer may not live in the
14 same residence as any minor child, nor exercise visitation with
15 any minor child and has no contact with the victim of the
16 offense: *Provided*, That the probationer may petition the court
17 of the circuit wherein he or she was convicted for a modifica-
18 tion of this term and condition of his or her probation and the
19 burden rests upon the probationer to demonstrate that a modifi-
20 cation is in the best interest of the child;

21 (5) That the probationer be required to pay a fee, not to
22 exceed twenty dollars per month to defray costs of supervision:
23 *Provided*, That the court conducts a hearing prior to imposition
24 of probation and makes a determination on the record that the
25 offender is able to pay the fee without undue hardship. All
26 moneys collected as fees from probationers pursuant to this
27 subdivision are to be deposited with the circuit clerk who shall,
28 on a monthly basis, remit the moneys collected to the state
29 treasurer for deposit in the state general revenue fund; and

30 (6) That the probationer is required to pay the fee described
31 in section four, article eleven-c of this chapter: *Provided*, That
32 the court conducts a hearing prior to imposition of probation
33 and makes a determination on the record that the offender is
34 able to pay the fee without undue hardship.

35 (b) In addition the court may impose, subject to modifica-
36 tion at any time, any other conditions which it may deem
37 advisable, including, but not limited to, any of the following:

38 (1) That he or she make restitution or reparation, in whole
39 or in part, immediately or within the period of probation, to any
40 party injured by the crime for which he or she has been con-
41 victed: *Provided*, That the court conducts a hearing prior to
42 imposition of probation and makes a determination on the

43 record that the offender is able to pay restitution without undue
44 hardship;

45 (2) That he or she pay any fine assessed and the costs of the
46 proceeding in installments as the court may direct: *Provided,*
47 That the court conducts a hearing prior to imposition of
48 probation and makes a determination on the record that the
49 offender is able to pay the costs without undue hardship;

50 (3) That he or she make contribution from his or her
51 earnings, in sums as the court may direct, for the support of his
52 or her dependents; and

53 (4) That he or she, in the discretion of the court, be required
54 to serve a period of confinement in the county jail of the county
55 in which he or she was convicted for a period not to exceed one
56 third of the minimum sentence established by law or one third
57 of the least possible period of confinement in an indeterminate
58 sentence, but in no case may the period of confinement exceed
59 six consecutive months. The court has the authority to sentence
60 the defendant within the six-month period to intermittent
61 periods of confinement including, but not limited to, weekends
62 or holidays and may grant to the defendant intermittent periods
63 of release in order that he or she may work at his or her
64 employment or for other reasons or purposes as the court may
65 deem appropriate: *Provided,* That the provisions of article
66 eleven-a of this chapter do not apply to intermittent periods of
67 confinement and release except to the extent that the court may
68 direct. If a period of confinement is required as a condition of
69 probation, the court shall make special findings that other
70 conditions of probation are inadequate and that a period of
71 confinement is necessary.

CHAPTER 70

(Com. Sub. for S. B. 579 — By Senators Love and Hunter)

[Passed April 12, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article four, chapter twenty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to assignment of offenders to center; period of center confinement; return to court; sentence or probation; revocation of probation; and transfer of youths by commissioner of corrections.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. CENTERS FOR HOUSING YOUNG ADULT OFFENDERS.

§25-4-6. Assignment of offenders to center; period of center confinement; return to court; sentence or probation; revocation of probation.

1 The judge of any court with original criminal jurisdiction
2 may suspend the imposition of sentence of any young adult, as
3 defined in this section, convicted of or pleading guilty to a
4 felony offense, other than an offense punishable by life impris-
5 onment, including, but not limited to, felony violations of the
6 provisions of chapter seventeen-c of this code, who has attained
7 his or her eighteenth birthday but has not reached his or her

8 twenty-third birthday at the time of the sentencing by the court
9 and commit the young adult to the custody of the West Virginia
10 commissioner of corrections to be assigned to a center. Young
11 adult offenders who have previously been committed to a young
12 adult offender center are not eligible for commitment to this
13 program. The period of confinement in the center shall be for
14 a period of not less than six months, or longer to successfully
15 complete the program requirements set by the warden, but in
16 any event the period of confinement may not exceed two years.
17 The court shall order a presentence investigation to be con-
18 ducted and provide the warden with a copy of the presentence
19 investigation report, along with the commitment order.

20 If, in the opinion of the warden, the young adult offender
21 proves to be an unfit person to remain in the center, the
22 offender shall be returned to the committing court to be dealt
23 with further according to law. In that event, the court may
24 sentence the offender for the crime for which the offender was
25 convicted. In his or her discretion, the judge may allow the
26 defendant credit on the sentence for time the offender spent in
27 the center.

28 A young adult offender shall be returned to the jurisdiction
29 of the court which originally committed the offender when, in
30 the opinion of the warden, the young adult offender has
31 satisfactorily completed the center training program. The
32 offender is then eligible for probation for the offense with
33 which the offender is charged and the judge of the court shall
34 immediately place the offender on probation. In the event the
35 offender's probation is subsequently revoked, the judge shall
36 impose the sentence the young adult offender would have
37 originally received had the offender not been committed to the
38 center and subsequently placed on probation. The court shall,
39 however, give the offender credit on his or her sentence for the
40 time spent in the center.

CHAPTER 71

(Com. Sub. for H. B. 2329 — By Delegates Trump,
Michael, Faircloth and Pethel)

[Passed April 14, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three-cc, article one, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to enhanced emergency telephone systems established by county commissions; permitting the fee imposed upon consumers of local exchange service within the county for an enhanced emergency telephone system to be used for any administration and operation costs associated with the system, and subjecting the county answering points' books and records to an annual examination by the state auditors office.

Be it enacted by the Legislature of West Virginia:

That section three-cc, article one, 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 1. COUNTY COMMISSIONS GENERALLY.

§7-1-3cc. Authority of county commissions to establish enhanced emergency telephone systems, technical and operational standards for emergency communications centers, and standards for education and training of emergency communications systems personnel; standards for alarm systems; fee upon consumers of telephone service for the systems

and for roadway conversion systems; authority to contract with the telephone companies for billing of fee.

1 (a) In addition to possessing the authority to establish an
2 emergency telephone system pursuant to section four, article
3 six, chapter twenty-four of this code, a county commission or
4 the county commissions of two or more counties may, instead,
5 establish an enhanced emergency telephone system or convert
6 an existing system to an enhanced emergency system. The
7 establishment of such a system shall be subject to the provi-
8 sions of article six of said chapter. The county commission may
9 adopt rules after receiving recommendations from the West
10 Virginia enhanced 911 council concerning the operation of all
11 county emergency communications centers or emergency
12 telephone systems centers in the state, including, but not limited
13 to, recommendations for:

14 (1) Minimum standards for emergency telephone systems
15 and emergency communications centers;

16 (2) Minimum standards for equipment used in any center
17 receiving telephone calls of an emergency nature and dispatch-
18 ing emergency service providers in response to that call and
19 which receives 911 moneys or has basic 911 service funded
20 through its county commission; and

21 (3) Minimum standards for education and training of all
22 personnel in emergency communications centers.

23 (b) A county commission may impose a fee upon consum-
24 ers of local exchange service within that county for an enhanced
25 emergency telephone system and associated electronic equip-
26 ment and for the conversion of all rural routes to city-type
27 addressing, as provided in section three of this article. The fee

28 is to be used solely and directly for the capital, installation,
29 administration, operation and maintenance costs of the en-
30 hanced emergency telephone system and of the conversion to
31 city-type addressing and including the reasonable costs associ-
32 ated with establishing, equipping, furnishing, operating or
33 maintaining a county answering point.

34 (c) A county commission may contract with the telephone
35 company or companies providing local exchange service within
36 the county for the telephone company or companies to act as
37 the billing agent or agents of the county commission for the
38 billing of the fee imposed pursuant to subsection (b) of this
39 section. The cost for the billing agent services may be included
40 as a recurring maintenance cost of the enhanced emergency
41 telephone system.

42 Where a county commission has contracted with a tele-
43 phone company to act as its billing agent for enhanced emer-
44 gency telephone system fees, all competing local exchange
45 telephone companies with customers in that county shall bill the
46 enhanced emergency telephone system fees to its respective
47 customers located in that county, and shall remit the fee. It may
48 deduct its respective costs for billing in the same manner as the
49 acting billing agent for the enhanced emergency telephone
50 system fee.

51 (d) A county commission of any county with an emergency
52 communications center or emergency telephone system may
53 establish standards for alarm systems, including security, fire
54 and medical alarms.

55 (e) The books and records of all county answering points
56 that benefit from the imposition of the local exchange service
57 fees shall be subject to annual examination by the state audi-
58 tor's office.

CHAPTER 72

(Com. Sub. for S. B. 391 — By Senators Wooton, Bowman, Snyder, Unger, Kessler, Sprouse, Hunter, Minear, Caldwell, Ross, McCabe, Minard, Anderson, Prezioso and Sharpe)

[Passed April 12, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article one, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section three-hh; and to amend and reenact section eighteen, article twelve, chapter eight of said code, all relating to authorizing county commissions, municipalities, building commissions and development authorities to sell and lease property to both the state and federal governments.

Be it enacted by the Legislature of West Virginia:

That article one, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section three-hh; and that section eighteen, 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.

§7-1-3hh. Authority to lease, sell or dispose of county property to the state, federal government or an instrumentality thereof.

1 Every county commission, building commission created
 2 pursuant to article thirty-three, chapter eight of this code and
 3 development authority created pursuant to article twelve of this
 4 chapter is authorized to sell, lease as lessor or dispose of any of
 5 its real or personal property or any interest therein or any part
 6 thereof, as authorized in article five, chapter one of this code,
 7 or to the United States of America or any agency or instrumen-
 8 tality thereof, or to the state or any agency or instrumentality
 9 thereof, for a public purpose for an adequate consideration,
 10 without considering alone the commercial or market value of
 11 such property.

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.**

**PART VI. SALE, LEASE OR DISPOSITION OF
 OTHER MUNICIPAL PROPERTY.**

§8-12-18. Sale, lease or disposition of other municipal property.

1 (a) Every municipality, municipal building commission
 2 created pursuant to article thirty-three of this chapter and
 3 municipal development authority created pursuant to article
 4 twelve, chapter seven of this code is authorized to sell, lease as
 5 lessor or dispose of any of its real or personal property or any
 6 interest therein or any part thereof (other than a public utility
 7 which shall be sold or leased in accordance with the provisions
 8 of section seventeen of this article), as authorized in article five,

9 chapter one of this code, or to the United States of America or
10 any agency or instrumentality thereof, or to the state or any
11 agency or instrumentality thereof, for a public purpose for an
12 adequate consideration, without considering alone the present
13 commercial or market value of such property.

14 (b) In all other cases involving a sale, any municipality is
15 hereby empowered and authorized to sell any of its real or
16 personal property or any interest therein or any part thereof for
17 a fair and adequate consideration, the property to be sold at
18 public auction at a place designated by the governing body, but
19 before making any sale, notice of the time, terms and place of
20 sale, together with a brief description of the property to be sold,
21 shall be published as a Class II legal advertisement in compli-
22 ance with the provisions of article three, chapter fifty-nine of
23 this code and the publication area for the publication shall be
24 the municipality. The requirements of notice and public auction
25 shall not apply to the sale of any one item or piece of property
26 of less value than one thousand dollars and under no circum-
27 stances shall the provisions of this section be construed as being
28 applicable to any transaction involving the trading in of
29 municipally owned property on the purchase of new or other
30 property for the municipality and every municipality shall have
31 plenary power and authority to enter into and consummate any
32 trade-in transaction.

33 (c) In all other cases involving a lease, any municipality is
34 hereby empowered and authorized to lease as lessor any of its
35 real or personal property or any interest therein or any part
36 thereof for a fair and adequate consideration and for a term not
37 exceeding fifty years. Every lease shall be authorized by
38 resolution of the governing body of the municipality, which
39 resolution may specify terms and conditions which must be
40 contained in such lease: *Provided*, That before any proposed
41 lease is authorized by resolution of the governing body, a public

42 hearing on the proposed lease shall be held by the governing
43 body after notice of the date, time, place and purpose of the
44 public hearing has been published as a Class I legal advertise-
45 ment in compliance with the provisions of article three, chapter
46 fifty-nine of this code and the publication area for the publica-
47 tion shall be the municipality. The power and authority granted
48 in this subsection shall be in addition to, and not in derogation
49 of, any power and authority vested in any municipality under
50 any constitutional or other statutory provision now or hereafter
51 in effect.

CHAPTER 73

(S. B. 265 — By Senators Rowe, McCabe, Mitchell,
Burnette, Hunter, Love and Caldwell)

[Passed April 12, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article five, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-four, relating to permitting the sheriff to commence civil actions in his or her official capacity or on behalf of the county government without the payment of filing fees, costs, security or bond otherwise required of other civil litigants; and upon successful recovery of the costs by the sheriff, he or she shall remit them to the appropriate official.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. FISCAL AFFAIRS.

§7-5-24. Sheriff may commence civil action without paying fees and costs; fees and costs recoverable from defendants after completion of litigation.

1 The sheriff will not be required to pay any filing fee, cost,
2 bond or security, as may otherwise be required of other civil
3 litigants by provisions of this code, in any action in which the
4 sheriff commences the action in his or her official capacity or
5 on behalf of the county government: *Provided*, That where the
6 sheriff or county government prevails in the action and any
7 filing fees, costs, bond or security are recovered from the
8 opposing party, the sheriff shall pay therefrom the fees, costs,
9 bond or security to the officer who otherwise would have been
10 entitled thereto but for the provisions of this section.

CHAPTER 74

**(S. B. 214 — By Senators Wooton, Caldwell, Hunter, Kessler,
Minard, Mitchell, Oliverio, Redd, Ross, Snyder and Deem)**

[Passed April 14, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article seven, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by

adding thereto a new section, designated section four-a, relating to authorizing county commissions to require part-time prosecuting attorneys to serve full time.

Be it enacted by the Legislature of West Virginia:

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

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

§7-7-4a. Authorizing the option of full-time status for part-time prosecuting attorneys.

1 Notwithstanding any provision of this code to the contrary,
2 in any county which has a part-time prosecuting attorney the
3 county commission may, on the request of the prosecuting
4 attorney, find that such facts and circumstances exist that
5 require the prosecuting attorney to devote full time to his or her
6 public duties. If the county commission makes such a finding,
7 by proper order adopted and entered, it shall require the
8 prosecuting attorney to devote full time to his or her public
9 duties and the county commission shall then compensate the
10 prosecuting attorney at the same rate of compensation estab-
11 lished for a prosecuting attorney in a Class V county: *Provided,*
12 That nothing contained herein may be interpreted to affect the
13 status of a prosecuting attorney who has heretofore, by proper
14 order so entered, become full time.

CHAPTER 75

(S. B. 530 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]

[Passed April 14, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article twelve, chapter seven 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 joint undertakings by county development authorities.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 12. COUNTY AND MUNICIPAL DEVELOPMENT AUTHORITIES.

§7-12-9a. Joint undertakings by county development authorities.

1 (a) The Legislature hereby finds and declares that the
2 citizens of the state would benefit from coordinated economic
3 development efforts and that to encourage cooperation and
4 coordination, county economic development authorities should
5 share in the tax revenues derived from joint programs regard-
6 less of the county in which they are located.

7 (b) Any three or more county development authorities may
8 contract to share expenses for and revenues derived from joint

9 economic development projects within their respective geo-
10 graphic territories. Notwithstanding any other section of the
11 code to the contrary, county development authorities may
12 contract to distribute on a pro rata basis proceeds derived from
13 joint economic development projects.

14 (c) Each county development authority participating in a
15 joint economic development project contract must contribute at
16 least fifteen thousand dollars in cash to the project.

17 (d) In the event that a county development authority desires
18 to withdraw from participation, then the remaining participants
19 may jointly choose a successor. No withdrawing county
20 development authority shall be entitled to the return of any
21 money or property advanced to the project, unless specifically
22 provided for in the contract.

23 (e) In the event that a joint economic development project
24 is terminated, all funds, property and other assets shall be
25 returned to the county development authorities in the same
26 proportion as contributions of funds, property and other assets
27 were made by the county development authorities.

28 (f) A grant, which may not exceed one hundred thousand
29 dollars, may be made by the West Virginia development office
30 to any county economic development authority which enters
31 into such contracts.

CHAPTER 76

(Com. Sub. for S. B. 428 — By Senators Snyder and Unger)

[Passed April 14, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article twenty, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section five-b, article three, chapter twenty-nine of said code, all relating to inspection and standards of inspecting structures; removing the requirement that counties, as a prior condition to assessing levy impact fees, are required to include within their building permit plan that they will maintain a systematic and ongoing inspection of existing structures; and permitting counties and municipalities to adopt the state building code only to the extent that the code is prospective only and not retroactive in its application.

Be it enacted by the Legislature of West Virginia:

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

Chapter

7. County Commissions and Officers.

29. Miscellaneous Boards and Officers.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 20. FEES AND EXPENDITURES FOR COUNTY DEVELOPMENT.

§7-20-6. Criteria and requirements necessary to implement collection of fees.

- 1 (a) As a prerequisite to authorizing counties to levy impact
- 2 fees related to population growth and public service needs,
- 3 counties shall meet the following requirements:

- 4 (1) A demonstration that population growth rate history as
5 determined from the most recent base decennial census counts
6 of a county, utilizing generally approved standard statistical
7 estimate procedures, in excess of one percent annually averaged
8 over a five-year period since the last decennial census count; or
9 a demonstration that a total population growth rate projection
10 of one percent per annum for an ensuing five-year period, based
11 on standard statistical estimate procedures, from the current
12 official population estimate of the county;
- 13 (2) Adopting a countywide comprehensive plan;
- 14 (3) Reviewing and updating any comprehensive plan at no
15 less than five-year intervals;
- 16 (4) Drafting and adopting a comprehensive zoning ordi-
17 nance;
- 18 (5) Drafting and adopting a subdivision control ordinance;
- 19 (6) Keeping in place a formal building permit and review
20 system which provides a process to regulate the authorization
21 of applications relating to construction or structural modifica-
22 tion. The county shall adopt, pursuant to section three-n, article
23 one of this chapter, the state building code into any such
24 building permit and review system; and
- 25 (7) Providing an improvement program which shall include:
- 26 (A) Developing and maintaining a list within the county of
27 particular sites with development potential;
- 28 (B) Developing and maintaining standards of service for
29 capital improvements which are fully or partially funded with
30 revenues collected from impact fees; and

31 (C) Lists of proposed capital improvements from all areas,
32 containing descriptions of any such proposed capital improve-
33 ments, cost estimates, projected time frames for constructing
34 such improvements and proposed or anticipated funding
35 sources.

36 (b) Capital improvement programs may include provisions
37 to provide for the expenditure of impact fees for any legitimate
38 county purpose. This may include the expenditure of fees for
39 partial funding of any particular capital improvement where
40 other funding exists from any source other than the county or
41 exists in combination with other funds available to the county:
42 *Provided*, That for such expenditures to be considered legiti-
43 mate, no county or other local authority may deny or withhold
44 any reasonable benefit that may be derived therefrom from any
45 development project for which such impact fee or fees have
46 been paid.

47 (c) Capital improvement programs for public elementary
48 and secondary school facilities may include provisions to spend
49 impact fees based on a computation related to the following: (1)
50 The existing local tax base; and (2) the adjusted value of
51 accumulated infrastructure investment, based on net deprecia-
52 tion, and any remaining debt owed thereon. Any such computa-
53 tion must establish the value of any equity shares in the net
54 worth of an impacted school system facility, regardless of the
55 existence of any need to expand such facility. Impact fee
56 revenues may only be used for capital replacement or expan-
57 sion.

58 (d) Additional development areas may be added to any plan
59 or capital improvements program provided for hereunder if a
60 county government so desires. The standards governing the
61 construction or structural modification for any such additional

62 area shall not deviate from those adopted and maintained at the
63 time such addition is made.

64 (e) The county may modify annually any capital improve-
65 ments plan in addition to any impact fee rates based thereon,
66 pursuant to the following:

67 (1) The number and extent of development projects begun
68 in the past year;

69 (2) The number and extent of public facilities existing or
70 under construction;

71 (3) The changing needs of the general population;

72 (4) The availability of any other funding sources; and

73 (5) Any other relevant and significant factor applicable to
74 a legitimate goal or goals of any such capital improvement plan.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

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

***Clerk's Note:** This section was also amended by S. B. 630 (Chapter 130), which passed subsequent to this act.

10 counties and municipalities adopting the state building code:
11 *Provided*, That each county or municipality shall have the
12 election to adopt the code to the extent that it is only prospec-
13 tive and not retroactive in its application.

14 (b) The state fire commission has authority to propose rules
15 for legislative approval in accordance with the provisions of
16 article three, chapter twenty-nine-a of this code regarding
17 building construction, renovation and all other aspects as
18 related to the construction and mechanical operations of a
19 structure. The rules shall be known as the "State Building
20 Code".

21 (c) For the purpose of this section, the term "building code"
22 is intended to include all aspects of safe building construction
23 and mechanical operations and all safety aspects related thereto.
24 Whenever any other state law, county or municipal ordinance
25 or regulation of any agency thereof is more stringent or imposes
26 a higher standard than is required by the state building code, the
27 provisions of the state law, county or municipal ordinance or
28 regulation of any agency thereof governs if they are not
29 inconsistent with the laws of West Virginia and are not contrary
30 to recognized standards and good engineering practices. In any
31 question, the decision of the state fire commission determines
32 the relative priority of any such state law, county or municipal
33 ordinance or regulation of any agency thereof and determines
34 compliance with state building code by officials of the state,
35 counties, municipalities and political subdivisions of the state.

36 (d) Enforcement of the provisions of the state building code
37 is the responsibility of the respective local jurisdiction. Also,
38 any county or municipality may enter into an agreement with
39 any other county or municipality to provide inspection and
40 enforcement services: *Provided*, That any county or municipal-
41 ity may adopt the state building code with or without adopting
42 the BOCA national property maintenance code.

43 (e) After the state fire commission has promulgated rules as
44 provided in this section, each county or municipality intending
45 to adopt the state building code shall notify the state fire
46 commission of its intent.

47 (f) The state fire commission may conduct public meetings
48 in each county or municipality adopting the state building code
49 to explain the provisions of the rules.

50 (g) The provisions of the state building code relating to the
51 construction, repair, alteration, restoration and movement of
52 structures are not mandatory for existing buildings and struc-
53 tures identified and classified by the state register of historic
54 places under the provisions of section eight, article one, chapter
55 twenty-nine of this code or the national register of historic
56 places, pursuant to Title XVI, section 470a of the United States
57 Code. Prior to renovations regarding the application of the state
58 building code, in relation to historical preservation of structures
59 identified as such, the authority having jurisdiction shall consult
60 with the division of culture and history, state historic preserva-
61 tion office. The final decision is vested in the state fire commis-
62 sion. Additions constructed on a historic building are not
63 excluded from complying with the state building code.

CHAPTER 77

(H. B. 2844 — By Delegates Staton, Pino, Kominar,
Frederick, Stemple and Webb)

[Passed April 14, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter twenty-nine of the code of West Virginia,
one thousand nine hundred thirty-one, as amended, by adding

thereto a new article, designated article twenty-six, relating to the West Virginia courthouse facilities improvement authority; creating the West Virginia courthouse facilities improvement authority; requiring the authority to create guidelines and an application; providing requirements for the granting of assistance by the authority; providing for the review of applications for assistance by the authority; providing certain powers in the authority; and creating the West Virginia courthouse facilities improvement fund.

Be it enacted by the Legislature of West Virginia:

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

**ARTICLE 26. WEST VIRGINIA COURTHOUSE FACILITIES
IMPROVEMENT AUTHORITY.**

§29-26-1. West Virginia courthouse facilities improvement authority created; membership.

§29-26-2. Definitions.

§29-26-3. Development of guidelines and application for funding assistance.

§29-26-4. Requirements for assistance; review of application.

§29-26-5. Powers of the authority.

§29-26-6. The courthouse facilities improvement fund.

**§29-26-1. West Virginia courthouse facilities improvement
authority created; membership.**

1 (a) The West Virginia courthouse facilities improvement
2 authority is hereby created.

3 (b) The authority is to consist of twelve voting members
4 including:

5 (1) The president of the West Virginia sheriffs' association,
6 or another member of the association designated to attend in
7 lieu of the president;

8 (2) One sheriff to be appointed by the president of the West
9 Virginia sheriffs' association: *Provided*, That the sheriff who is
10 appointed may not be from the same congressional district as
11 the president;

12 (3) The president of the West Virginia prosecuting attor-
13 neys' association, or another member of the association
14 designated to attend in lieu of the president;

15 (4) One prosecuting attorney to be appointed by the
16 president of the West Virginia prosecuting attorneys' associa-
17 tion: *Provided*, That the prosecuting attorney who is appointed
18 may not be from the same congressional district as the presi-
19 dent;

20 (5) The president of the West Virginia county and circuit
21 clerks' association, or another member of the association
22 designated to attend in lieu of the president;

23 (6) The vice president of the West Virginia county and
24 circuit clerks' association, or another member of the association
25 designated to attend in lieu of the vice president;

26 (7) One county clerk to be appointed by the president of the
27 West Virginia county and circuit clerks' association: *Provided*,
28 That the county clerk who is appointed may not be from the
29 same congressional district as the president or vice president;

30 (8) One circuit clerk to be appointed by the president of the
31 West Virginia county and circuit clerks' association: *Provided*,
32 That the circuit clerk who is appointed may not be from the
33 same congressional district as the president or vice president;

34 (9) The president of the West Virginia county commission-
35 ers' association, or another member of the association desig-
36 nated to attend in lieu of the president;

37 (10) One county commissioner to be appointed by the
38 president of the West Virginia county commissioners' associa-
39 tion: *Provided*, That the county commissioner who is appointed
40 may not be from the same congressional district as the presi-
41 dent;

42 (11) The president of the West Virginia assessors' associa-
43 tion, or another member of the association designated to attend
44 in lieu of the president; and

45 (12) One assessor to be appointed by the president of the
46 West Virginia assessors' association: *Provided*, That the
47 assessor who is appointed may not be from the same congress-
48 sional district as the president.

49 (c) The authority is to consist of eight advisory members,
50 including:

51 (1) The president of the West Virginia judicial association,
52 or another member of the association designated to attend in
53 lieu of the president;

54 (2) One circuit judge to be appointed by the West Virginia
55 judicial association: *Provided*, That the circuit judge who is
56 appointed may not be from the same congressional district as
57 the president;

58 (3) The president of the West Virginia magistrates'
59 association, or another member of the association designated to
60 attend in lieu of the president;

61 (4) One magistrate to be appointed by the West Virginia
62 magistrates' association: *Provided*, That the magistrate who is
63 appointed may not be from the same congressional district as
64 the president;

65 (5) The president of the West Virginia family law masters'
66 association, or another member of the association designated to
67 attend in lieu of the president;

68 (6) One family law master to be appointed by the West
69 Virginia family law masters' association: *Provided*, That the
70 family law master who is appointed may not be from the same
71 congressional district as the president;

72 (7) One member of the West Virginia Senate, to be ap-
73 pointed by the president of the Senate; and

74 (8) One member of the West Virginia House of Delegates,
75 to be appointed by the speaker of the House of Delegates.

76 (d) The advisory members of the authority are nonvoting,
77 ex officio members.

78 (e) The appointments are to be made as soon as possible
79 after the effective date of this article. The terms of appoint-
80 ments are for four-year terms.

81 (f) The authority shall annually elect one of its members as
82 chair, and shall appoint a secretary, who need not be a member
83 of the authority and who shall keep records of its proceedings.

84 (g) The authority shall meet at least once every ninety days
85 to review applications requesting funding assistance and
86 otherwise to conduct its business, and may meet more fre-
87 quently if necessary.

88 (h) Seven members of the authority constitute a quorum and
89 the affirmative vote of at least a majority of those members
90 present is necessary for any action taken by vote of the author-
91 ity. No vacancy in the membership of the authority impairs the
92 rights of a quorum by such vote to exercise all the rights and
93 perform all the duties of the authority.

94 (i) Members of the authority shall be reimbursed for
95 reasonable and necessary expenses actually incurred in the
96 performance of their official duties from funds appropriated or
97 otherwise made available to the authority for the purpose of
98 reimbursement upon submission of an itemized statement.

§29-26-2. Definitions.

1 The following terms, wherever used or referred to in this
2 article, have the following meaning:

3 (a) “Approved modifications or construction of courthouse
4 facilities” means any modification or construction of a court-
5 house facility which has been recommended for assistance by
6 the authority according to the requirements of section four of
7 this article;

8 (b) “Authority” means the West Virginia courthouse
9 facilities improvement authority;

10 (c) “Cost” means the cost of construction, renovation,
11 repair and safety upgrading of courthouse facilities; the cost of
12 land, equipment, machinery, furnishings, installation of utilities
13 and other similar items convenient in connection with placing
14 a courthouse facility in operation; and the cost of financing,
15 interest during construction, professional service fees and all
16 other charges or expenses necessary, appurtenant or incidental
17 to the modification or construction of a courthouse facility; and

18 (d) “Courthouse facility” means buildings or structures
19 which are occupied exclusively by offices of county and
20 judicial officials or by courtrooms, county jails or detention
21 centers.

**§29-26-3. Development of guidelines and application for funding
assistance.**

1 (a) The authority shall propose legislative rules for promul-
2 gation in accordance with article three, chapter twenty-nine-a
3 of this code to develop comprehensive, uniform guidelines for
4 use by the authority in evaluating any request by a county for
5 funding assistance for the modification of an existing court-
6 house facility or the construction of a new county courthouse
7 facility.

8 (b) The guidelines shall include the following factors:

9 (1) The degree of increased security of records kept by the
10 offices of the county, circuit and magistrate court clerks in the
11 county;

12 (2) The degree of increased safety for personnel whose
13 offices are contained in the existing court facility or will be
14 contained in the proposed court facility;

15 (3) The degree to which the proposal of modification or
16 construction can correct deficiencies in compliance with
17 building codes and with the requirements of the Americans with
18 Disabilities Act, 42 U.S.C. §12101 et seq.;

19 (4) The degree of increased efficiency and modernization
20 in the preservation of records kept by the offices of the county
21 officers, circuit clerks and magistrate court clerks in the county;

22 (5) The increased efficiency and modernization of the
23 storage of records kept by the offices of the county officers,
24 circuit clerks and magistrate court clerks in the county;

25 (6) The availability of alternative sources of funding which
26 could finance all or a part of the modification or construction of
27 a courthouse facility;

28 (7) The need for the assistance of the authority to finance
29 the modification or construction of a courthouse facility or
30 attract other sources of funding;

31 (8) The applicant county's ability to operate and maintain
32 the courthouse facility if the modification or construction is
33 granted assistance by the authority;

34 (9) The degree to which the modification or construction of
35 a courthouse facility achieves other state or regional planning
36 goals;

37 (10) The estimated date upon which the modification or
38 construction of a courthouse facility could commence if funding
39 were available and the estimated completion date of the
40 modification or construction; and

41 (11) Other considerations the authority considers necessary
42 or appropriate to accomplish its duties as defined in this article.

43 (c) The authority shall create an application form which
44 shall be used by all counties requesting funding assistance from
45 the authority.

46 (d) The application shall require the county applicant to set
47 forth the following information:

48 (1) The type and proposed location of the proposed
49 modification or construction of a courthouse facility;

50 (2) The estimated total cost of the proposed modification or
51 construction of a courthouse facility;

52 (3) The amount of funding assistance required and the
53 specific uses of the funding;

54 (4) Other sources of funding available or potentially
55 available for the modification or construction;

56 (5) Information demonstrating the need for the modification
57 or construction and that the proposed funding of the modifica-
58 tion or construction is the most economically feasible to the
59 completion of the modification or construction; and

60 (6) Any other information the authority considers necessary
61 to enable it to recommend the type of financing, in terms of the
62 kind, amount and source of funding, which the applicant county
63 should pursue and which the authority should consider an
64 appropriate investment of public funds.

§29-26-4. Requirements for assistance; review of application.

1 (a) No county applicant may receive any loan, loan guaran-
2 tee, grant or other funding assistance for the modification or
3 construction of a courthouse facility from the authority unless:

4 (1) The county applicant submits a completed application
5 to the authority on the form prepared by the authority pursuant
6 to section three of this article; and

7 (2) The authority, after having considered the application,
8 recommends the county applicant receive a loan, loan guaran-
9 tee, grant or other funding assistance for the proposed modifica-
10 tion or construction.

11 (b) The authority shall, within ninety days of receipt of each
12 completed application submitted to it, review the application
13 and either:

14 (1) Make a written recommendation as to the modification
15 or construction financing, in terms of the kind, amount and
16 source of funding, for which the applicant county submitting
17 the application is eligible; or

18 (2) If the authority determines that (A) the proposed
19 modification or construction of a courthouse facility is not
20 eligible for funding assistance from the authority, or (B) the

21 proposed modification or construction of a courthouse facility
22 is not otherwise an appropriate or prudent investment of state
23 funds, the authority shall state the reasoning for its findings in
24 a written rejection of the county applicant's application.

§29-26-5. Powers of the authority.

1 In addition to the powers set forth elsewhere in this article,
2 the authority may exercise the following powers it considers the
3 exercise of these powers necessary and appropriate to carry out
4 and effectuate its responsibilities as defined by this article. The
5 authority may:

6 (a) Employ an executive director and an executive assistant
7 as may be necessary in the judgment of the authority and fix
8 their compensation;

9 (b) Acquire, hold and dispose of real and personal property
10 for its corporate purposes;

11 (c) Make bylaws for the management and rule of its affairs;

12 (d) Contract with and employ attorneys, accountants,
13 construction and financial experts, architects, engineers,
14 managers and such other employees and agents that are
15 necessary in the judgment of the authority and fix their compen-
16 sation;

17 (e) Make contracts and execute all instruments necessary or
18 convenient to exercise the powers granted to it by this article;

19 (f) Renegotiate all contracts entered into by it whenever,
20 due to a change in situation, it appears to the authority that its
21 interests will be best served;

22 (g) Accept and expend any gift, grant, contribution, bequest
23 or endowment of money to, or for the benefit of, the authority,
24 from the state of West Virginia or any other source;

25 (h) Identify any alternative sources of funding, whether
26 privately or publicly administered, and assist county applicants
27 in the securing of alternative sources of funding; and

28 (i) Do all things necessary or convenient to carry out the
29 powers given in this article.

§29-26-6. The courthouse facilities improvement fund.

1 (a) There is hereby created in the state treasury a special
2 revenue account to be known as the "West Virginia courthouse
3 facilities improvement fund". The West Virginia courthouse
4 facilities improvement fund may receive any gifts, grants,
5 contributions or other money from any source which is specifi-
6 cally designated for deposit in the fund.

7 (b) The authority shall undertake a study on the condition
8 and state of need of every courthouse facility throughout the
9 state of West Virginia, and shall determine the estimated cost
10 of the improvements which are necessary to bring each facility
11 into conformity with requirements outlined in this article. The
12 authority shall submit to the Legislature, on or before the first
13 day of January, two thousand two, a report which shall contain
14 the estimate of the cost, a plan for the financing of the cost, and
15 an estimated prioritized schedule for the implementation and
16 financing of the improvements to be made pursuant to the
17 provisions of this article.

18 (c) The moneys of the West Virginia courthouse facilities
19 improvement fund shall be disbursed by the authority for the
20 funding of approved modifications or construction of court
21 facilities and to pay expenses of the authority in administering
22 the provisions of this article.

23 (d) Any disbursements from the West Virginia courthouse
24 facilities improvement fund allocated for approved modifica-
25 tions or construction of courthouse facilities may be made

26 contingent upon local appropriations or gifts in money or in
27 kind for the support of the modifications or construction.

28 (e) Nothing in this article may be construed to mandate
29 funding for the West Virginia court facilities improvement fund
30 or to require any appropriation by the Legislature.

CHAPTER 78

(Com. Sub. for S. B. 102 — By Senators Fanning, Minard, Deem, Redd,
McCabe, Wooton, McKenzie, Hunter and Kessler)

[Passed April 14, 2001; in effect July 1, 2001. Approved by the Governor.]

AN ACT to amend and reenact section ten, article one, chapter fifty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to modifying the fees charged by the clerk of the county commission; combining fees charged for various types of documents and services; and increasing certain fees.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. FEES AND ALLOWANCES.

§59-1-10. Fees to be charged by clerk of county commission.

1 For the purpose of this section, the word “page” is defined
2 as being a paper writing of not more than legal size, 8 ½” x 14”.

3 The clerk of the county commission shall charge and collect
4 the following fees:

5 (a) When a writing is admitted to record, for receiving
6 proof of acknowledgment thereof, entering an order in connec-
7 tion therewith, endorsing clerk’s certificate of recordation
8 thereon and indexing in a proper index, where the writing is a:

9 (1) Deed of conveyance (with or without a plat), trust
10 deed, fixture filing or security agreement concerning real
11 estate lease \$10.00

12 (2) Financing, continuation, termination or other statement
13 or writing permitted to be filed under chapter forty-six of this
14 code 10.00

15 (3) Plat or map (with no deed of conveyance) 10.00

16 (4) Service discharge record No Charge

17 (5) Any document or writing other than those referenced in
18 subdivisions (1), (2), (3) and (4) of this subsection 5.00

19 (6) If any document or writing contains more than five
20 pages, for each additional page 1.00

21 (b) For administering any oath other than oaths by
22 officers and employees of the state, political subdivisions of
23 the state, or a public or quasi public entity of the state or a
24 political subdivision of the state, taken in his or her official
25 capacity 5.00

26 (c)(1) For issuance of marriage license and other duties
27 pertaining to the marriage license (including preparation of the
28 application, administrating the oath, registering and recording
29 the license, mailing acknowledgment of minister’s return to one

30 of the licensees and notification to a licensee after sixty days of
31 the nonreceipt of the minister’s return) 25.00

32 (2) One dollar of the marriage license fee received pursuant
33 to this subsection shall be paid by the county clerk into the state
34 treasury as a state registration fee in the same manner that
35 license taxes are paid into the treasury under article twelve,
36 chapter eleven of this code;

37 (3) Fifteen dollars of the marriage license fee received
38 pursuant to this subsection shall be paid by the county clerk into
39 the state treasury for the family protection shelter support act in
40 the same manner that license taxes are paid into the treasury
41 under article twelve, chapter eleven of this code.

42 (d) (1) For a copy of any writing or document, if it is not
43 otherwise provided for 1.50

44 (2) If the copy of the writing or document contains more
45 than two pages, for each additional page 1.00

46 (3) For annexing the seal of the commission or clerk to any
47 paper 1.00

48 (4) For a certified copy of a birth certificate, death certifi-
49 cate or marriage license 5.00

CHAPTER 79

(S. B. 516 — By Senators Burnette, Love, Mitchell and Ross)

[Passed April 11, 2001; to take effect July 1, 2001. Approved by the Governor.]

AN ACT to amend and reenact section two, article one, chapter fifty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to adding magistrates to those serving Berkeley and Nicholas Counties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. COURTS AND OFFICERS.

§50-1-2. Number of magistrates.

1 (a) The number of magistrates to be elected in each county
2 of this state shall be determined in accordance with the provi-
3 sions of this section.

4 (b) The number of magistrates serving in each county of the
5 state shall comport with the numbers certified by the supreme
6 court of appeals to the ballot commissioners of each county on
7 or before the thirty-first day of January, two thousand, for
8 purposes of the primary and general elections to be held in the
9 year two thousand.

10 (c) (1) The Legislature finds that there exists among the
11 various counties large and unwarranted disparities of caseload
12 between the magistrate courts. The Legislature further finds that
13 the disparity causes an inequity with regard to magistrate court
14 resources and the ability of the courts to effectively meet the
15 needs of the citizens of this state who need to avail themselves
16 of this judicial resource. The Legislature further finds that the
17 system currently in place for allocating magistrate court
18 resources which has been in effect since the year one thousand
19 nine hundred ninety-one produces certain anomalies which
20 cause quadrennial reallocation of magistrate resources based

21 upon said anomalies which in turn cause a waste of funds,
22 inequitable workloads, unnecessary shifting of resources and
23 confusion among the various counties.

24 (2) The office of legislative services is hereby directed to
25 undertake a comprehensive study of the magistrate courts of the
26 various counties to determine, among other things, the work
27 performed by various personnel in the magistrate court system,
28 how work time is spent by said employees and to report its
29 findings no later than the tenth day of December, two thousand
30 one, to the joint standing committee on the judiciary.

31 (3) The division of criminal justice and highway safety
32 shall, in conjunction with the administrative office of the West
33 Virginia supreme court of appeals, compile for consideration by
34 the Legislature statistical information and documentation
35 regarding caseloads, cases handled per year per magistrate,
36 cases per county, cases per circuit and provide to the president
37 of the Senate and the speaker of the House of Delegates no later
38 than the first day of the regular session of the Legislature, two
39 thousand two, their recommendations for improving the
40 magistrate process, better utilization of court resources,
41 including, but not limited to, categorizing the various types of
42 cases heard in magistrate court and developing a new weighted
43 formula to evaluate types of cases by the amount of time
44 necessary to bring said cases to a resolution.

45 (d) Notwithstanding the other provisions of this section, the
46 allowable number of magistrates serving the counties of
47 Berkeley and Nicholas on the first day of March, two thousand
48 one, shall be increased by one in each county, effective the first
49 day of July, two thousand one. The initial appointment to the
50 position shall be made in accordance with the provisions of
51 section six of this article.

CHAPTER 80

(Com. Sub. for S. B. 217 — By Senators Wooton, Unger, Love, Kessler, Bowman, Minear, Facemyer, Jackson, Oliverio, Mitchell, Hunter, Ross, Prezioso, Fanning, Snyder, Bailey, Edgell, Sharpe, Caldwell, Sprouse, Rowe, Redd, Burnette, Anderson, Minard, Tomblin, Mr. President, and Plymale)

[Passed April 13, 2001; in effect July 1, 2001. Approved by the Governor.]

AN ACT to amend and reenact sections eight and nine, article one, chapter fifty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to increasing salaries for magistrate clerks, magistrate assistants and magistrate deputy clerks.

Be it enacted by the Legislature of West Virginia:

That sections eight and nine, article one, chapter fifty 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. COURTS AND OFFICERS.

§50-1-8. Magistrate court clerks; salaries; duties; duties of circuit clerk.

§50-1-9. Magistrate assistants; salary; duties.

§50-1-8. Magistrate court clerks; salaries; duties; duties of circuit clerk.

- 1 (a) In each county having three or more magistrates the
- 2 judge of the circuit court or the chief judge of the circuit court,
- 3 if there is more than one judge of the circuit court, shall appoint
- 4 a magistrate court clerk. In all other counties the judge may
- 5 appoint a magistrate court clerk or may by rule require the

6 duties of the magistrate court clerk to be performed by the clerk
7 of the circuit court, in which event the circuit court clerk is
8 entitled to additional compensation in the amount of two
9 thousand five hundred dollars per year. The magistrate court
10 clerk serves at the will and pleasure of the circuit judge.

11 (b) Magistrate court clerks shall be paid a monthly salary
12 by the state. Magistrate court clerks serving magistrates who
13 serve less than eight thousand five hundred in population shall
14 be paid up to one thousand seven hundred forty-eight dollars
15 per month and magistrate court clerks serving magistrates who
16 serve eight thousand five hundred or more in population shall
17 be paid up to two thousand one hundred fifty-seven dollars per
18 month: *Provided*, That on and after the first day of January, two
19 thousand two, magistrate court clerks serving magistrates who
20 serve less than eight thousand five hundred in population shall
21 be paid up to one thousand nine hundred ninety-eight dollars
22 per month and magistrate court clerks serving magistrates who
23 serve eight thousand five hundred or more in population shall
24 be paid up to two thousand four hundred seven dollars per
25 month: *Provided, however*, That after the effective date of this
26 section, any general salary increase granted to all state employ-
27 ees, whose salaries are not set by statute, expressed as a
28 percentage increase or an “across-the-board” increase, may also
29 be granted to magistrate court clerks. For the purpose of
30 determining the population served by each magistrate, the
31 number of magistrates authorized for each county shall be
32 divided into the population of each county. The salary of the
33 magistrate court clerk shall be established by the judge of the
34 circuit court, or the chief judge of the circuit court if there is
35 more than one judge of the circuit court, within the limits set
36 forth in this section.

37 (c) In addition to other duties that may be imposed by the
38 provisions of this chapter or by the rules of the supreme court
39 of appeals or the judge of the circuit court or the chief judge of

40 the circuit court if there is more than one judge of the circuit
41 court, it is the duty of the magistrate court clerk to establish and
42 maintain appropriate dockets and records in a centralized
43 system for the magistrate court, to assist in the preparation of
44 the reports required of the court and to carry out on behalf of
45 the magistrates or chief magistrate if a chief magistrate is
46 appointed, the administrative duties of the court.

47 (d) The magistrate court clerk, or if there is no magistrate
48 court clerk in the county, the clerk of the circuit court, may
49 issue all manner of civil process and require the enforcement of
50 subpoenas and subpoenas duces tecum in magistrate court.

§50-1-9. Magistrate assistants; salary; duties.

1 (a) In each county there shall be one magistrate assistant for
2 each magistrate. Each magistrate assistant shall be appointed by
3 the magistrate under whose authority and supervision and at
4 whose will and pleasure he or she shall serve. The assistant
5 shall not be a member of the immediate family of any magis-
6 trate and shall not have been convicted of a felony or any
7 misdemeanor involving moral turpitude and shall reside in the
8 state of West Virginia. For the purpose of this section, “imme-
9 diate family” means the relationships of mother, father, sister,
10 brother, child or spouse.

11 (b) A magistrate assistant shall have the duties, clerical or
12 otherwise, assigned by the magistrate and prescribed by the
13 rules of the supreme court of appeals or the judge of the circuit
14 court or the chief judge of the circuit court if there is more than
15 one judge of the circuit court. In addition to these duties,
16 magistrate assistants shall perform and are accountable to the
17 magistrate court clerks with respect to the following duties:

18 (1) The preparation of summons in civil actions;

19 (2) The assignment of civil actions to the various magis-
20 trates;

21 (3) The collection of all costs, fees, fines, forfeitures and
22 penalties which are payable to the court;

23 (4) The submission of moneys, along with an accounting of
24 the moneys, to appropriate authorities as provided by law;

25 (5) The daily disposition of closed files which are to be
26 located in the magistrate clerk's office;

27 (6) All duties related to the gathering of information and
28 documents necessary for the preparation of administrative
29 reports and documents required by the rules of the supreme
30 court of appeals or the judge of the circuit court or the chief
31 judge of the circuit court if there is more than one judge of the
32 circuit court;

33 (7) All duties relating to the notification, certification and
34 payment of jurors serving pursuant to the terms of this chapter;

35 (8) All other duties or responsibilities whereby the magis-
36 trate assistant is accountable to the magistrate court clerk as
37 determined by the magistrate.

38 (c) Magistrate assistants shall be paid a monthly salary by
39 the state. Magistrate assistants serving magistrates who serve
40 less than eight thousand five hundred in population shall be
41 paid up to one thousand four hundred seventy-four dollars per
42 month and magistrate assistants serving magistrates who serve
43 eight thousand five hundred or more in population shall be paid
44 up to one thousand seven hundred thirty-two dollars per month:
45 *Provided*, That on and after the first day of January, two
46 thousand two, magistrate assistants serving magistrates who
47 serve less than eight thousand five hundred in population shall
48 be paid up to one thousand seven hundred twenty-four dollars

49 per month and magistrate assistants serving magistrates who
50 serve eight thousand five hundred or more in population shall
51 be paid up to one thousand nine hundred eighty-two dollars per
52 month: *Provided, however,* That after the effective date of this
53 section, any general salary increase granted to all state employ-
54 ees, whose salaries are not set by statute, expressed as a
55 percentage increase or an “across-the-board” increase, may also
56 be granted to magistrate assistants. For the purpose of determin-
57 ing the population served by each magistrate, the number of
58 magistrates authorized for each county shall be divided into the
59 population of each county. The salary of the magistrate assistant
60 shall be established by the magistrate within the limits set forth
61 in this section.

CHAPTER 81

(S. B. 688 — By Senators Chafin and Kessler)

[Passed April 14, 2001; 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 increasing the amount of costs to be collected in criminal proceedings in magistrate court; mandating the use of the increase; and extending the time in which incarcerated persons may pay costs and fines.

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 is
3 imposed, in addition to other costs, fines, forfeitures or penal-
4 ties as may be allowed by law: (1) Costs in the amount of
5 fifty-five dollars; and (2) an amount equal to the one-day per
6 diem provided for in subsection (h), section ten, article twenty,
7 chapter thirty-one of this code. A magistrate may not collect
8 costs in advance. Notwithstanding any other provision of this
9 code, a person liable for fines and court costs in a criminal
10 proceeding in which the defendant is confined in a jail or prison
11 and not participating in a work release program shall not be
12 held liable for the fines and court costs until ninety days after
13 completion of the term in jail or prison. A magistrate court shall
14 deposit five dollars from each of the criminal proceedings fees
15 collected pursuant to this section in the court security fund
16 created in section fourteen, article three, chapter fifty-one of
17 this code. A magistrate court shall, on or before the tenth day of
18 the month following the month in which the fees imposed in
19 this section were collected, remit an amount equal to the one-
20 day per diem provided for in subsection (h), section ten, article
21 twenty, chapter thirty-one of this code from each of the criminal
22 proceedings in which the fees specified in this section were
23 collected to the magistrate court clerk or if there is no magis-
24 trate court clerk to the clerk of the circuit, together with
25 information as may be required by the rules of the supreme
26 court of appeals and the rules of the office of chief inspector.
27 These moneys are paid to the sheriff who shall distribute the
28 moneys solely in accordance with the provisions of section
29 fifteen, article five, chapter seven of this code. Amendments
30 made to this section during the regular session of the Legisla-
31 ture, two thousand one, are effective after the thirtieth day of
32 June, two thousand one.

33 (b) A magistrate shall assess costs in the amount of two
34 dollars and fifty cents for issuing a sheep warrant and the
35 appointment and swearing appraisers and docketing the
36 proceedings.

37 (c) In each criminal case which must be tried by the circuit
38 court but in which a magistrate renders some service, costs in
39 the amount of ten dollars shall be imposed by the magistrate
40 court and is certified to the clerk of the circuit court in accor-
41 dance with the provisions of section six, article five, chapter
42 sixty-two of this code.

CHAPTER 82

(S. B. 556 — By Senators Wooton, Burnette, Caldwell, Deem,
Facemyer, Fanning, Hunter, Minard, Ross and Snyder)

[Passed March 27, 2001; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article three-d, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to certification of crane operators; and clarifying the exceptions to the certification requirement.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3D. CRANE OPERATOR CERTIFICATION ACT.

§21-3D-2. Certification required; exemptions.

1 (a) Commencing with the first day of September, two
2 thousand one, a person may not operate a crane with a lifting
3 capacity of five tons or more without certification issued under
4 this article except for those persons exempted under subsection
5 (b) of this section.

6 (b) A person is not required to obtain certification under
7 this article if the person:

8 (1) Is a member of the armed forces of the United States or
9 an employee of the United States, when such member or
10 employee is engaged in the work of a crane operator exclu-
11 sively for such governmental unit; or

12 (2) Is primarily an operator of farm machinery who is
13 performing the work of a crane operator as part of an agricul-
14 tural operation; or

15 (3) Is operating a crane on an emergency basis; or

16 (4) Is operating a crane for personal use and not for profit
17 on the site of real property which the person owns or leases; or

18 (5) Is under the direct supervision of a certified crane
19 operator and:

20 (A) Who is enrolled in an industry recognized in-house
21 training course based on the American national standards
22 institute standards for crane operators and who is employed by
23 the entity that either taught the training course or contracted to
24 have the training course taught, all of which is approved by the
25 commissioner; or

26 (B) Who is enrolled in an apprenticeship program or
27 training program for crane operators approved by the United

28 States department of labor, bureau of apprenticeship and
29 training;

30 (6) Is an employee of and operating a crane at the direction
31 of any manufacturing plant or other industrial establishment,
32 including any mill, factory, tannery, paper or pulp mill, mine,
33 colliery, breaker or mineral processing operation, quarry,
34 refinery or well or is an employee of and operating a crane at
35 the direction of the person, firm or corporation who owns or is
36 operating such plant or establishment;

37 (7) Is an employee of a public utility operating a crane to
38 perform work in connection with facilities used to provide a
39 public service under the jurisdiction of the public service
40 commission, federal energy regulatory commission or federal
41 communications commission; or

42 (8) Is operating timbering harvesting machinery associated
43 with the production of timber and the manufacturing of wood
44 products.

CHAPTER 83

(S. B. 192 — By Senators Hunter, Fanning, Minard,
Mitchell, Oliverio, Redd, Facemyer, McKenzie, Kessler,
Unger, Rowe, Snyder, Edgell and Sprouse)

[Passed April 14, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine-a, article two, chapter
sixty-one of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, relating to stalking and

harassment generally; penalties; and enhanced penalties for violations of protective order.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. CRIMES AGAINST THE PERSON.

§61-2-9a. Stalking; harassment; penalties; definitions.

1 (a) Any person who willfully and repeatedly follows and
2 harasses a person with whom he or she has or in the past has
3 had or with whom he or she seeks to establish a personal or
4 social relationship, whether or not the intention is reciprocated,
5 a member of that person's immediate family, his or her current
6 social companion, his or her professional counselor or attorney,
7 is guilty of a misdemeanor and, upon conviction thereof, shall
8 be incarcerated in the county or regional jail for not more than
9 six months or fined not more than one thousand dollars, or both.

10 (b) Any person who willfully and repeatedly follows and
11 makes a credible threat against a person with whom he or she
12 has or in the past has had or with whom he or she seeks to
13 establish a personal or social relationship, whether or not the
14 intention is reciprocated, or against a member of that person's
15 immediate family, his or her current social companion, his or
16 her professional counselor or attorney with the intent to place
17 or placing him or her in reasonable apprehension that he or she
18 or a member of his or her immediate family will suffer death,
19 sexual assault, kidnaping, bodily injury or battery is guilty of a
20 misdemeanor and, upon conviction thereof, shall be incarcer-
21 ated in the county or regional jail for not more than six months
22 or fined not more than one thousand dollars, or both.

23 (c) Any person who repeatedly harasses or repeatedly
24 makes credible threats against a person with whom he or she
25 has, or in the past has had or with whom he or she seeks to
26 establish a personal or social relationship, whether or not the
27 intention is reciprocated, or against a member of that person's
28 immediate family, his or her current social companion, his or
29 her professional counselor or attorney is guilty of a misde-
30 meanor and, upon conviction thereof, shall be incarcerated in
31 the county or regional jail for not more than six months or fined
32 not more than one thousand dollars, or both.

33 (d) Notwithstanding any provision of this code to the
34 contrary, any person who violates the provisions of subsection
35 (a), (b) or (c) of this section in violation of an order entered by
36 a circuit court, magistrate court or family law master, in effect
37 and entered pursuant to part 48-5-501, *et seq.*, part 48-5-601, *et*
38 *seq.* or 48-27-403 of this code is guilty of a misdemeanor and,
39 upon conviction thereof, shall be incarcerated in the county jail
40 for not less than ninety days nor more than one year or fined not
41 less than two thousand dollars nor more than five thousand
42 dollars, or both.

43 (e) A second or subsequent conviction for a violation of this
44 section occurring within five years of a prior conviction is a
45 felony punishable by incarceration in a state correctional
46 facility for not less than one year nor more than five years or
47 fined not less than three thousand dollars nor more than ten
48 thousand dollars, or both.

49 (f) Notwithstanding any provision of this code to the
50 contrary, any person against whom a protective order is in
51 effect pursuant to the provisions of 48-27-403 of this code who
52 has been served with a copy of said order or 48-27-501 of this
53 code who is convicted of a violation of the provisions of this
54 section shall be guilty of a felony and punishable by incarcera-
55 tion in a state correctional facility for not less than one year nor

56 more than five years or fined not less than three thousand
57 dollars nor more than ten thousand dollars, or both.

58 (g) For the purposes of this section:

59 (1) "Harasses" means willful conduct directed at a specific
60 person or persons which would cause a reasonable person
61 mental injury or emotional distress;

62 (2) "Credible threat" means a threat of bodily injury made
63 with the apparent ability to carry out the threat and with the
64 result that a reasonable person would believe that the threat
65 could be carried out;

66 (3) "Bodily injury" means substantial physical pain, illness
67 or any impairment of physical condition; and

68 (4) "Immediate family" means a spouse, parent, stepparent,
69 mother-in-law, father-in-law, child, stepchild, sibling, or any
70 person who regularly resides in the household or within the
71 prior six months regularly resided in the household.

72 (h) Nothing in this section shall be construed to prevent
73 lawful assembly and petition for the redress of grievances,
74 including, but not limited to: Any labor dispute; demonstration
75 at the seat of federal, state, county or municipal government;
76 activities protected by the West Virginia Constitution or the
77 United States Constitution or any statute of this state or the
78 United States.

79 (i) Any person convicted under the provisions of this
80 section who is granted probation or for whom execution or
81 imposition of a sentence or incarceration is suspended is to have
82 as a condition of probation or suspension of sentence that he or
83 she participate in counseling or medical treatment as directed
84 by the court.

85 (j) Upon conviction, the court may issue an order restrain-
86 ing the defendant from any contact with the victim for a period
87 not to exceed ten years. The length of any restraining order
88 shall be based upon the seriousness of the violation before the
89 court, the probability of future violations, and the safety of the
90 victim or his or her immediate family. The duration of the
91 restraining order may be longer than five years only in cases
92 when a longer duration is necessary to protect the safety of the
93 victim or his or her immediate family.

94 (k) It is a condition of bond for any person accused of the
95 offense described in this section that the person is to have no
96 contact, direct or indirect, verbal or physical, with the alleged
97 victim.

98 (l) Nothing in this section may be construed to preclude a
99 sentencing court from exercising its power to impose home
100 confinement with electronic monitoring as an alternative
101 sentence.

CHAPTER 84

**(S. B. 524 — By Senators Wooton, Burnette, Caldwell, Fanning,
Hunter, Kessler, Minard, Mitchell, Oliverio, Redd, Ross, Rowe,
Snyder, Deem, Facemyer and McKenzie)**

[Passed April 13, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eight, article five, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to aiding escape and other offenses; and providing that persons who deliver certain

items to adults and juveniles in custody or confinement are subject to penalties of both fine and incarceration.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. CRIMES AGAINST PUBLIC JUSTICE.

§61-5-8. Aiding escape and other offenses relating to adults and juveniles in custody or confinement; penalties.

1 (a) Where any adult or juvenile is lawfully detained in
2 custody or confinement in any county or regional jail, state
3 correctional facility, juvenile facility or juvenile detention
4 center, if any other person shall deliver anything into the place
5 of custody or confinement of the adult or juvenile with the
6 intent to aid or facilitate the adult's or juvenile's escape or
7 attempted escape therefrom, or if the other person shall forcibly
8 rescue or attempt to rescue an adult or a juvenile therefrom, the
9 other person is guilty of a felony and, upon conviction thereof,
10 shall be confined in a state correctional facility not less than one
11 nor more than ten years.

12 (b) Where any adult or juvenile is lawfully detained in
13 custody or confinement in any county or regional jail, a state
14 correctional facility or a juvenile facility or juvenile detention
15 center, if any other person shall deliver any money or other
16 thing of value, any written or printed matter, any article of
17 merchandise, food or clothing, any medicine, utensil or
18 instrument of any kind to such adult or juvenile without the
19 express authority and permission of the supervising officer and
20 with knowledge that such adult or juvenile is lawfully detained,
21 such other person is guilty of a misdemeanor and, upon
22 conviction thereof, shall be fined not less than fifty dollars nor

23 more than five hundred dollars and confined in the county or
24 regional jail not less than three nor more than twelve months:
25 *Provided*, That the provisions of this section do not prohibit an
26 attorney or his or her employees from supplying any written or
27 printed material to an adult or juvenile which pertains to that
28 attorney's representation of the adult or juvenile.

29 (c) If any person transports any alcoholic liquor, nonintoxi-
30 cating beer, poison, explosive, firearm or other dangerous or
31 deadly weapon or any controlled substance as defined by
32 chapter sixty-a of this code onto the grounds of any county or
33 regional jail, state correctional facility, juvenile facility or
34 juvenile detention center within this state and is unauthorized
35 by law to do so, or is unauthorized by the persons supervising
36 the facility, such person is guilty of a felony and, upon convic-
37 tion thereof, shall be fined not less than one thousand nor more
38 than five thousand dollars or confined in a state correctional
39 facility not less than two years nor more than ten years, or both,
40 or, in the discretion of the court, be confined in the county or
41 regional jail not more than one year and fined not more than
42 five hundred dollars.

43 (d) If any person delivers any alcoholic liquor, nonintoxi-
44 cating beer, poison, explosive, firearm or other dangerous or
45 deadly weapon, or any controlled substance as defined by
46 chapter sixty-a of this code to an adult or juvenile in custody or
47 confinement in any county or regional jail, state correctional
48 facility, juvenile facility or juvenile detention center within this
49 state and is unauthorized by law to do so, or is unauthorized by
50 the persons supervising the facility, such person is guilty of a
51 felony and, upon conviction thereof, shall be fined not less than
52 one thousand nor more than five thousand dollars or confined
53 in a state correctional facility not less than one year nor more
54 than five years, or both.

55 (e) Whoever purchases, accepts as a gift, or secures by
56 barter, trade or in any other manner, any article or articles
57 manufactured at or belonging to any county or regional jail,
58 state correctional facility, juvenile facility or juvenile detention
59 center from any adult or juvenile detained therein is guilty of a
60 misdemeanor and, upon conviction thereof, shall be fined not
61 less than fifty dollars nor more than five hundred dollars and
62 confined in the county or regional jail not less than three nor
63 more than twelve months: *Provided*, That the provisions of this
64 subsection do not apply to articles specially manufactured in
65 any facility under the authorization of the persons supervising
66 the facility and which are offered for sale within or outside of
67 the facility.

68 (f) Whoever persuades, induces or entices or attempts to
69 persuade, induce or entice any person who is in custody or
70 confined in any county or regional jail, state correctional
71 facility, juvenile facility or juvenile detention center to escape
72 therefrom or to engage or aid in any insubordination to the
73 persons supervising the facility is guilty of a misdemeanor and,
74 upon conviction thereof, shall be fined not less than fifty dollars
75 nor more than five hundred dollars and confined in the county
76 or regional jail not less than three nor more than twelve months.



CHAPTER 85

(H. B. 2275 — By Delegates Stemple, Shelton and Williams)

[Passed April 14, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seventeen, article five, chapter sixty-one of the code of West Virginia, one thousand nine

hundred thirty-one, as amended, relating to obstructing law-enforcement officer; creating felony offense of disarming or attempting to disarm an officer; creating misdemeanor offense of making false statement to officer; providing exceptions; providing penalties; and defining term.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. CRIMES AGAINST PUBLIC JUSTICE.

§61-5-17. Obstructing officer; fleeing from officer; making false statement to officer; penalties; definitions.

1 (a) Any person who by threats, menaces, acts or otherwise,
2 forcibly or illegally hinders or obstructs, or attempts to hinder
3 or obstruct, any law-enforcement officer, probation officer or
4 parole officer acting in his or her official capacity is guilty of a
5 misdemeanor and, upon conviction thereof, shall be fined not
6 less than fifty nor more than five hundred dollars or confined in
7 the county or regional jail not more than one year, or both.

8 (b) Any person who intentionally disarms or attempts to
9 disarm any law-enforcement officer acting in his or her official
10 capacity, is guilty of a felony and, upon conviction thereof,
11 shall be imprisoned in the state correctional facility not less
12 than one nor more than five years.

13 (c) Any person who, with intent to impede or obstruct a
14 law-enforcement officer in the conduct of an investigation of a
15 felony offense, knowingly and wilfully makes a materially false
16 statement, is guilty of a misdemeanor and, upon conviction
17 thereof, shall be fined not less than twenty-five dollars and not
18 more than two hundred dollars, or confined in the county or

19 regional jail for five days, or both: *Provided*, That the provi-
20 sions of this section shall not apply to statements made by a
21 spouse, parent, stepparent, grandparent, sibling, half-sibling,
22 child, stepchild or grandchild, whether related by blood or
23 marriage, of the person under investigation. Statements made
24 by the person under investigation may not be used as the basis
25 for prosecution under this subsection. For the purposes of this
26 subsection, "law-enforcement officer" shall not include
27 watchman, state police or college security personnel.

28 (d) Any person who intentionally flees or attempts to flee
29 by any means other than the use of a vehicle from any
30 law-enforcement officer, probation officer or parole officer
31 acting in his or her official capacity who is attempting to make
32 a lawful arrest of the person, and who knows or reasonably
33 believes that the officer is attempting to arrest him or her, is
34 guilty of a misdemeanor and, upon conviction thereof, shall be
35 fined not less than fifty nor more than five hundred dollars or
36 confined in the county or regional jail not more than one year,
37 or both.

38 (e) Any person who intentionally flees or attempts to flee
39 in a vehicle from any law-enforcement officer, probation officer
40 or parole officer acting in his or her official capacity, after the
41 officer has given a clear visual or audible signal directing the
42 person to stop, is guilty of a misdemeanor and, upon conviction
43 thereof, shall be fined not less than five hundred nor more than
44 one thousand dollars, and shall be confined in the county or
45 regional jail not more than one year.

46 (f) Any person who intentionally flees or attempts to flee in
47 a vehicle from any law-enforcement officer, probation officer
48 or parole officer acting in his or her official capacity, after the
49 officer has given a clear visual or audible signal directing the
50 person to stop, and who causes damage to the real or personal
51 property of any person during or resulting from his or her flight,

52 is guilty of a misdemeanor and, upon conviction thereof, shall
53 be fined not less than one thousand nor more than three
54 thousand dollars, and shall be confined in the county or regional
55 jail for not less than six months nor more than one year.

56 (g) Any person who intentionally flees or attempts to flee
57 in a vehicle from any law-enforcement officer, probation officer
58 or parole officer acting in his or her official capacity, after the
59 officer has given a clear visual or audible signal directing the
60 person to stop, and who causes bodily injury to any person
61 during or resulting from his or her flight, is guilty of a felony
62 and, upon conviction thereof, shall be imprisoned in a state
63 correctional facility not less than one nor more than five years.

64 (h) Any person who intentionally flees or attempts to flee
65 in a vehicle from any law-enforcement officer, probation officer
66 or parole officer acting in his or her official capacity, after the
67 officer has given a clear visual or audible signal directing the
68 person to stop, and who causes death to any person during or
69 resulting from his or her flight, is guilty of a felony and, upon
70 conviction thereof, shall be punished by a definite term of
71 imprisonment in a state correctional facility which is not less
72 than three nor more than fifteen years. A person imprisoned
73 pursuant to the provisions of this subsection is not eligible for
74 parole prior to having served a minimum of three years of his
75 or her sentence or the minimum period required by the provi-
76 sions of section thirteen, article twelve, chapter sixty-two of this
77 code, whichever is greater.

78 (i) Any person who intentionally flees or attempts to flee in
79 a vehicle from any law-enforcement officer, probation officer
80 or parole officer acting in his or her official capacity, after the
81 officer has given a clear visual or audible signal directing the
82 person to stop, and who is under the influence of alcohol,
83 controlled substances or drugs at the time, is guilty of a felony

84 and, upon conviction thereof, shall be imprisoned in a state
85 correctional facility not less than one nor more than five years.

86 (j) For purposes of this section, the term “vehicle” includes
87 any motor vehicle, motorcycle, motorboat, all-terrain vehicle or
88 snowmobile, as those terms are defined in section one, article
89 one, chapter seventeen-a of this code, whether or not it is being
90 operated on a public highway at the time and whether or not it
91 is licensed by the state.

92 (k) For purposes of this section, the terms “flee,” “fleeing”
93 and “flight” do not include any person’s reasonable attempt to
94 travel to a safe place, allowing the pursuing law-enforcement
95 officer to maintain appropriate surveillance, for the purpose of
96 complying with the officer’s direction to stop.

CHAPTER 86

**(Com. Sub. for H. B. 2376 — By Delegates Caputo, Prunty,
Manchin, Stalnaker, Varner, Marshall and Shaver)**

[Passed April 13, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article eight, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section eleven, relating to creating the misdemeanor offense for intentionally breathing, inhaling, or drinking certain intoxicating compounds; and providing a criminal penalty.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 8. CRIMES AGAINST CHASTITY, MORALITY AND DECENCY.

§61-8-11. Breathing, inhaling, or drinking certain intoxicating compounds; penalty.

1 (a) No person shall intentionally breathe, inhale, or drink
2 any compound, liquid, or chemical containing acetone,
3 amylacetate, benzol or benzene, butyl acetate, butyl alcohol,
4 carbon tetrachloride, chloroform, cyclohexanone, ethanol or
5 ethyl alcohol, ethyl acetate, hexane, isopropanol or isopropyl
6 alcohol, isopropyl acetate, methyl "cellosolve" acetate, methyl
7 ethyl ketone, methyl isobutyl ketone, toluol or toluene, trichlo-
8 roethylene, tricresyl phosphate, xylol or xylene, or any other
9 solvent, material substance, chemical, or combination thereof,
10 having the property of releasing toxic vapors for the purpose of
11 inducing a condition of intoxication, stupefaction, depression,
12 giddiness, paralysis, or irrational behavior or in any manner
13 changing, distorting, or disturbing the auditory, visual, or
14 mental processes. For the purposes of this section, any condi-
15 tion so induced shall be deemed to be an intoxicated condition.

16 (b) This section does not apply to:

17 (1) Any person who commits any act described herein
18 pursuant to the direction or prescription of a licensed physician
19 or dentist authorized to so direct or prescribe, including the
20 inhalation of anesthesia for medical or dental purposes; or

21 (2) To any alcoholic liquor or nonintoxicating beer as
22 defined in section five, article one, chapter sixty of this code.

23 (c) Any person who violates the provisions of this section
 24 is guilty of a misdemeanor and, upon conviction thereof, shall
 25 be fined not more than one hundred dollars or be confined in a
 26 county or regional jail for not more than sixty days, or both
 27 fined and imprisoned.

CHAPTER 87

(S. B. 191 — By Senators Hunter, Fanning, Minard, Mitchell,
 Oliverio, Redd, Facemyer, McKenzie and Kessler)

[Passed April 14, 2001; to take effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven, article one-c, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to forfeiture of criminal bail bonds; basis for forfeiture; and limitations on basis for forfeiture.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1C. BAIL.

§62-1C-7. Forfeiture of bail; basis therefor.

1 (1) Whenever a person under bail serves as his or her own
 2 surety and he or she willfully and without just cause fails to
 3 appear as and when required or violates any other term or

4 condition of bail, the circuit court or magistrate shall declare the
5 bail forfeited.

6 (2) Whenever a person or entity other than the person under
7 bail serves as surety, forfeiture of bail shall be declared only
8 when the person under bail willfully and without just cause fails
9 to appear as and when required unless the surety, by the express
10 terms of the bail instrument, has agreed to be responsible to
11 ensure compliance with one or more other conditions of bail
12 and there is a willful violation of such condition.

CHAPTER 88

(Com. Sub. for H. B. 3130 — By Mr. Speaker, Mr. Kiss, and
Delegates Trump and Michael)

[Passed April 14, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section fifteen, article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend article six, chapter sixty-two of said code by adding thereto a new section, designated section six-a, relating to refusing to accept custody of prisoners arrested by a member of the state police who are in need of medical treatment by a physician; and duty to accept prisoners who are not injured; and penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. MISCELLANEOUS PROVISIONS CONCERNING CRIMINAL PROCEDURE.**§62-6-6a. Disposition of prisoners.**

1 (a) It is the duty of all officers of the state, or of any county
2 or municipality thereof, or jailers having the charge and custody
3 of any jail or place of detention, to receive any prisoners
4 arrested by any officer or member of any law-enforcement
5 office acting in his or her official capacity and to detain them in
6 custody until ordered released by a tribunal of competent
7 jurisdiction, and any officer, jailer or person having custody of
8 any jail or place of detention who willfully fails or refuses to
9 receive and detain the prisoner is guilty of a misdemeanor and,
10 upon conviction thereof, shall be fined not less than twenty-five
11 dollars nor more than two hundred dollars, or imprisoned in the
12 county or regional jail for not more than sixty days, or both
13 fined and imprisoned.

14 (b) Notwithstanding the provisions of subsection (a) of this
15 section, no officer, jailer or other person having authority to
16 accept prisoners in a county or regional jail is required to do so
17 if the prisoner appears to be in need of medical attention of a
18 degree necessitating treatment by a physician. If a prisoner is
19 refused pursuant to the provisions of this section, he or she may
20 not be accepted for detention until the arresting or transporting
21 officer provides the officer, jailer or person accepting prisoners
22 with a written clearance from a licensed physician reflecting
23 that the prisoner has been examined and, if necessary, treated
24 and which states that in the physician's medical opinion the
25 prisoner can be safely confined in the county or regional jail.



CHAPTER 89

(Com. Sub. for H. B. 2243 — By Delegates Stemple,
Fletcher, Williams and Shelton)

[Passed April 14, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section nineteen, article twelve, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating generally to parole; violation of parole; procedures; conditions; restrictions; updating terms; and effecting release of persons upon approval of a home plan.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 12. PROBATION AND PAROLE.

§62-12-19. Violation of parole.

- 1 (a) If at any time during the period of parole, there shall be
- 2 reasonable cause to believe that the parolee has violated any of
- 3 the conditions of his or her release on parole, the parole officer
- 4 may arrest him or her with or without an order or warrant, or
- 5 the commissioner of corrections may issue its written order or
- 6 warrant for his or her arrest, which written order or warrant
- 7 shall be sufficient for his or her arrest by any officer charged
- 8 with the duty of executing an ordinary criminal process. The
- 9 commissioner's written order or warrant delivered to the sheriff

10 against the paroled prisoner shall be a command to keep
11 custody of the parolee for the jurisdiction of the division of
12 corrections, and during the period of custody, the parolee may
13 be admitted to bail by the court before which the parolee was
14 sentenced. If the parolee is not released on a bond, the costs of
15 confining the paroled prisoner shall be paid out of the funds
16 appropriated for the division of corrections.

17 (b) When a parolee is under arrest for violation of the
18 conditions of his or her parole, he or she shall be given a
19 prompt and summary hearing, at which the parolee and his or
20 her counsel shall be given an opportunity to attend. If at the
21 hearing, it shall appear to the satisfaction of the board that the
22 parolee has violated any condition of his or her release on
23 parole, or any rules or conditions of his or her supervision, the
24 board may revoke his or her parole and may require him or her
25 to serve in prison the remainder or any portion of his or her
26 maximum sentence for which, at the time of his or her release,
27 he or she was subject to imprisonment: *Provided*, That if the
28 violation of the conditions of parole or rules for his or her
29 supervision is not a felony as set out in section eighteen of this
30 article, the board may, if in its judgment the best interests of
31 justice do not require revocation, reinstate him or her on parole.
32 The division of corrections will effect release from custody
33 upon approval of a home plan.

34 (c) When a parolee has violated the conditions of his or her
35 release on parole by confession to, or being convicted of any of
36 the crimes set forth in section eighteen of this article, he or she
37 shall be returned to the custody of the division of corrections to
38 serve the remainder of his or her maximum sentence, during
39 which remaining part of his or her sentence he or she shall be
40 ineligible for further parole.

41 (d) Whenever the parole of a paroled prisoner has been
42 revoked, the commissioner shall upon receipt of the board's
43 written order of revocation, convey and transport the paroled

44 prisoner to a state correctional institution. A paroled prisoner
45 whose parole has been revoked shall remain in custody of the
46 sheriff until delivery to a corrections officer sent and duly
47 authorized by the commissioner for the removal of the paroled
48 prisoner to a state penal institution; the cost of confining such
49 paroled prisoner shall be paid out of the funds appropriated for
50 the division of corrections.

51 (e) When a paroled prisoner is convicted of, or confesses to,
52 any one of the crimes enumerated in section eighteen of this
53 article, it shall be the duty of the board to cause him or her to be
54 returned to this state for a summary hearing as provided by this
55 article. Whenever a parolee has absconded supervision, the
56 commissioner shall issue a warrant for his or her apprehension
57 and return to this state for the hearing provided for in this
58 article: *Provided*, That the board may, if it be of opinion the
59 best interests of justice do not require revocation, cause the
60 paroled absconder to be reinstated to parole.

61 (f) A warrant filed by the commissioner shall stay the
62 running of his or her sentence until the parolee is returned to the
63 custody of the division of corrections and physically in the state
64 of West Virginia.

65 (g) Whenever a parolee, who has absconded supervision or
66 has been transferred out of this state for supervision pursuant to
67 section one, article six, chapter twenty-eight of this code is
68 returned to West Virginia due to a violation of parole and costs
69 are incurred by the division of corrections, the commissioner
70 may assess reasonable costs from the parolee's inmate funds or
71 the parolee as reimbursement to the division of corrections for
72 the costs of returning him or her to the state of West Virginia.

CHAPTER 90

(Com. Sub. for S. B. 237 — By Senator Snyder)

[Passed April 14, 2001; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section eight, article one, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the historic preservation section; rules; permits; and establishing that county general revenue funds are not considered funds of the state.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. DIVISION OF CULTURE AND HISTORY.

§29-1-8. Historic preservation section; director.

1 (a) The purposes and duties of the historic preservation
2 section are to locate, survey, investigate, register, identify,
3 preserve, protect, restore and recommend to the commissioner
4 for acquisition historic, architectural, archaeological and
5 cultural sites, structures and objects worthy of preservation,
6 including human skeletal remains, graves, grave artifacts and
7 grave markers, relating to the state of West Virginia and the
8 territory included therein from the earliest times to the present
9 upon its own initiative or in cooperation with any private or
10 public society, organization or agency; to conduct a continuing

11 survey and study throughout the state to develop a state plan to
12 determine the needs and priorities for the preservation, restora-
13 tion or development of the sites, structures and objects; to
14 direct, protect, excavate, preserve, study or develop the sites
15 and structures; to review all undertakings permitted, funded,
16 licensed or otherwise assisted, in whole or in part, by the state
17 for the purposes of furthering the duties of the section; to carry
18 out the duties and responsibilities enumerated in the National
19 Historic Preservation Act of 1966, as amended, as they pertain
20 to the duties of the section; to develop and maintain a West
21 Virginia state register of historic places for use as a planning
22 tool for state and local government; to cooperate with state and
23 federal agencies in archaeological work; to issue permits for the
24 excavation or removal of human skeletal remains, grave
25 artifacts and grave markers, archaeological and prehistoric and
26 historic features under the provisions of section eight-a of this
27 article; and to perform any other duties as may be assigned to
28 the section by the commissioner.

29 (b) With the advice and consent of the archives and history
30 commission, the commissioner shall appoint a director of the
31 historic preservation section who shall have: (1) A graduate
32 degree in one of the social sciences or equivalent training and
33 experience in the field of historic preservation, archaeology,
34 West Virginia history or history; and (2) three years' experience
35 in administration in the field of West Virginia history, history,
36 historic preservation or archaeology. Notwithstanding these
37 qualifications, the person serving as the deputy state historic
38 preservation officer on the date of enactment of this article shall
39 be eligible for appointment as the director of the historic
40 preservation section. The director of the historic preservation
41 section shall serve as the deputy state historic preservation
42 officer.

43 (c) With the approval of the commissioner, the director
44 shall establish professional positions within the section and
45 develop appropriate organizational structures to carry out the
46 duties of the section. The director shall employ the personnel

47 with applicable professional qualifications to fill positions
48 within the organizational structure with the minimum profes-
49 sional qualifications necessary to carry out the provisions of the
50 National Historic Preservation Act of 1966, as amended. At the
51 minimum, the following professions shall be represented within
52 the section staff: Historian, architectural historian, a structural
53 historian who specializes in historical preservation, an archaeol-
54 ogist specializing in historic and prehistoric archaeology, and
55 such technical and clerical positions as are required.

56 (d) The director shall promulgate rules with the approval of
57 the archives and history commission and in accordance with
58 chapter twenty-nine-a of this code concerning: (1) The profes-
59 sional policies and functions of the historic preservation
60 section; (2) the review of and, when required, issuance of
61 permits for all undertakings permitted, funded, licensed or
62 otherwise assisted, in whole or in part, by the state as indicated
63 in subsection (a) of this section, in order to carry out the duties
64 and responsibilities of the section: *Provided*, That solely for the
65 purposes of this section, funded, in whole or in part, by the state
66 shall not include funding from any county's general revenue
67 fund regardless of whether or not state funds are commingled
68 with the county's general revenue fund; (3) the establishment
69 and maintenance of a West Virginia state register of historic
70 places, including the criteria for eligibility of buildings,
71 structures, sites, districts and objects for the state register and
72 procedures for nominations to the state register and protection
73 of nominated and listed properties; (4) the review of historic
74 structures in accordance with compliance alternatives and other
75 provisions in any state fire regulation, and shall coordinate
76 standards with the appropriate regulatory officials regarding
77 their application; (5) review of historic structures in conjunction
78 with existing state or local building codes and shall coordinate
79 standards with the appropriate regulatory officials for their
80 application; and (6) any other rules as may be considered
81 necessary to effectuate the purposes of this article.

CHAPTER 91

(Com. Sub. for H. B. 2199 — By Delegates Staton, Amores, Mahan,
Pino, Wills, Faircloth and Riggs)

[Passed March 22, 2001; in effect from passage. Approved by the Governor.]

AN ACT to repeal chapters forty-eight-a, forty-eight-b and forty-eight-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section one, article two, chapter five-f of said code; to amend and reenact sections twelve and eighteen-b, article five, chapter sixteen of said code; to amend and reenact section thirteen, article five-b of said chapter; to amend and reenact section ten, article two, chapter seventeen-b of said code; to amend and reenact sections thirteen and eighteen, article four, chapter twenty-three of said code; to amend and reenact section twenty-seven-a, article twenty-two, chapter twenty-nine of said code; to amend and reenact section eleven, article eight, chapter thirty-eight of said code; to amend and reenact section five, article one, chapter forty-two of said code; to amend and reenact chapter forty-eight of said code; to amend and reenact section one, article three, chapter forty-nine of said code; to amend and reenact section ten, article two-a, chapter fifty-one of said code; to amend and reenact section eight, article ten, chapter fifty-six of said code; to amend and reenact section nine, article three, chapter fifty-seven of said code; and to amend and reenact section twenty-eight-a, article one, chapter fifty-nine of said code, all relating to revising, arranging, consolidating and recodifying the laws of the state of West Virginia relating to domestic relations.

Be it enacted by the Legislature of West Virginia:

That chapters forty-eight-a, forty-eight-b and forty-eight-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section one, article two, chapter five-f of said code be amended and reenacted; that sections twelve and eighteen-b, article five, chapter sixteen of said code be amended and reenacted; that section thirteen, article five-b of said chapter be amended and reenacted; that section ten, article two, chapter seventeen-b of said code be amended and reenacted; that sections thirteen and eighteen, article four, chapter twenty-three of said code be amended and reenacted; that section twenty-seven-a, article twenty-two, chapter twenty-nine of said code be amended and reenacted; that section eleven, article eight, chapter thirty-eight of said code be amended and reenacted; that section five, article one, chapter forty-two of said code be amended and reenacted; that chapter forty-eight of said code be amended and reenacted; that section one, article three, chapter forty-nine of said code be amended and reenacted; that section ten, article two-a, chapter fifty-one of said code be amended and reenacted; that section eight, article ten, chapter fifty-six of said code be amended and reenacted; that section nine, article three, chapter fifty-seven of said code be amended and reenacted; and that section twenty-eight-a, article one, chapter fifty-nine of said code be amended and reenacted, all to read as follows:

Chapter

- 5F. Reorganization of the Executive Branch of State Government.**
- 16. Public Health.**
- 17B. Motor Vehicle Driver's Licenses.**
- 23. Workers' Compensation.**
- 29. Miscellaneous Boards and Officers.**
- 38. Liens.**
- 42. Descent and Distribution.**
- 48. Domestic Relations.**
- 49. Child Welfare.**
- 51. Courts and Their Officers.**
- 56. Pleading and Practice.**
- 57. Evidence and Witnesses.**
- 59. Fees, Allowances and Costs; Newspapers; Legal Advertisements.**

**CHAPTER 5F. REORGANIZATION OF THE EXECUTIVE
BRANCH OF STATE GOVERNMENT.**

ARTICLE 2. TRANSFER OF AGENCIES AND BOARDS.

***§5F-2-1. Transfer and incorporation of agencies and boards;
funds.**

1 (a) The following agencies and boards, including all of the
2 allied, advisory, affiliated or related entities and funds associ-
3 ated with any such agency or board, are hereby transferred to
4 and incorporated in and shall be administered as a part of the
5 department of administration:

6 (1) Building commission provided for in article six, chapter
7 five of this code;

8 (2) Public employees insurance agency and public employ-
9 ees insurance agency advisory board provided for in article
10 sixteen, chapter five of this code;

11 (3) Governor's mansion advisory committee provided for
12 in article five, chapter five-a of this code;

13 (4) Commission on uniform state laws provided for in
14 article one-a, chapter twenty-nine of this code;

15 (5) Education and state employees grievance board pro-
16 vided for in article twenty-nine, chapter eighteen of this code
17 and article six-a, chapter twenty-nine of this code;

18 (6) Board of risk and insurance management provided for
19 in article twelve, chapter twenty-nine of this code;

20 (7) Boundary commission provided for in article
21 twenty-three, chapter twenty-nine of this code;

***Clerk's Note:** This section was also amended by H. B. 2218 (Chapter 123), which passed subsequent to this act.

22 (8) Public defender services provided for in article
23 twenty-one, chapter twenty-nine of this code;

24 (9) Division of personnel provided for in article six, chapter
25 twenty-nine of this code;

26 (10) The West Virginia ethics commission provided for in
27 article two, chapter six-b of this code; and

28 (11) Consolidated public retirement board provided for in
29 article ten-d, chapter five of this code.

30 (b) The department of commerce, labor and environmental
31 resources and the office of secretary of the department of
32 commerce, labor and environmental resources are hereby
33 abolished. For purposes of administrative support and liaison
34 with the office of the governor, the following agencies and
35 boards, including all allied, advisory and affiliated entities shall
36 be grouped under three bureaus as follows:

37 (1) Bureau of commerce:

38 (A) Division of labor provided for in article one, chapter
39 twenty-one of this code, which shall include:

40 (i) Occupational safety and health review commission
41 provided for in article three-a, chapter twenty-one of this code;
42 and

43 (ii) Board of manufactured housing construction and safety
44 provided for in article nine, chapter twenty-one of this code;

45 (B) Office of miners' health, safety and training provided
46 for in article one, chapter twenty-two-a of this code. The
47 following boards are transferred to the office of miners' health,
48 safety and training for purposes of administrative support and
49 liaison with the office of the governor:

50 (i) Board of coal mine health and safety and coal mine
51 safety and technical review committee provided for in article
52 six, chapter twenty-two-a of this code;

53 (ii) Board of miner training, education and certification
54 provided for in article seven, chapter twenty-two-a of this code;
55 and

56 (iii) Mine inspectors' examining board provided for in
57 article nine, chapter twenty-two-a of this code;

58 (C) The West Virginia development office provided for in
59 article two, chapter five-b of this code, which shall include:

60 (i) Enterprise zone authority provided for in article two-b,
61 chapter five-b of this code;

62 (ii) Economic development authority provided for in article
63 fifteen, chapter thirty-one of this code; and

64 (iii) Tourism commission provided for in article two,
65 chapter five-b of this code and the office of the tourism
66 commissioner;

67 (D) Division of natural resources and natural resources
68 commission provided for in article one, chapter twenty of this
69 code. The Blennerhassett historical state park provided for in
70 article eight, chapter twenty-nine of this code shall be under the
71 division of natural resources;

72 (E) Division of forestry provided for in article one-a,
73 chapter nineteen of this code;

74 (F) Geological and economic survey provided for in article
75 two, chapter twenty-nine of this code;

76 (G) Water development authority and board provided for in
77 article one, chapter twenty-two-c of this code;

78 (2) Bureau of employment programs provided for in article
79 one, chapter twenty-one-a of this code;

80 (3) Bureau of environment:

81 (A) Air quality board provided for in article two, chapter
82 twenty-two-b of this code;

83 (B) Solid waste management board provided for in article
84 three, chapter twenty-two-c of this code;

85 (C) Environmental quality board, or its successor board,
86 provided for in article three, chapter twenty-two-b of this code;

87 (D) Division of environmental protection provided for in
88 article one, chapter twenty-two of this code;

89 (E) Surface mine board provided for in article four, chapter
90 twenty-two-b of this code;

91 (F) Oil and gas inspectors' examining board provided for in
92 article seven, chapter twenty-two-c of this code; and

93 (G) Shallow gas well review board provided for in article
94 eight, chapter twenty-two-c of this code; and

95 (H) Oil and gas conservation commission provided for in
96 article nine, chapter twenty-two-c of this code.

97 (c) The following agencies and boards, including all of the
98 allied, advisory, affiliated or related entities and funds associ-
99 ated with any such agency or board, are hereby transferred to
100 and incorporated in and shall be administered as a part of the
101 department of education and the arts:

102 (1) Library commission provided for in article one, chapter
103 ten of this code;

104 (2) Educational broadcasting authority provided for in
105 article five, chapter ten of this code;

106 (3) University of West Virginia board of trustees provided
107 for in article two, chapter eighteen-b of this code;

108 (4) Board of directors of the state college system provided
109 for in article three, chapter eighteen-b of this code;

110 (5) Joint commission for vocational-technical-occupational
111 education provided for in article three-a, chapter eighteen-b of
112 this code;

113 (6) Division of culture and history provided for in article
114 one, chapter twenty-nine of this code; and

115 (7) Division of rehabilitation services provided for in
116 section two, article ten-a, chapter eighteen of this code.

117 (d) The following agencies and boards, including all of the
118 allied, advisory, affiliated or related entities and funds associ-
119 ated with any such agency or board, are hereby transferred to
120 and incorporated in and shall be administered as a part of the
121 department of health and human resources:

122 (1) Human rights commission provided for in article eleven,
123 chapter five of this code;

124 (2) Division of human services provided for in article two,
125 chapter nine of this code;

126 (3) Bureau of public health provided for in article one,
127 chapter sixteen of this code;

128 (4) Office of emergency medical services and advisory
129 council thereto provided for in article four-c, chapter sixteen of
130 this code;

131 (5) Health care cost review authority provided for in article
132 twenty-nine-b, chapter sixteen of this code;

133 (6) Commission on mental retardation provided for in
134 article fifteen, chapter twenty-nine of this code;

135 (7) Women's commission provided for in article twenty,
136 chapter twenty-nine of this code; and

137 (8) The bureau for child support enforcement provided for
138 in chapter forty-eight of this code.

139 (e) The following agencies and boards, including all of the
140 allied, advisory, affiliated or related entities and funds associ-
141 ated with any such agency or board, are hereby transferred to
142 and incorporated in and shall be administered as a part of the
143 department of military affairs and public safety:

144 (1) Adjutant general's department provided for in article
145 one-a, chapter fifteen of this code;

146 (2) Armory board provided for in article six, chapter fifteen
147 of this code;

148 (3) Military awards board provided for in article one-g,
149 chapter fifteen of this code;

150 (4) West Virginia state police provided for in article two,
151 chapter fifteen of this code;

152 (5) Office of emergency services and disaster recovery
153 board provided for in article five, chapter fifteen of this code
154 and emergency response commission provided for in article
155 five-a of said chapter;

156 (6) Sheriffs' bureau provided for in article eight, chapter
157 fifteen of this code;

158 (7) Division of corrections provided for in chapter
159 twenty-five of this code;

160 (8) Fire commission provided for in article three, chapter
161 twenty-nine of this code;

162 (9) Regional jail and correctional facility authority provided
163 for in article twenty, chapter thirty-one of this code;

164 (10) Board of probation and parole provided for in article
165 twelve, chapter sixty-two of this code; and

166 (11) Division of veterans' affairs and veterans' council
167 provided for in article one, chapter nine-a of this code.

168 (f) The following agencies and boards, including all of the
169 allied, advisory, affiliated or related entities and funds associ-
170 ated with any such agency or board, are hereby transferred to
171 and incorporated in and shall be administered as a part of the
172 department of tax and revenue:

173 (1) Tax division provided for in article one, chapter eleven
174 of this code;

175 (2) Racing commission provided for in article twenty-three,
176 chapter nineteen of this code;

177 (3) Lottery commission and position of lottery director
178 provided for in article twenty-two, chapter twenty-nine of this
179 code;

180 (4) Agency of insurance commissioner provided for in
181 article two, chapter thirty-three of this code;

182 (5) Office of alcohol beverage control commissioner
183 provided for in article sixteen, chapter eleven of this code and
184 article two, chapter sixty of this code;

185 (6) Board of banking and financial institutions provided for
186 in article three, chapter thirty-one-a of this code;

187 (7) Lending and credit rate board provided for in chapter
188 forty-seven-a of this code; and

189 (8) Division of banking provided for in article two, chapter
190 thirty-one-a of this code.

191 (g) The following agencies and boards, including all of the
192 allied, advisory, affiliated or related entities and funds associ-
193 ated with any such agency or board, are hereby transferred to
194 and incorporated in and shall be administered as a part of the
195 department of transportation:

196 (1) Division of highways provided for in article two-a,
197 chapter seventeen of this code;

198 (2) Parkways, economic development and tourism authority
199 provided for in article sixteen-a, chapter seventeen of this code;

200 (3) Division of motor vehicles provided for in article two,
201 chapter seventeen-a of this code;

202 (4) Driver's licensing advisory board provided for in article
203 two, chapter seventeen-b of this code;

204 (5) Aeronautics commission provided for in article two-a,
205 chapter twenty-nine of this code;

206 (6) State rail authority provided for in article eighteen,
207 chapter twenty-nine of this code; and

208 (7) Port authority provided for in article sixteen-b, chapter
209 seventeen of this code.

210 (h) Except for such powers, authority and duties as have
211 been delegated to the secretaries of the departments by the

212 provisions of section two of this article, the existence of the
213 position of administrator and of the agency and the powers,
214 authority and duties of each administrator and agency shall not
215 be affected by the enactment of this chapter.

216 (i) Except for such powers, authority and duties as have
217 been delegated to the secretaries of the departments by the
218 provisions of section two of this article, the existence, powers,
219 authority and duties of boards and the membership, terms and
220 qualifications of members of such boards shall not be affected
221 by the enactment of this chapter and all boards which are
222 appellate bodies or were otherwise established to be independ-
223 ent decision makers shall not have their appellate or independ-
224 ent decision-making status affected by the enactment of this
225 chapter.

226 (j) Any department previously transferred to and incorpo-
227 rated in a department created in section two, article one of this
228 chapter by prior enactment of this section in chapter three, acts
229 of the Legislature, first extraordinary session, one thousand nine
230 hundred eighty-nine, and subsequent amendments thereto, shall
231 henceforth be read, construed and understood to mean a
232 division of the appropriate department so created. Wherever
233 elsewhere in this code, in any act, in general or other law, in
234 any rule or regulation, or in any ordinance, resolution or order,
235 reference is made to any department transferred to and incorpo-
236 rated in a department created in section two, article one of this
237 chapter, such reference shall henceforth be read, construed and
238 understood to mean a division of the appropriate department so
239 created, and any reference elsewhere to a division of a depart-
240 ment so transferred and incorporated shall henceforth be read,
241 construed and understood to mean a section of the appropriate
242 division of the department so created.

243 (k) When an agency, board or commission is transferred
244 under a bureau or agency other than a department headed by a

245 secretary pursuant to this section, that transfer shall be con-
246 strued to be solely for purposes of administrative support and
247 liaison with the office of the governor, a department secretary
248 or a bureau. The bureaus created by the Legislature upon the
249 abolishment of the department of commerce, labor and environ-
250 mental resources in the year one thousand nine hundred
251 ninety-four shall be headed by a commissioner or other
252 statutory officer of an agency within that bureau. Nothing in
253 this section shall be construed to extend the powers of depart-
254 ment secretaries under section two of this article to any person
255 other than a department secretary and nothing herein shall be
256 construed to limit or abridge the statutory powers and duties of
257 statutory commissioners or officers pursuant to this code. Upon
258 the abolishment of the office of secretary of the department of
259 commerce, labor and environmental resources, the governor
260 may appoint a statutory officer serving functions formerly
261 within that department to a position which was filled by the
262 secretary ex officio.

CHAPTER 16. PUBLIC HEALTH.

Article

5. Vital Statistics.

5B. Hospitals and Similar Institutions.

ARTICLE 5. VITAL STATISTICS.

§16-5-12. Birth registration generally; acknowledgment of paternity.

§16-5-18b. Limitation on use of social security numbers.

§16-5-12. Birth registration generally; acknowledgment of paternity.

1 (a) A certificate of birth for each live birth which occurs in
2 this state shall be filed with the local registrar of the district in
3 which the birth occurs within seven days after the birth and
4 shall be registered by the registrar if it has been completed and
5 filed in accordance with this section . When a birth occurs in a

6 moving conveyance, a birth certificate shall be filed in the
7 district in which the child is first removed from the conveyance.
8 When a birth occurs in a district other than where the mother
9 resides, a birth certificate shall be filed in the district in which
10 the child is born and in the district in which the mother resides.

11 (b) When a birth occurs in an institution, the person in
12 charge of the institution or his or her designated representative
13 shall obtain the personal data, prepare the certificate, secure the
14 signatures required for the certificate and file it with the local
15 registrar. The physician in attendance shall certify to the facts
16 of birth and provide the medical information required for the
17 certificate within five days after the birth.

18 (c) When a birth occurs outside an institution, the certificate
19 shall be prepared and filed by one of the following in the
20 indicated order of priority:

21 (1) The physician in attendance at or immediately after the
22 birth, or in the absence of such a person;

23 (2) Any other person in attendance at or immediately after
24 the birth, or in the absence of such a person; or

25 (3) The father, the mother, or, in the absence of the father
26 and the inability of the mother, the person in charge of the
27 premises where the birth occurred.

28 (d) Either of the parents of the child shall sign the certifi-
29 cate of live birth to attest to the accuracy of the personal data
30 entered thereon, in time to permit its filing within the seven
31 days prescribed above.

32 (e) In order that each county may have a complete record of
33 the births occurring in said county, the local registrar shall
34 transmit each month to the county clerk of his or her county the
35 copies of the certificates of all births occurring in said county,

36 from which copies the clerk shall compile a record of such
37 births and shall enter the same in a systematic and orderly way
38 in a well-bound register of births, which said register shall be
39 a public record: *Provided*, That such copies and register shall
40 not state that any child was either legitimate or illegitimate. The
41 form of said register of births shall be prescribed by the state
42 registrar of vital statistics.

43 (f) In addition to the personal data furnished for the
44 certificate of birth issued for a live birth in accordance with the
45 provisions of this section, a person whose name is to appear on
46 such certificate of birth as a parent shall contemporaneously
47 furnish to the person preparing and filing the certificate of birth
48 the social security account number (or numbers, if the parent
49 has more than one such number) issued to the parent. A record
50 of the social security number or numbers shall be filed with the
51 local registrar of the district in which the birth occurs within
52 seven days after such birth, and the local registrar shall transmit
53 such number or numbers to the state registrar of vital statistics
54 in the same manner as other personal data is transmitted to the
55 state registrar.

56 (g) If the mother was married either at the time of concep-
57 tion or birth, the name of the husband shall be entered on the
58 certificate as the father of the child unless paternity has been
59 determined otherwise by a court of competent jurisdiction
60 pursuant to the provisions of article twenty-four, chapter forty-
61 eight of this code or other applicable law, in which case the
62 name of the father as determined by the court shall be entered.

63 (h) If the mother was not married either at the time of
64 conception or birth, the name of the father shall not be entered
65 on the certificate of birth without the written consent of the
66 mother and of the person to be named as the father unless a
67 determination of paternity has been made by a court of compe-
68 tent jurisdiction pursuant to the provisions of article twenty-

69 four, chapter forty-eight of this code or other applicable law, in
70 which case the name of the father as determined by the court
71 shall be entered.

72 (i) A written, notarized acknowledgment of both the man
73 and the woman that the man is the father of a named child
74 legally establishes the man as the father of the child for all
75 purposes, and child support may be established pursuant to the
76 provisions of chapter forty-eight of this code.

77 (1) The written acknowledgment shall include filing
78 instructions, the parties' social security number and addresses
79 and a statement, given orally and in writing, of the alternatives
80 to, the legal consequences of, and the rights and obligations of
81 acknowledging paternity, including, but not limited to, the duty
82 to support a child. If either of the parents is a minor, the
83 statement shall include an explanation of any rights that may be
84 afforded due to the minority status.

85 (2) The failure or refusal to include all information required
86 by subdivision (1) of this subsection shall not affect the validity
87 of the written acknowledgment, in the absence of a finding by
88 a court of competent jurisdiction that the acknowledgment was
89 obtained by fraud, duress or material mistake of fact, as
90 provided in subdivision (4) of this subsection.

91 (3) The original written acknowledgment should be filed
92 with the state registrar of vital statistics. Upon receipt of any
93 acknowledgment executed pursuant to this section, the registrar
94 shall forward the copy of the acknowledgment to the bureau for
95 child support enforcement and the parents, if the address of the
96 parents is known to the registrar. If a birth certificate for the
97 child has been previously issued which is incorrect or incom-
98 plete, a new birth certificate shall be issued.

99 (4) An acknowledgment executed under the provisions of
100 this subsection may be rescinded as follows:

101 (A) The parent wishing to rescind the acknowledgment
102 shall file with the clerk of the circuit court of the county in
103 which the child resides a verified complaint stating the name of
104 the child, the name of the other parent, the date of the birth of
105 the child, the date of the signing of the affidavit, and a state-
106 ment that he or she wishes to rescind the acknowledgment of
107 the paternity. If the complaint is filed more than sixty days from
108 the date of execution or the date of an administrative or judicial
109 proceeding relating to the child in which the signatory is a
110 party, the complaint shall include specific allegations concern-
111 ing the elements of fraud, duress or material mistake of fact.

112 (B) The complaint shall be served upon the other parent as
113 provided in rule 4 of the West Virginia rules of civil procedure.

114 (C) The family law master shall hold a hearing within sixty
115 days of the service of process upon the other parent. If the
116 complaint was filed within sixty days of the date the acknowl-
117 edgment of paternity was executed, the court shall order the
118 acknowledgment to be rescinded without any requirement of a
119 showing of fraud, duress, or material mistake of fact. If the
120 complaint was filed more than sixty days from the date of
121 execution or the date of an administrative or judicial proceeding
122 relating to the child in which the signatory is a party, the court
123 may only set aside the acknowledgment upon a finding, by clear
124 and convincing evidence, that the acknowledgment was
125 executed under circumstances of fraud, duress or material
126 mistake of fact. The circuit clerk shall forward a copy of any
127 order entered pursuant to this proceeding to the state registrar
128 of vital statistics by certified mail.

§16-5-18b. Limitation on use of social security numbers.

1 A social security account number obtained in accordance
2 with the provisions of this article with respect to the filing of:

3 (1) A certificate of birth; (2) an application for a delayed
4 registration of birth; (3) a judicial order establishing a record of
5 birth; (4) an adoption order or decree; or (5) a certificate of
6 paternity shall not be transmitted to a clerk of the county
7 commission. The social security account number shall not
8 appear upon the public record of the register of births or upon
9 any certificate of birth registration issued by the state registrar,
10 local registrar, county clerk or other issuing authority, if any.
11 The social security account numbers shall be made available by
12 the state registrar to the bureau for child support enforcement
13 upon the request of the bureau, to be used solely in connection
14 with the enforcement of child support orders.

ARTICLE 5B. HOSPITALS AND SIMILAR INSTITUTIONS.

§16-5B-13. Hospital-based paternity program.

1 (a) Every public and private hospital licensed pursuant to
2 section two of this article and every birthing center licensed
3 pursuant to section two, article two-e of this chapter, that
4 provides obstetrical services in West Virginia shall participate
5 in the hospital-based paternity program.

6 (b) The bureau for child support enforcement as described
7 in article eighteen, chapter forty-eight of this code shall provide
8 all public and private hospitals and all birthing centers provid-
9 ing obstetric services in this state with:

10 (1) Information regarding the establishment of paternity;

11 (2) An acknowledgment of paternity fulfilling the require-
12 ments of subsection (i), section twelve, article five, chapter
13 sixteen of this code; and

14 (3) The telephone contact number for the bureau for child
15 support enforcement that a parent may call for further informa-
16 tion regarding the establishment of paternity.

17 (c) Prior to the discharge from any facility included in this
18 section of any mother who has given birth to a live infant, the
19 administrator, or his or her assignee, shall ensure that the
20 following materials are provided to any unmarried woman and
21 any person holding himself out to be the natural father of the
22 child:

23 (1) Information regarding the establishment of paternity;

24 (2) An acknowledgment of paternity fulfilling the require-
25 ments of subsection (i), section twelve, article five, chapter
26 sixteen of this code; and

27 (3) The telephone contact number for the bureau for child
28 support enforcement that a parent may call for further informa-
29 tion regarding the establishment of paternity.

30 (d) The bureau for child support enforcement shall notify
31 the state department of health of any failure of any hospital or
32 birthing center to conform with the requirements of this section.

33 (e) Any hospital or birthing center described in this article
34 should provide the information detailed in subsection (c) of this
35 section at any time when such facility is providing obstetrical
36 services.

CHAPTER 17B. MOTOR VEHICLE DRIVER'S LICENSES.

ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION AND RENEWAL.

§17B-2-10. Restricted licenses.

1 (a) The division upon issuing a driver's license shall have
2 authority whenever good cause appears to impose restrictions
3 suitable to the licensee's driving ability with respect to the type
4 of or special mechanical control devices required on a motor
5 vehicle which the licensee may operate or such other restric-
6 tions applicable to the licensee as the division may determine

7 to be appropriate to assure the safe operation of a motor vehicle
8 by the licensee.

9 (b) The division shall issue a restricted license to a person
10 who has failed to pay overdue child support or comply with
11 subpoenas or warrants relating to paternity or child support
12 proceedings, if a circuit court orders restrictions of the person's
13 license as provided in article fifteen, chapter forty-eight of this
14 code.

15 (c) The division may either issue a special restricted license
16 or may set forth such restrictions upon the usual license form.

17 (d) The division may upon receiving satisfactory evidence
18 of any violation of the restrictions of such license suspend or
19 revoke the same but the licensee shall be entitled to a hearing
20 as upon a suspension or revocation under this chapter.

21 (e) It is a misdemeanor for any person to operate a motor
22 vehicle in any manner in violation of the restrictions imposed
23 in a restricted license issued to such person.

CHAPTER 23. WORKERS' COMPENSATION.

ARTICLE 4. DISABILITY AND DEATH BENEFITS.

§23-4-13. Effect of abandonment of spouse.

§23-4-18. Mode of paying benefits generally; exemptions of compensation from legal process.

§23-4-13. Effect of abandonment of spouse.

1 Notwithstanding anything herein contained, no sum will be
2 paid to a widow or widower who abandoned the employee
3 before the injury causing death. However, the provisions of this
4 section may not be construed to preclude a widow or widower
5 from receiving compensation in accordance with section ten of
6 this article if the widow or widower was abandoned within a

7 period of two years by the employee for any reason except a
8 reason that would have entitled the deceased employee to an
9 annulment or a divorce as provided in articles three or five,
10 chapter forty-eight of this code.

§23-4-18. Mode of paying benefits generally; exemptions of compensation from legal process.

1 Except as provided by this section, compensation shall be
2 paid only to such employees or their dependents, and shall be
3 exempt from all claims of creditors and from any attachment,
4 execution or assignment other than compensation to counsel for
5 legal services, under the provisions of, and subject to the
6 limitations contained in section sixteen, article five of this
7 chapter, and other than for the enforcement of orders for child
8 or spousal support entered pursuant to the provisions of chapter
9 forty-eight of this code. Payments may be made in such
10 periodic installments as determined by the division in each
11 case, but in no event less frequently than semimonthly for any
12 temporary award and monthly for any permanent award.
13 Payments for permanent disability shall be paid on or before the
14 third day of the month in which they are due. In all cases where
15 compensation is awarded or increased, the amount thereof shall
16 be calculated and paid from the date of disability.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 22. STATE LOTTERY ACT.

§29-22-27a. Payment of prizes to the bureau for child support enforcement.

1 (a) Upon notification by the bureau for child support
2 enforcement that a person who is entitled to all or part of a
3 lottery prize is delinquent in the payment of child support or
4 spousal support, the director shall forward to the bureau for
5 child support enforcement the prize or portion to be distributed

6 directly from the state lottery office that is available to be
7 applied to the delinquent support payment.

8 (b) The director shall enter into a written agreement with
9 the bureau for child support enforcement for the purpose of
10 establishing a procedure for the collection of prizes as set forth
11 in subsection (a) of this section. The director shall include in
12 the agreement a method by which the bureau for child support
13 enforcement will receive the names of lottery winners as
14 expeditiously as possible.

CHAPTER 38. LIENS.

ARTICLE 8. EXEMPTIONS FROM LEVY.

§38-8-11. No exemption from claims for child or spousal support, purchase money or taxes.

1 No exemption claimed under the preceding sections of this
2 article, or any of them, shall affect or impair any claim for child
3 or spousal support established or enforced under the provisions
4 of chapter forty-eight of this code, the purchase money of the
5 personal estate in respect to which such exemption is claimed,
6 or any proceeding for the collection of taxes, or county or
7 district or municipal levies. Any increase in the exemption
8 provided by a prior enactment of other sections of this article
9 are not applicable to liens and all other debts and liabilities
10 contracted and incurred prior to the effective date of the prior
11 enactment of those sections.

CHAPTER 42. DESCENT AND DISTRIBUTION.

ARTICLE 1. DESCENT.

§42-1-5. From whom children born out of wedlock inherit.

1 (a) Children born out of wedlock shall be capable of
2 inheriting and transmitting inheritance on the part of their
3 mother and father.

4 (b) Prior to the death of the father, paternity shall be
5 established by:

6 (1) An acknowledgment that he is the child's father;

7 (2) An adjudication of paternity pursuant to the provisions
8 of article twenty-four, chapter forty-eight of this code; or

9 (3) An order of a court of competent jurisdiction issued in
10 another state.

11 (c) After the death of the father, paternity is established if,
12 after a hearing on the merits, the court finds, by clear and
13 convincing evidence, that the man is the father of the child. The
14 civil action must be filed in the circuit court of the county
15 where the administration of the decedent's estate has been filed
16 or could be filed:

17 (1) Within six months of the date of the final order of the
18 county commission admitting the decedent's will to probate or
19 commencing intestate administration of the estate; or

20 (2) If none of the above apply, within six months from the
21 date of decedent's death.

22 (d) Any putative child who at the time of the decedent's
23 death is under the age of eighteen years, a convict or a mentally
24 incapacitated person may file such civil action within six
25 months after he or she becomes of age or the disability ceases.

26 (e) The provisions of this section do not apply where the
27 putative child has been lawfully adopted by another man and
28 stands to inherit property or assets through his or her adopted
29 father.

30 (f) The provisions of this section do not apply where the
31 father or putative father has expressly disinherited the child in
32 a provision of his will.

CHAPTER 48. DOMESTIC RELATIONS.**Article**

1. **General Provisions; Definitions.**
2. **Marriage.**
3. **Annulment or Affirmation of Marriage.**
4. **Separate Maintenance.**
5. **Divorce.**
6. **Property Settlement or Separation Agreements.**
7. **Equitable Distribution of Property.**
8. **Spousal Support.**
9. **Custody of Children.**
10. **Grandparent Visitation.**
11. **Support of Children.**
12. **Medical Support.**
13. **Guidelines for Child Support Awards.**
14. **Remedies for the Enforcement or Support Obligations.**
15. **Enforcement of Support Order through Action Against License.**
16. **Uniform Interstate Family Support Act.**
17. **West Virginia Support Enforcement Commission.**
18. **Bureau for Child Support Enforcement.**
19. **Bureau for Child Support Enforcement Attorney.**
20. **Uniform Child Custody Jurisdiction and Enforcement Act.**
21. **[Reserved.]**
22. **Adoption.**
23. **Voluntary Adoption Registry.**
24. **Establishment of Paternity.**
25. **Change of Name.**
26. **Domestic Violence Act.**
27. **Prevention and Treatment of Domestic Violence.**
28. **[Reserved.]**
29. **Property, Rights and Liabilities of Married Women; Husband and Wife.**
30. **Proceeding Before a Family Law Master.**

ARTICLE 1. GENERAL PROVISIONS; DEFINITIONS.

- §48-1-101. Short title; intent of recodification.
- §48-1-102. Legislative intent; continuation of existing statutory provisions.
- §48-1-103. Operative date of enactment; effect on existing law.
- §48-1-104. West Virginia code replacement.
- §48-1-201. Applicability of definitions.
- §48-1-202. Adjusted gross income defined.

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- §48-1-231. 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 defined.
- §48-1-232. Legal parent defined.
- §48-1-233. Marital property defined.
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- §48-1-239. Shared physical custody defined.
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- §48-1-243. Spousal support in gross defined.
- §48-1-244. Support defined.
- §48-1-245. Support order defined.
- §48-1-246. Unreimbursed health care expenses defined.
- §48-1-247. Work-related child care costs defined.
- §48-1-301. Communications between clergy and party.
- §48-1-302. Calculation of interest.
- §48-1-303. Confidentiality of domestic relations court files.
- §48-1-304. Proceedings in contempt.
- §48-1-305. Suit money, counsel fees and costs.
- §48-1-306. Proceeding for release of support lien.

PART 1. GENERAL PROVISIONS.

§48-1-101. Short title; intent of recodification.

1 (a) This chapter sets forth the “West Virginia Domestic
2 Relations Act.”

3 (b) The recodification of this chapter during the regular
4 session of the Legislature in the year 2001 is intended to
5 embrace in a revised, consolidated, and codified form and
6 arrangement the laws of the state of West Virginia relating to
7 domestic relations at the time of that enactment.

§48-1-102. Legislative intent; continuation of existing statutory provisions.

1 In recodifying the domestic relations law of this state
2 during the regular session of the Legislature in the year 2001
3 through the passage of House Bill 2199 it is intended by the
4 Legislature that each specific reenactment of a substantively
5 similar prior statutory provision will be construed as continuing
6 the intended meaning of the corresponding prior statutory
7 provision and any existing judicial interpretation of the prior
8 statutory provision. It is not the intent of the Legislature, by
9 recodifying the domestic relations law of this state during the
10 regular session of the Legislature in the year 2001 through the
11 passage of House Bill 2199 to alter the substantive law of this
12 state as it relates to domestic relations.

§48-1-103. Operative date of enactment; effect on existing law.

1 The amendment and reenactment of chapter forty-eight of
2 this code and the repeal of chapters forty-eight-a, forty-eight-b
3 and forty-eight-c of this code pursuant to the provisions of
4 Enrolled Committee Substitute for House Bill No. 2199, as
5 enacted by the Legislature during the regular session, 2001, are
6 operative on the first day of September, two thousand one. The
7 prior enactments of chapters forty-eight, forty-eight-a, forty-
8 eight-b and forty-eight-c of this code, whether amended and
9 reenacted or repealed by the passage of Enrolled Committee
10 Substitute for House Bill No. 2199 have full force and effect
11 until the provisions of Enrolled Committee Substitute for House
12 Bill No. 2199 are operative on the first day of September, two
13 thousand one, unless after the effective date of Enrolled
14 Committee Substitute for House Bill No. 2199 and prior to the
15 operative date of the first day of September, two thousand one,
16 the provisions of Enrolled Committee Substitute for House Bill
17 No. 2199 are otherwise repealed or amended and reenacted.

§48-1-104. West Virginia code replacement.

1 The department of health and human resources is not
2 required to change any form or letter that contains a citation to
3 this code that is changed or otherwise affected by the
4 recodification of this chapter during the regular session of the
5 Legislature in the year 2001 through the passage of Committee
6 Substitute for House Bill 2199, unless specifically required by
7 a provision of this code.

PART 2. DEFINITIONS.**§48-1-201. Applicability of definitions.**

1 For the purposes of this chapter the words or terms defined
2 in this article, and any variation of those words or terms
3 required by the context, have the meanings ascribed to them in

4 this article. These definitions are applicable unless a different
5 meaning clearly appears from the context.

§48-1-202. Adjusted gross income defined.

1 (a) “Adjusted gross income” means gross income less the
2 payment of previously ordered child support, spousal support
3 or separate maintenance.

4 (b) A further deduction from gross income for additional
5 dependents may be allowed by the court or master if the parent
6 has legal dependents other than those for whom support is being
7 determined. An adjustment may be used in the establishment of
8 a child support order or in a review of a child support order.
9 However, in cases where a modification is sought, the adjust-
10 ment should not be used to the extent that it results in a support
11 amount lower than the previously existing order for the children
12 who are the subject of the modification. The court or master
13 may elect to use the following adjustment because it allots
14 equitable shares of support to all of the support obligor’s legal
15 dependents. Using the income of the support obligor only,
16 determine the basic child support obligation (from the table of
17 basic child support obligations in section 13-301 of this
18 chapter) for the number of additional legal dependents living
19 with the support obligor. Multiply this figure by 0.75 and
20 subtract this amount from the support obligor’s gross income.

21 (c) As used in this section, the term “legal dependents”
22 means:

23 (1) Minor natural or adopted children who live with the
24 parent; and

25 (2) Natural or adopted adult children who are totally
26 incapacitated because of physical or emotional disabilities and
27 for whom the parent owes a duty of support.

§48-1-203. Antenuptial or prenuptial agreement defined.

1 “Antenuptial agreement” or “prenuptial agreement” means
2 an agreement between a man and woman before marriage, but
3 in contemplation and generally in consideration of marriage, by
4 which the property rights and interests of the prospective
5 husband and wife, or both of them, are determined, or where
6 property is secured to either or both of them, to their separate
7 estate, or to their children or other persons. An antenuptial
8 agreement may include provisions that define the respective
9 property rights of the parties during the marriage, or upon the
10 death of either or both of the parties. The agreement may
11 provide for the disposition of marital property upon an annul-
12 ment of the marriage or a divorce or separation of the parties.
13 A prenuptial agreement is void if at the time it is made either of
14 the parties is a minor.

§48-1-204. Arrearages or past due support defined.

1 “Arrearages” or “past due support” means the total of any
2 matured, unpaid installments of child support required to be
3 paid by an order entered or modified by a court of competent
4 jurisdiction, or by the order of a magistrate court of this state,
5 and shall stand, by operation of law, as a decretal judgment
6 against the obligor owing such support. The amount of unpaid
7 support shall bear interest from the date it accrued, at a rate of
8 ten dollars upon one hundred dollars per annum, and propor-
9 tionately for a greater or lesser sum, or for a longer or shorter
10 time. Except as provided in rule 23 of rules of practice and
11 procedure for family law and as provided in section 1-302, a
12 child support order may not be retroactively modified so as to
13 cancel or alter accrued installments of support.

§48-1-205. Attributed income defined.

1 (a) “Attributed income” means income not actually earned
2 by a parent, but which may be attributed to the parent because
3 he or she is unemployed, is not working full time, or is working

4 below full earning capacity, or has nonperforming or un-
5 der-performing assets. Income may be attributed to a parent if
6 the court or master evaluates the parent's earning capacity in
7 the local economy (giving consideration to relevant evidence
8 that pertains to the parent's work history, qualifications,
9 education and physical or mental condition) and determines that
10 the parent is unemployed, is not working full time, or is
11 working below full earning capacity. Income may also be
12 attributed to a parent if the court or master finds that the obligor
13 has nonperforming or under-performing assets.

14 (b) If an obligor: (1) Voluntarily leaves employment or
15 voluntarily alters his or her pattern of employment so as to be
16 unemployed, underemployed or employed below full earning
17 capacity; (2) is able to work and is available for full-time work
18 for which he or she is fitted by prior training or experience; and
19 (3) is not seeking employment in the manner that a reasonably
20 prudent person in his or her circumstances would do, then an
21 alternative method for the court or master to determine gross
22 income is to attribute to the person an earning capacity based on
23 his or her previous income. If the obligor's work history,
24 qualifications, education or physical or mental condition cannot
25 be determined, or if there is an inadequate record of the
26 obligor's previous income, the court or master may, as a
27 minimum, base attributed income on full-time employment (at
28 forty hours per week) at the federal minimum wage in effect at
29 the time the support obligation is established.

30 (c) Income shall not be attributed to an obligor who is
31 unemployed or underemployed or is otherwise working below
32 full earning capacity if any of the following conditions exist:

33 (1) The parent is providing care required by the children to
34 whom the parties owe a joint legal responsibility for support,
35 and such children are of preschool age or are handicapped or
36 otherwise in a situation requiring particular care by the parent;

37 (2) The parent is pursuing a plan of economic
38 self-improvement which will result, within a reasonable time,
39 in an economic benefit to the children to whom the support
40 obligation is owed, including, but not limited to,
41 self-employment or education: *Provided*, That if the parent is
42 involved in an educational program, the court or master shall
43 ascertain that the person is making substantial progress toward
44 completion of the program;

45 (3) The parent is, for valid medical reasons, earning an
46 income in an amount less than previously earned; or

47 (4) The court or master makes a written finding that other
48 circumstances exist which would make the attribution of
49 income inequitable: *Provided*, That in such case, the court or
50 master may decrease the amount of attributed income to an
51 extent required to remove such inequity.

52 (d) The court or master may attribute income to a parent's
53 nonperforming or under-performing assets, other than the
54 parent's primary residence. Assets may be considered to be
55 nonperforming or under-performing to the extent that they do
56 not produce income at a rate equivalent to the current six-month
57 certificate of deposit rate, or such other rate that the court or
58 master determines is reasonable.

**§48-1-206. Automatic data processing and retrieval system
defined.**

1 “Automatic data processing and retrieval system” means a
2 computerized data processing system designed to do the
3 following:

4 (1) To control, account for and monitor all of the factors in
5 the support enforcement collection and paternity determination
6 process, including, but not limited to:

7 (A) Identifiable correlation factors (such as social security
8 numbers, names, dates of birth, home addresses and mailing
9 addresses of any individual with respect to whom support
10 obligations are sought to be established or enforced and with
11 respect to any person to whom such support obligations are
12 owing) to assure sufficient compatibility among the systems of
13 different jurisdictions to permit periodic screening to determine
14 whether such individual is paying or is obligated to pay support
15 in more than one jurisdiction;

16 (B) Checking of records of such individuals on a periodic
17 basis with federal, interstate, intrastate and local agencies;

18 (C) Maintaining the data necessary to meet applicable
19 federal reporting requirements on a timely basis; and

20 (D) Delinquency and enforcement activities;

21 (2) To control, account for and monitor the collection and
22 distribution of support payments (both interstate and intrastate)
23 the determination, collection and distribution of incentive
24 payments (both interstate and intrastate), and the maintenance
25 of accounts receivable on all amounts owed, collected and
26 distributed;

27 (3) To control, account for and monitor the costs of all
28 services rendered, either directly or by exchanging information
29 with state agencies responsible for maintaining financial
30 management and expenditure information;

31 (4) To provide access to the records of the department of
32 health and human resources in order to determine if a collection
33 of a support payment causes a change affecting eligibility for or
34 the amount of aid under such program;

35 (5) To provide for security against unauthorized access to,
36 or use of, the data in such system;

37 (6) To facilitate the development and improvement of the
38 income withholding and other procedures designed to improve
39 the effectiveness of support enforcement through the monitor-
40 ing of support payments, the maintenance of accurate records
41 regarding the payment of support and the prompt provision of
42 notice to appropriate officials with respect to any arrearage in
43 support payments which may occur; and

44 (7) To provide management information on all cases from
45 initial referral or application through collection and enforce-
46 ment.

§48-1-207. Basic child support obligation defined.

1 “Basic child support obligation” means the base amount of
2 child support due by both parents as determined by the table of
3 basic child support obligations set forth in section 13-301 of
4 this chapter, based upon the combined adjusted gross income of
5 the parents and the number of children to whom support is due.

§48-1-208. Bureau for child support enforcement defined.

1 “Bureau for child support enforcement” means the agency
2 created under the provisions of article eighteen of this chapter,
3 or any public or private entity or agency contracting to provide
4 a service. The “bureau for child support enforcement” is that
5 agency intended by the Legislature to be the single and separate
6 organizational unit of state government administering programs
7 of child and spousal support enforcement and meeting the
8 staffing and organizational requirements of the secretary of the
9 federal department of health and human services. A reference
10 in this chapter and elsewhere in this code to the “child advocate
11 office” or the child support enforcement division shall be
12 interpreted to refer to the bureau for child support enforcement.

**§48-1-209. Bureau for child support enforcement attorney de-
fined.**

1 “Bureau for child support enforcement attorney” means
2 those persons or agencies or entities providing services under
3 the direction of or pursuant to a contract with the bureau for
4 child support enforcement as provided in article eighteen of this
5 chapter.

§48-1-210. Caretaker and caretaking functions defined.

1 (a) “Caretaker” means a person who performs one or more
2 caretaking functions for a child. The term “caretaking func-
3 tions” means activities that involve interaction with a child and
4 the care of a child. Caretaking functions also include the
5 supervision and direction of interaction and care provided by
6 other persons.

7 (b) Caretaking functions include the following:

8 (1) Performing functions that meet the daily physical needs
9 of the child. These functions include, but are not limited to, the
10 following:

11 (A) Feeding;

12 (B) Dressing;

13 (C) Bedtime and wake-up routines;

14 (D) Caring for the child when sick or hurt;

15 (E) Bathing and grooming;

16 (F) Recreation and play;

17 (G) Physical safety; and

18 (H) Transportation.

19 (2) Direction of the child's various developmental needs,
20 including the acquisition of motor and language skills, toilet
21 training, self-confidence and maturation;

22 (3) Discipline, instruction in manners, assignment and
23 supervision of chores and other tasks that attend to the child's
24 needs for behavioral control and self-restraint;

25 (4) Arrangements for the child's education, including
26 remedial or special services appropriate to the child's needs and
27 interests, communication with teachers and counselors and
28 supervision of homework;

29 (5) The development and maintenance of appropriate
30 interpersonal relationships with peers, siblings and adults;

31 (6) Arrangements for health care, which includes making
32 medical appointments, communicating with health care
33 providers and providing medical follow-up and home health
34 care;

35 (7) Moral guidance; and

36 (8) Arrangement of alternative care by a family member,
37 baby-sitter or other child care provider or facility, including
38 investigation of alternatives, communication with providers and
39 supervision.

§48-1-211. Chief judge defined.

1 "Chief judge" means the circuit judge of the circuit court in
2 a judicial circuit that has only one circuit judge, or the chief
3 judge of the circuit court in a judicial circuit that has two or
4 more circuit judges.

§48-1-212. Clergy defined.

1 “Clergy” includes a minister, priest, rabbi or other clergy
2 who has qualified as such before the county commission or the
3 clerk of the county commission as provided for in section 2-402
4 of this chapter.

§48-1-213. Combined adjusted gross income defined.

1 “Combined adjusted gross income” means the combined
2 monthly adjusted gross incomes of both parents.

§48-1-214. Commissioner defined.

1 “Commissioner” means any person appointed pursuant to
2 section 18-102, who directs all child support establishment and
3 enforcement services for the bureau for child support enforce-
4 ment.

§48-1-215. Contingent fee agreement defined.

1 (a) “Contingent fee agreement” means a contract under
2 which an attorney may be compensated for work in progress,
3 dependent on the occurrence of some future event which is not
4 certain and absolute. As such, a contingent fee agreement is not
5 an asset, but is potential income or income capacity. This
6 potential income may have current value, and a portion of that
7 current value, if any, may be considered to be a marital asset. In
8 the event a party seeks to quantify the current value of a
9 particular contingent fee agreement for the purpose of establish-
10 ing the value of the agreement as marital property, the court
11 must find that the party has proved such value by a preponder-
12 ance of the evidence. Factors to be considered by the court
13 include, but are not limited to, the following:

14 (1) The nature of the particular case or claim which
15 underlies the agreement;

16 (2) The jurisdiction or venue of any projected trial or
17 proceeding;

18 (3) Any historical data relevant to verdicts or settlements
19 within the jurisdiction where the case or claim is pending or
20 may be brought;

21 (4) The terms and particulars of the agreement;

22 (5) The status of the case or claim at valuation date;

23 (6) The amount of time spent working on the case or claim
24 prior to the valuation date, and an analysis of the nature of how
25 that time was spent, including, but not limited to, such activities
26 such as investigation, research, discovery, trial or appellate
27 practice;

28 (7) The extent of the person's active role in the work in
29 process, whether as an actual participant or as an indirect
30 participant such as a partner, local counsel or other ancillary
31 role;

32 (8) The age of the case or claim;

33 (9) The expenses accrued or projected to bring the case or
34 claim to resolution, including any office overhead attributable
35 to case or claim; and

36 (10) The probable tax consequences attendant to a success-
37 ful resolution of the case or claim.

38 (b) The provisions of this section as enacted during the
39 regular session of the Legislature, one thousand nine hundred
40 ninety-six, are to be applied prospectively and shall have no
41 application to any action for annulment, divorce or separate
42 maintenance that was commenced on or before June 7, 1996.

§48-1-216. Court defined.

1 “Court” means a circuit court of this state, unless the
2 context in which such term is used clearly indicates that
3 reference to some other court is intended.

§48-1-217. Court of competent jurisdiction defined.

1 “Court of competent jurisdiction” means a circuit court
2 within this state or a court or administrative agency of another
3 state having jurisdiction and due legal authority to deal with the
4 subject matter of the establishment and enforcement of support
5 obligations. Whenever in this chapter reference is made to an
6 order of a court of competent jurisdiction, or similar wording,
7 such language shall be interpreted so as to include orders of an
8 administrative agency entered in a state where enforceable
9 orders may by law be properly made and entered by such
10 administrative agency.

§48-1-218. Custodial parent defined.

1 “Custodial parent” or “custodial parent of a child” means a
2 parent who has been granted custody of a child by a court of
3 competent jurisdiction. “Noncustodial parent” means a parent
4 of a child with respect to whom custody has been adjudicated
5 with the result that such parent has not been granted custody of
6 the child.

§48-1-219. Custodial responsibility defined.

1 “Custodial responsibility” refers to physical custodianship
2 and supervision of a child. It usually includes, but does not
3 necessarily require, the exercise of residential or overnight
4 responsibility.

§48-1-220. Decision-making responsibility defined.

1 “Decision-making responsibility” refers to authority for
2 making significant life decisions on behalf of a child, including,
3 but not limited to, the child’s education, spiritual guidance and
4 health care.

§48-1-221. Divorce defined.

1 “Divorce” means the judicial termination of a marriage
2 contract. The termination of a marriage contract must be based
3 on misconduct or other statutory cause arising after the mar-
4 riage. A divorce is established by the order of a circuit court
5 that changes the status of a husband and wife from a state of
6 marriage to that of single persons.

***§48-1-222. Domestic relations action defined.**

1 “Domestic relations action” means an action:

2 (1) To obtain a divorce;

3 (2) To have a marriage annulled;

4 (3) To be granted separate maintenance;

5 (4) To establish paternity;

6 (5) To establish and enforce child support, including actions
7 brought under the provisions of the uniform interstate family
8 support act; and

9 (6) To allocate custodial responsibility and determine
10 decision-making responsibility, or to otherwise determine child
11 custody, as in an action petitioning for a writ of habeas corpus
12 wherein the issue is child custody.

§48-1-223. Earnings defined.

***Clerk’s Note:** This section was also amended by S. B. 652 (Chapter 93), which passed subsequent to this act.

1 “Earnings” means compensation paid or payable for
2 personal services, whether denominated as wages, salary,
3 commission, bonus, or otherwise, and includes periodic
4 payments pursuant to a pension or retirement program.
5 “Disposable earnings” means that part of the earnings of any
6 individual remaining after the deduction from those earnings of
7 any amounts required by law to be withheld.

§48-1-224. Employer defined.

1 “Employer” means any individual, sole proprietorship,
2 partnership, association, public or private corporation, the
3 United States or any federal agency, this state or any political
4 subdivision of this state, any other state or a political subdivi-
5 sion of another state and any other legal entity which hires and
6 pays an individual for his services.

§48-1-225. Extraordinary medical expenses defined.

1 “Extraordinary medical expenses” means uninsured
2 medical expenses in excess of two hundred fifty dollars per year
3 per child which are recurring and can reasonably be predicted
4 by the court or master at the time of establishment or modifica-
5 tion of a child support order. Such expenses shall include, but
6 not be limited to, insurance copayments and deductibles,
7 reasonable costs for necessary orthodontia, dental treatment,
8 asthma treatments, physical therapy, vision therapy and eye
9 care, and any uninsured chronic health problem.

§48-1-226. Family law master defined.

1 “Family law master” means a commissioner of the circuit
2 court appointed or elected and authorized to hear certain
3 domestic relations actions under section 51-2A-10 of this code.

§48-1-227. Final divorce or final annulment order defined.

1 “Final divorce order” or “final annulment order” means an
2 order that grants or denies the judicial termination of a marriage
3 contract.

§48-1-228. Gross income defined.

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 1-205;

27 (6) An amount equal to fifty percent of the average com-
28 pensation paid for personal services as overtime compensation
29 during the preceding thirty-six months: *Provided*, That overtime
30 compensation may be excluded from gross income if the parent
31 with the overtime income demonstrates to the court that the
32 overtime work is voluntarily performed and that he or she did
33 not have a previous pattern of working overtime hours prior to
34 separation or the birth of a nonmarital child;

35 (7) Income from self-employment or the operation of a
36 business, minus ordinary and necessary expenses which are not
37 reimbursable, and which are lawfully deductible in computing
38 taxable income under applicable income tax laws, and minus
39 FICA and medicare contributions made in excess of the amount
40 that would be paid on an equal amount of income if the parent
41 was not self-employed: *Provided*, That the amount of monthly
42 income to be included in gross income shall be determined by
43 averaging the income from such employment during the
44 previous thirty-six-month period or during a period beginning
45 with the month in which the parent first received such income,
46 whichever period is shorter;

47 (8) Income from seasonal employment or other sporadic
48 sources: *Provided*, That the amount of monthly income to be
49 included in gross income shall be determined by averaging the
50 income from seasonal employment or other sporadic sources
51 received during the previous thirty-six-month period or during
52 a period beginning with the month in which the parent first
53 received such compensation, whichever period is shorter; and

54 (9) Spousal support and separate maintenance receipts.

55 (c) Depending on the circumstances of the particular case,
56 the court may also include severance pay, capital gains and net
57 gambling, gifts or prizes as gross income.

58 (d) "Gross income" does not include:

59 (1) Income received by other household members such as
60 a new spouse;

61 (2) Child support received for the children of another
62 relationship;

63 (3) Means-tested assistance such as temporary assistance
64 for needy families, supplemental security income and food
65 stamps; and

66 (4) A child's income unless the court determines that the
67 child's income substantially reduces the family's living
68 expenses.

§48-1-229. Guardian of the property of a child defined.

1 "Guardian of the property of a child" means a person
2 lawfully invested with the power, and charged with the duty, of
3 managing and controlling the estate of a child.

§48-1-230. Income defined.

1 "Income" includes, but is not limited to, the following:

2 (1) Commissions, earnings, salaries, wages, and other
3 income due or to be due in the future to an individual from his
4 or her employer and successor employers;

5 (2) Any payment due or to be due in the future to an
6 individual from a profit-sharing plan, a pension plan, an
7 insurance contract, an annuity, social security, unemployment
8 compensation, supplemental employment benefits, workers'

9 compensation benefits, state lottery winnings and prizes, and
10 overtime pay;

11 (3) Any amount of money which is owing to an individual
12 as a debt from an individual, partnership, association, public or
13 private corporation, the United States or any federal agency,
14 this state or any political subdivision of this state, any other
15 state or a political subdivision of another state, or any other
16 legal entity which is indebted to the obligor.

**§48-1-231. 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 defined.**

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 bureau for child support enforcement and who
6 is the parent of a child, or the caretaker of a child, or the
7 guardian of the property of a child when:

8 (A) The child has a parent and child relationship with an
9 obligor who is not a custodial parent, a caretaker or a guardian;
10 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 bureau for child support enforcement 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 spousal support or separate maintenance, or is
20 identified by some other terminology, thus establishing a
21 support obligation with respect to such spouse, when the
22 obligor required to pay such spousal support is not meeting the
23 obligation, or has 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 bureau for child support
30 enforcement, if the individual filing the action is otherwise
31 eligible for such services: *Provided*, That any such individual
32 has the option to decline the receipt of such services.

§48-1-232. Legal parent defined.

1 “Legal parent” means an individual defined as a parent, by
2 law, on the basis of biological relationship, presumed biological
3 relationship, legal adoption or other recognized grounds.

§48-1-233. Marital property defined.

1 “Marital property” means:

2 (1) All property and earnings acquired by either spouse
3 during a marriage, including every valuable right and interest,
4 corporeal or incorporeal, tangible or intangible, real or personal,
5 regardless of the form of ownership, whether legal or benefi-
6 cial, whether individually held, held in trust by a third party, or
7 whether held by the parties to the marriage in some form of co-
8 ownership such as joint tenancy or tenancy in common, joint
9 tenancy with the right of survivorship, or any other form of
10 shared ownership recognized in other jurisdictions without this

11 state, except that marital property does not include separate
12 property as defined in section 1-238; and

13 (2) The amount of any increase in value in the separate
14 property of either of the parties to a marriage, which increase
15 results from: (A) an expenditure of funds which are marital
16 property, including an expenditure of such funds which reduces
17 indebtedness against separate property, extinguishes liens, or
18 otherwise increases the net value of separate property; or (B)
19 work performed by either or both of the parties during the
20 marriage.

21 The definition of “marital property” contained in this
22 section has no application outside of the provisions of this
23 article, and the common law as to the ownership of the respec-
24 tive property and earnings of a husband and wife, as altered by
25 the provisions of article 29 of this chapter and other provisions
26 of this code, are not abrogated by implication or otherwise,
27 except as expressly provided for by the provisions of this article
28 as such provisions are applied in actions brought under this
29 article or for the enforcement of rights under this article.

§48-1-234. Obligee defined.

1 “Obligee” means:

2 (1) An individual to whom a duty of support is or is alleged
3 to be owed or in whose favor a support order has been issued or
4 a judgment determining parentage has been rendered;

5 (2) A state or political subdivision to which the rights under
6 a duty of support or support order have been assigned or which
7 has independent claims based on financial assistance provided
8 to an individual obligee; or

9 (3) An individual seeking a judgment determining parent-
10 age of the individual’s child.

§48-1-235. Obligor defined.

1 “Obligor” means an individual or the estate of a decedent:

2 (1) Who owes or is alleged to owe a duty of support;

3 (2) Who is alleged, but has not been adjudicated, to be a
4 parent of a child; or

5 (3) Who is liable under a support order.

§48-1-236. Secretary defined.

1 “Secretary” means the secretary of the department of health
2 and human resources.

§48-1-237. Separate property defined.

1 “Separate property” means:

2 (1) Property acquired by a person before marriage;

3 (2) Property acquired by a person during marriage in
4 exchange for separate property which was acquired before the
5 marriage;

6 (3) Property acquired by a person during marriage, but
7 excluded from treatment as marital property by a valid agree-
8 ment of the parties entered into before or during the marriage;

9 (4) Property acquired by a party during marriage by gift,
10 bequest, devise, descent or distribution;

11 (5) Property acquired by a party during a marriage but after
12 the separation of the parties and before ordering an annulment,
13 divorce or separate maintenance; or

14 (6) Any increase in the value of separate property as
15 defined in subdivision (1), (2), (3), (4) or (5) of this section
16 which is due to inflation or to a change in market value result-
17 ing from conditions outside the control of the parties.

§48-1-238. Separation defined.

1 “Separation” or “separation of the parties” means the
2 uninterrupted separation of a husband and wife for some
3 continuous period of time during which they do not cohabit or
4 otherwise live together as husband and wife. When a separation
5 is required as a predicate for filing an action under this article,
6 the separation must continue through the date of filing.

***§48-1-239. Shared physical custody defined.**

1 “Shared physical custody” means an arrangement under
2 which each parent keeps a child or children overnight for more
3 than thirty-five percent of the year and under which both
4 parents contribute to the expenses of the child or children in
5 addition to the payment of child support.

§48-1-240. Source of income defined.

1 “Source of income” means an employer or successor
2 employer or any other person who owes or will owe income to
3 an obligor.

§48-1-241. Split Physical custody defined.

1 “Split physical custody” means a situation where there is
2 more than one child and where each parent has physical custody
3 of at least one child.

§48-1-242. Spousal support defined.

1 “Spousal support” means an allowance that a person may
2 be ordered to pay for the support and maintenance of a spouse

***Clerk’s Note:** This section was also amended by S. B. 652 (Chapter 93), which passed subsequent to this act.

- 3 or a former spouse, while they are living separate and apart or
- 4 after an order for divorce, annulment or separate maintenance.

§48-1-243. Spousal support in gross defined.

- 1 “Spousal support in gross” means spousal support payable
- 2 either in a lump sum, or in periodic payments of a definite
- 3 amount over a specific period of time. A spousal support award
- 4 is “spousal support in gross” only if the award grants spousal
- 5 support in such terms that a determination can be made of the
- 6 total amount to be paid as well as the time such payments will
- 7 cease.

§48-1-244. Support defined.

- 1 “Support” means the payment of money, including interest:

- 2 (1) For a child or spouse, ordered by a court of competent
- 3 jurisdiction, whether the payment is ordered in an emergency,
- 4 temporary, permanent or modified order, the amount of unpaid
- 5 support shall bear simple interest from the date it accrued, at a
- 6 rate of ten dollars upon one hundred dollars per annum, and
- 7 proportionately for a greater or lesser sum, or for a longer or
- 8 shorter time;

- 9 (2) To third parties on behalf of a child or spouse, includ-
- 10 ing, but not limited to, payments to medical, dental or educa-
- 11 tional providers, payments to insurers for health and hospital-
- 12 ization insurance, payments of residential rent or mortgage
- 13 payments, payments on an automobile or payments for day
- 14 care; or

- 15 (3) For a mother, ordered by a court of competent jurisdic-
- 16 tion, for the necessary expenses incurred by or for the mother
- 17 in connection with her confinement or of other expenses in
- 18 connection with the pregnancy of the mother.

§48-1-245. Support order defined.

1 (a) For cases being enforced pursuant to Title IV-D of the
2 Social Security Act, “support order” means a judgment, decree
3 or order, whether temporary, final, or subject to modification,
4 issued by a court or an administrative agency of competent
5 jurisdiction, for the support and maintenance of a child,
6 including a child who has attained the age of majority under the
7 law of the issuing state, or a child and the parent with whom the
8 child is living, which provides for monetary support, health
9 care, arrearage or reimbursements, and which may include
10 related costs and fees, interest and penalties, income withhold-
11 ing, attorneys’ fees and other relief.

12 (b) For all other cases, “support order” means an order as
13 defined in subsection (a) of this section and, in addition, an
14 order for the support and maintenance of a spouse or former
15 spouse.

§48-1-246. Unreimbursed health care expenses defined.

1 “Unreimbursed health care expenses” means the child’s
2 portion of health insurance premiums and extraordinary
3 medical expenses.

§48-1-247. Work-related child care costs defined.

1 “Work-related child care costs” shall mean the cost of child
2 care the parent incurs due to employment or the search for
3 employment.

PART 3. MISCELLANEOUS PROVISIONS
RELATING TO DOMESTIC RELATIONS.

§48-1-301. Communications between clergy and party.

1 (a) A party to a domestic relations action cannot compel a
2 member of the clergy to testify regarding any communications
3 or statements made to the member of the clergy in his or her

4 capacity as spiritual counselor or spiritual adviser by a party to
5 the action, if the following conditions exist:

6 (1) Both the clergy and the party making such communica-
7 tions or statements claim that the communications or statements
8 were made to the clergy in his capacity as a clergy and spiritual
9 counselor or spiritual adviser to such party;

10 (2) No person, other than a member of the clergy, a party
11 and the spouse of the party, was present when such communica-
12 tions or statements were made; and

13 (3) The party making such communications or statements
14 does not either consent to their disclosure or otherwise waive
15 the privilege granted by this section.

16 (b) The privilege granted by this section shall be in addition
17 to and not in derogation of any other privileges recognized by
18 law.

***§48-1-302. 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 56-6-31 of this
3 code. Interest accrues only upon the outstanding principal of
4 such obligation. On and after the ninth day of June, one
5 thousand nine hundred ninety-five, this section will be con-
6 strued to permit the accumulation of simple interest, and may
7 not be construed to permit the compounding of interest. Interest
8 which accrued on unpaid installments accruing before the ninth
9 day of June, one thousand nine hundred ninety-five, may not be
10 modified by any court, irrespective of whether such installment
11 accrued simple or compound interest: *Provided*, That unpaid
12 installments upon which interest was compounded before the
13 effective date of this section shall accrue only simple interest
14 thereon on and after the ninth day of June, one thousand nine
15 hundred ninety-five.

***Clerk's Note:** This section was also amended by S. B. 652 (Chapter 93), which passed subsequent to this act.

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.

25 (c) Upon written agreement by both parties, an obligor may
26 petition the court to enter an order conditionally suspending the
27 collection of all or part of the interest that has accrued on past
28 due child support prior to the date of the agreement: *Provided,*
29 That said agreement shall also establish a reasonable payment
30 plan which is calculated to fully discharge all arrearages within
31 twenty-four months. Upon successful completion of the
32 payment plan, the court shall enter an order which permanently
33 relieves the obligor of the obligation to pay the accrued interest.
34 If the obligor fails to comply with the terms of the written
35 agreement, then the court shall enter an order which reinstates
36 the accrued interest. Any proceeding commenced pursuant to
37 the provisions of this subsection may only be filed after the first
38 day of January, two thousand one and before the thirty-first day
39 of December, two thousand one.

§48-1-303. Confidentiality of domestic relations court files.

1 (a) All orders in domestic relations actions entered in the
2 civil order books by circuit clerks are public records.

3 (b) Upon the filing of a domestic relations action, all
4 pleadings, exhibits or other documents, other than orders, that
5 are contained in the court file are confidential and not open for
6 public inspection either during the pendency of the case or after
7 the case is closed.

8 (c) When sensitive information has been disclosed during
9 a hearing or in pleadings, evidence, or documents filed in the
10 record, a circuit judge or family law master may, sua sponte or
11 upon motion of a party, order such information sealed in the
12 court file. Sealed documents or court files can only be opened
13 by order of a circuit judge or family law master.

14 (d) The parties, their designees, their attorneys, a duly
15 appointed guardian ad litem or any other person who has
16 standing to seek modification or enforcement of a support
17 order, has the right to examine and copy any document in a
18 confidential court file that has not been sealed by order of a
19 circuit judge or family law master. Upon motion and for good
20 cause shown, the circuit court or family law master may permit
21 a person who is not a party to the action to examine and copy
22 any documents that are necessary to further the interests of
23 justice.

24 (e) The clerk of the circuit court shall keep a written log of
25 all persons who examine confidential documents as provided
26 for in this section. Every person who examines confidential
27 documents shall first sign the clerk's written log, except for a
28 circuit judge or family law master before whom the case is
29 pending, or court personnel acting within the scope of their
30 duties. The clerk shall record the time and date of every
31 examination of confidential documents. The log must be
32 retained by the clerk and must be available upon request for
33 inspection by the court or the family law master.

***§48-1-304. Proceedings in contempt.**

1 (a) Upon a verified petition for contempt, notice of hearing
2 and hearing, if the petition alleges criminal contempt or the
3 court informs the parties that the matter will be treated and tried
4 as a criminal contempt, the matter shall be tried before a jury,
5 unless the party charged with contempt shall knowingly and

***Clerk's Note:** This section was also amended by S. B. 652 (Chapter 93), which passed subsequent to this act.

6 intelligently waive the right to a jury trial with the consent of
7 the court and the other party. If the jury, or the court sitting
8 without a jury, shall find the defendant in contempt for willfully
9 failing to comply with an order of the court made pursuant to
10 the provisions of this article, as charged in the petition, the
11 court may find the person to be in criminal contempt and may
12 commit such person to the county jail for a determinate period
13 not to exceed six months.

14 (b) If trial is had under the provisions of subsection (a) of
15 this section and the court elects to treat a finding of criminal
16 contempt as a civil contempt, or if the petition alleges civil
17 contempt and the matter is not tried before a jury and the court
18 finds the defendant in contempt for willfully failing to comply
19 with an order of the court made pursuant to the provisions of
20 this article, and if the court further finds the person has the
21 ability to purge himself of contempt, the court shall afford the
22 contemnor a reasonable time and method whereby he may
23 purge himself of contempt. If the contemnor fails or refuses to
24 purge himself of contempt, the court may confine the
25 contemnor to the county jail for an indeterminate period not to
26 exceed six months or until such time as the contemnor has
27 purged himself, whichever shall first occur.

28 (c) In the case of a charge of contempt based upon the
29 failure of the defendant to pay alimony, child support or
30 separate maintenance, if the court or jury finds that the defen-
31 dant did not pay because he was financially unable to pay, the
32 defendant may not be imprisoned on charges of contempt of
33 court.

34 (d) Regardless of whether the court or jury finds the
35 defendant to be in contempt, if the court shall find that a party
36 is in arrears in the payment of alimony, child support or
37 separate maintenance ordered to be paid under the provisions of
38 this article, the court shall enter judgment for such arrearage

39 and award interest on such arrearage from the due date of each
40 unpaid installment. Following any hearing wherein the court
41 finds that a party is in arrears in the payment of alimony, child
42 support or separate maintenance, the court may, if sufficient
43 assets exist, require security to ensure the timely payment of
44 future installments.

45 (e) At any time during a contempt proceeding, the court
46 may enter an order to attach forthwith the body of, and take into
47 custody, any person who refuses or fails to respond to the
48 lawful process of the court or to comply with an order of the
49 court. Such order of attachment shall require the person to be
50 brought forthwith before the court or the judge thereof in any
51 county in which the court may then be sitting.

§48-1-305. Suit money, counsel fees and costs.

1 (a) Costs may be awarded to either party as justice requires,
2 and in all cases the court, in its discretion, may require payment
3 of costs at any time, and may suspend or withhold any order
4 until the costs are paid.

5 (b) The court may compel either party to pay attorney's
6 fees and court costs reasonably necessary to enable the other
7 party to prosecute or defend the action in the trial court. An
8 order for temporary relief awarding attorney fees and court
9 costs may be modified at any time during the pendency of the
10 action, as the exigencies of the case or equity and justice may
11 require, including, but not limited to, a modification which
12 would require full or partial repayment of fees and costs by a
13 party to the action to whom or on whose behalf payment of
14 such fees and costs was previously ordered. If an appeal is
15 taken or an intention to appeal is stated, the court may further
16 order either party to pay attorney fees and costs on appeal.

17 (c) When it appears to the court that a party has incurred
18 attorney fees and costs unnecessarily because the opposing
19 party has asserted unfounded claims or defenses for vexatious,
20 wanton or oppressive purposes, thereby delaying or diverting
21 attention from valid claims or defenses asserted in good faith,
22 the court may order the offending party, or his or her attorney,
23 or both, to pay reasonable attorney fees and costs to the other
24 party.

§48-1-306. Proceeding for release of support lien.

1 If any person deem that his or her interest, or that of any
2 person for whom he or she may act in a fiduciary or representa-
3 tive capacity, will be promoted by a release, in full or in part, of
4 a lien created upon his or her real or personal property for the
5 support or maintenance of another person or persons, or for
6 spousal or child support, he or she may apply by petition, in a
7 summary way, to the court that entered the order or decree
8 creating such lien for relief from said order. The petition shall
9 be verified and shall describe said lien, the circumstances of the
10 petitioner or the person for whom he is acting, the name or
11 names of the person or persons holding such lien, and the
12 circumstances calculated to show the propriety of the release
13 requested. All persons interested shall be made defendants and
14 shall be given ten days' notice before hearing upon the petition.
15 If authorized by the court, the release may be so conditioned as
16 to promote substantial justice, but the release may only be
17 prospective in effect, and may not operate to deprive the person
18 secured by the lien of the right to receive spousal or child
19 support payments accrued to the date of the hearing.

ARTICLE 2. MARRIAGE.

§48-2-101. Necessity of marriage license.

§48-2-102. Where an application for a marriage license may be made; when an application may be received and a license issued; application by mail.

- §48-2-103. Waiting period before issuance of marriage license; issuance of license in case of emergency or extraordinary circumstances.
- §48-2-104. Contents of the application for a marriage license.
- §48-2-105. Execution of the application for a marriage license.
- §48-2-106. Proof of age.
- §48-2-107. Recording an application for a marriage license.
- §48-2-201. Form of marriage license.
- §48-2-202. Endorsement and return of licenses by persons solemnizing marriage; duties of clerk pertaining thereto.
- §48-2-203. Register of marriages.
- §48-2-204. Record of marriage celebrated outside of state.
- §48-2-301. Age of consent for marriage; exception.
- §48-2-302. Prohibition against marriage of persons related within certain degrees.
- §48-2-303. Prohibition against marriage not to include persons related by adoption.
- §48-2-401. Persons authorized to perform marriages.
- §48-2-402. Qualifications of religious representative for celebrating marriages.
- §48-2-403. Ritual for ceremony of marriage by religious representative.
- §48-2-404. Ritual for ceremony of marriage by a judge.
- §48-2-405. Record of marriage to be kept by person officiating.
- §48-2-501. Unlawful acts by clerk of the county commission; penalties.
- §48-2-502. Issuing marriage license contrary to law; penalty.
- §48-2-503. Consanguineous marriage; penalty.
- §48-2-504. Failure to endorse and return license; penalties.
- §48-2-505. Unlawful solicitation of a celebration of marriage.
- §48-2-601. Belief of parties in lawful marriage validates certain defects.
- §48-2-602. Marriage out of state to evade law.
- §48-2-603. Certain acts, records, and proceedings not to be given effect in this state.
- §48-2-604. Additional fee to be collected for each marriage license issued.

PART 1. APPLICATION FOR MARRIAGE LICENSE.

§48-2-101. Necessity of marriage license.

1 Every marriage in this state must be solemnized under a
2 marriage license issued by a clerk of the county commission in
3 accordance with the provisions of this article. If a ceremony of
4 marriage is performed without a license, the attempted marriage
5 is void, and the parties do not attain the legal status of husband
6 and wife.

§48-2-102. Where an application for a marriage license may be made; when an application may be received and a license issued; application by mail.

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) Applications for licenses may be received and licenses
8 may be issued by the clerk of the county commission when the
9 office of the clerk is officially open for the conduct of business.

§48-2-103. Waiting period before issuance of marriage license; issuance of license in case of emergency or extraordinary circumstances.

1 (a) Except as otherwise provided in subsection(b) of this
2 section, if either or both of the applicants for a marriage license
3 is under eighteen years of age, the clerk of the county commis-
4 sion may not issue a marriage license until two full days elapse
5 after the day the license application is filed.

6 (b) In case of an emergency or extraordinary circumstances,
7 as shown by affidavit or other proof, a circuit judge of the
8 county in which an application for a marriage license will be
9 filed may order the clerk of the county commission to issue a
10 license at any time before the expiration of the waiting period
11 prescribed in subsection (a) of this section. The clerk of the
12 county commission shall attach a certified copy of the judge's
13 order to the application and issue the marriage license in
14 accordance with the order. If the judge or judges of the county
15 in which the application will be filed are absent or incapaci-
16 tated, the order may be made and directed to the clerk of the

17 county commission of the county by a circuit judge in any
18 adjoining judicial circuit, or a special judge appointed by the
19 supreme court of appeals.

§48-2-104. Contents of the application for a marriage license.

1 (a) The application for a marriage license must contain a
2 statement of the full names of both female and male parties,
3 their social security account numbers, dates of birth, places of
4 birth and residence addresses.

5 (b) If either of the parties is a legal alien in the United
6 States of America and has no social security account number,
7 a tourist or visitor visa number or number equivalent to a
8 United States social security account number must be provided.

9 (c) Every application for a marriage license must contain
10 the following statement: "Marriage is designed to be a loving
11 and lifelong union between a woman and a man.

12 The laws of this state affirm your right to enter into this
13 marriage and to live within the marriage free from violence and
14 abuse. Neither of you is the property of the other. Physical
15 abuse, sexual abuse, battery and assault of a spouse or other
16 family member, and other provisions of the criminal laws of
17 this state are applicable to spouses and other family members,
18 and these violations are punishable by law."

§48-2-105. Execution of the application for a marriage license.

1 Both female and male parties to a contemplated marriage
2 are required to sign the application for a marriage license, under
3 oath. The application must be signed before the clerk of the
4 county commission or another person authorized to administer
5 oaths under the laws of this state.

§48-2-106. 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 certificate produced by any means that accurately reproduces
7 the 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 custody of
19 the applicant is sufficient.

§48-2-107. Recording an application for a marriage license.

1 The clerk of the county commission shall record the
2 application for a marriage license in the register of marriages
3 provided for in section 2-203. The clerk shall note the date of
4 the filing of the application in the register. The clerk's notation,
5 or a certified copy thereof, is legal evidence of the facts
6 contained in the license.

PART 2. MARRIAGE LICENSE.

§48-2-201. Form of marriage license.

1 The marriage license shall be in form substantially as
2 follows:

3 Marriage License.

4 State of West Virginia, County of _____,
5 to wit:

6 To any person authorized to celebrate marriages:

7 You are hereby authorized to join together in matrimony
8 _____ and _____

9 Given under my hand, as clerk of the county commission of
10 the county of _____, this _____ day of
11 _____, 2_____.

12 _____

13 Clerk as aforesaid.

§48-2-202. Endorsement and return of licenses by persons solemnizing marriage; duties of clerk pertaining thereto.

1 (a) The person solemnizing a marriage shall retain the
2 marriage license and place an endorsement on it establishing
3 the fact of the marriage and the time and place it was cele-
4 brated.

5 (b) Before the sixth day of the month after the month in
6 which the marriage was celebrated, the person who solemnized
7 the marriage shall forward the original of the marriage license
8 to the clerk who issued the license.

9 (c) In the event that the marriage authorized by the license
10 is not solemnized within sixty days from the date of its issu-
11 ance, then the license is null and void. If the county clerk has
12 not received the original license within sixty days after the
13 expiration date on the license, the clerk shall notify each of the
14 applicants of that fact, by certified mail, return receipt re-
15 quested.

§48-2-203. Register of marriages.

1 (a) The clerk of the county commission is required to
2 maintain a suitable book to be used as a register of marriages.
3 The clerk shall keep a complete record of the following
4 information:

5 (1) Factual information that relates to the eligibility of a
6 person to obtain a marriage license: *Provided*, That if the
7 license is issued because the female is pregnant, the pregnancy
8 will not be noted by the clerk in the register of marriages;

9 (2) Each marriage license issued by the clerk; and

10 (3) An endorsement by a minister, priest, rabbi, or judge
11 certifying that the marriage was solemnized.

12 (b) The clerk shall index the register of marriages in the
13 names of both parties to the marriage.

§48-2-204. Record of marriage celebrated outside of state.

1 If at the time of celebrating any marriage out of this state,
2 either or both of the parties thereto is a resident of this state, a
3 certificate or statement of that fact, verified by the affidavit of
4 any person present at such celebration, or a transcript of the
5 marriage record, certified by the custodian of such records,
6 from the state where the marriage was celebrated, may be
7 returned to the clerk of the county commission of the county in

8 which the husband resides, if he is a resident, or otherwise to
9 the clerk of the county in which the wife resides, and an
10 abstract thereof shall be recorded by the clerk in the register of
11 marriages and indexed in the name of both parties.

PART 3. CAPACITY TO MARRY.

§48-2-301. Age of consent for marriage; exception.

1 (a) The age of consent for marriage for both the male and
2 the female is eighteen years of age. A person under the age of
3 eighteen lacks the capacity to contract a marriage without the
4 consent required by this section.

5 (b) The clerk of the county commission may issue a
6 marriage license to an applicant who is under the age of
7 eighteen but sixteen years of age or older if the clerk obtains a
8 valid written consent from the applicant's parents or legal
9 guardian.

10 (c) Upon order of a circuit judge, the clerk of the county
11 commission may issue a marriage license to an applicant who
12 is under the age of sixteen, if the clerk obtains a valid written
13 consent from the applicant's parents or legal guardian. A circuit
14 judge of the county in which the application for a marriage
15 license is filed may order the clerk of the county commission to
16 issue a license to an applicant under the age of sixteen if, in the
17 court's discretion, the issuance of a license is in the best interest
18 of the applicant and if consent is given by the parents or
19 guardian.

20 (d) A consent to marry must be duly acknowledged before
21 an officer authorized to acknowledge a deed. If the parents are
22 living together at the time the application for a marriage license
23 is made and the consent is given, the signatures of both parents
24 or the applicant's legal guardian is required. If one parent is
25 dead, the signature of the surviving parent or the applicant's

26 legal guardian is required. If both parents are dead, the signa-
27 ture of the applicant's legal guardian is required. If the parents
28 of the applicant are living separate and apart, the signature of
29 the parent having custody of the applicant or the applicant's
30 legal guardian is required.

31 (e) If a person under the age of consent is married in
32 violation of this section, the marriage is not void for this reason,
33 and such marriage is valid until it is actually annulled.

34 (f) A marriage by an underage person without a valid
35 consent as required by this section, though voidable at the time
36 it is entered into, may be ratified and become completely valid
37 and binding when the underage party reaches the age of
38 consent. Validation of a marriage by ratification is established
39 by some unequivocal and voluntary act, statement, or course of
40 conduct after reaching the age of consent. Ratification includes,
41 but is not limited to, continued cohabitation as husband and
42 wife after the age of consent is attained.

**§48-2-302. Prohibition against marriage of persons related within
certain degrees.**

1 (a) A man is prohibited from marrying his mother, grand-
2 mother, sister, daughter, granddaughter, half sister, aunt,
3 brother's daughter, sister's daughter, first cousin or double
4 cousin. A woman is prohibited from marrying her father,
5 grandfather, brother, son, grandson, half brother, uncle,
6 brother's son, sister's son, first cousin or double cousin.

7 (b) The prohibitions described in subsection (a) of this
8 section are applicable to consanguineous relationships where
9 persons are blood related by virtue of having a common
10 ancestor.

11 (c) The prohibitions described in subsection (a) of this
12 section are applicable to persons related by affinity, where the

13 relationship is founded on a marriage, and the prohibition
14 continues in force even though the marriage is terminated by
15 death or divorce, unless the divorce was ordered for a cause
16 which made the marriage, originally, unlawful or void.

§48-2-303. Prohibition against marriage not to include persons related by adoption.

1 For the purpose of section 2-302, cousin or double cousin
2 does not include persons whose relationship is created solely by
3 adoption. If it necessary to open and examine the record of any
4 adoption proceeding in the state to ascertain that a relationship
5 of cousin or double cousin is created solely by adoption, then an
6 application may be made to the circuit court that held the
7 adoption proceeding, by the clerk of the county commission
8 seeking to issue the marriage license, or either party applying
9 for the license, to open the record and cause it to be examined.
10 Upon such application, the judge shall examine the record
11 confidentially and report to the clerk whether the record
12 discloses any consanguinity prohibited by this section and may
13 grant such other relief prayed for which may be proper under
14 article 22 of this chapter.

PART 4. MARRIAGE CEREMONY.

§48-2-401. Persons authorized to perform marriages.

1 A religious representative who has complied with the
2 provisions of section 2-402, or a judge of any court of record in
3 this state, is authorized to celebrate the rites of marriage in any
4 county of this state. Celebration or solemnization of a marriage
5 means the performance of the formal act or ceremony by which
6 a man and woman contract marriage and assume the status of
7 husband and wife.

8 For purposes of this chapter, the term "religious representa-
9 tive" means a minister, priest, or rabbi and includes, without

10 being limited to, a leader or representative of a generally
11 recognized spiritual assembly, church, or religious organization
12 which does not formally designate or recognize persons as
13 ministers, priests or rabbis.

***§48-2-402. Qualifications of religious representative for celebrating marriages.**

1 (a) The county commission of any county in this state may
2 make an order authorizing a person who is a religious represen-
3 tative to celebrate the rites of marriage in all the counties of the
4 state, upon proof that the person:

5 (1) Is eighteen years of age or older;

6 (2) Is duly authorized to perform marriages by his or her
7 church, synagogue, spiritual assembly or religious organization;
8 and

9 (3) Is in regular communion with the church, synagogue,
10 spiritual assembly or religious organization of which he or she
11 is a member.

12 (b) The person shall give bond in the penalty of one
13 thousand five hundred dollars, with surety approved by the
14 commission. Any religious representative who gives proof
15 before the county commission of his or her ordination or
16 authorization by his or her respective church, synagogue,
17 spiritual assembly or religious organization, is exempt from
18 giving the bond.

§48-2-403. Ritual for ceremony of marriage by a religious representative.

1 A religious representative authorized to celebrate the rites
2 of marriage shall perform the ceremony of marriage according
3 to the rites and ceremonies of his or her religious denomination,

***Clerk's Note:** This section was also amended by S. B. 59 (Chapter 94), which passed subsequent to this act.

- 4 church, synagogue, spiritual assembly or religious organization
- 5 and the laws of the state of West Virginia.

§48-2-404. Ritual for ceremony of marriage by a judge.

1 The ritual for the ceremony of marriages by judges of
2 courts of record in this state may be as follows: At the time
3 appointed, the persons to be married, being qualified according
4 to the law of the state of West Virginia, standing together facing
5 the judge, the man at the judge's left hand and the woman at the
6 right, the judge shall say:

7 "We are gathered here, in the presence of these witnesses,
8 to join together this man and this woman in matrimony. It is not
9 to be entered into unadvisedly but discreetly, sincerely, and in
10 dedication of life.

11 (Then shall the judge say to the man, using his christian
12 name:)

13 "N., wilt thou have this woman to be thy wedded wife, to
14 live together in the bonds of matrimony? Wilt thou love her,
15 comfort her, honor and keep her in sickness and in health?

16 (Then the man shall answer:)

17 "I will.

18 (Then the judge shall say to the woman, using her christian
19 name:)

20 "N., wilt thou have this man to be thy wedded husband, to
21 live together in the bonds of matrimony? Wilt thou love him,
22 comfort him, honor and keep him in sickness and health?

23 (The woman shall answer:)

24 "I will.

25 (Then may the judge say:)

26 “Who giveth this woman to be married to this man?

27 (The father of the woman, or whoever giveth her in
28 marriage, shall answer:)

29 “I do.

30 (Then the judge shall ask the man to say after him:)

31 “I, N., take thee, N., to be my wedded wife, to have and to
32 hold, from this day forward, for better, for worse, for richer, for
33 poorer, in sickness and in health, to love, and to cherish, as long
34 as life shall last, and thereto I pledge thee my faith.

35 (Then the judge shall ask the woman to repeat after him:)

36 “I, N., take thee, N., to be my wedded husband, to have and
37 to hold, from this day forward, for better, for worse, for richer,
38 for poorer, in sickness and in health, to love and to cherish, as
39 long as life shall last, and thereto I pledge thee my faith.

40 (Then, if there be a ring, the judge shall say:)

41 “The wedding ring is an outward and visible sign--signify-
42 ing unto all, the uniting of this man and this woman in matri-
43 mony.

44 (The judge then shall deliver the ring to the man to put on
45 the third finger of the woman’s left hand. The man shall say
46 after the judge:)

47 “In token and pledge of the vow between us made, with this
48 ring, I thee wed.

49 (Then, if there be a second ring, the judge shall deliver it to
50 the woman to put upon the third finger of the man's left hand;
51 and the woman shall say after the judge:)

52 "In token and pledge of the vow between us made, with this
53 ring, I thee wed.

54 (Then shall the judge say:)

55 "Forasmuch as N. and N. have consented together in
56 wedlock, and have witnessed the same each to the other and
57 before these witnesses, and thereto have pledged their faith each
58 to the other, and have declared the same by giving (and
59 receiving) a ring, by virtue of the authority vested in me as
60 judge of this court, I pronounce that they are husband and wife
61 together."

§48-2-405. Record of marriage to be kept by person officiating.

1 A record of each marriage performed, with the names of the
2 parties, their respective places of residence prior to marriage,
3 and the date of marriage, shall be kept by the officiating
4 religious representative in the permanent record of the church,
5 synagogue, spiritual assembly or religious organization which
6 he or she serves.

PART 5. OFFENSES AND PENALTIES.

**§48-2-501. 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 section 2-103);

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

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

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

§48-2-502. Issuing marriage license contrary to law; penalty.

1 A clerk of the county commission who knowingly issues
2 a marriage license contrary to law is guilty of a misdemeanor
3 and, upon conviction thereof, shall be punished by a fine not
4 exceeding five hundred dollars, or by confinement in the county
5 or regional jail for not more than one year, or by both such fine
6 and confinement, in the discretion of the court.

§48-2-503. Consanguineous marriage; penalty.

1 (a) If a person marries another who is within the degrees of
2 relationship described in section 2-302, and the relationship is
3 founded on consanguinity, the person is guilty of a misde-
4 meanor and, upon conviction thereof, shall be fined not more
5 than five hundred dollars, or be confined in the county or
6 regional jail for not more than six months, or both, in the
7 discretion of the court.

8 (b) If a person who is a resident of this state marries in
9 another state or country, the person violates subsection (a) of
10 this section if:

11 (1) The persons married are within the degrees of relation-
12 ship described in section 2-302 and the relationship is founded
13 on consanguinity;

14 (2) The person intends to evade the law of this state;

15 (3) The person intends to return and reside in this state; and

16 (4) The persons, after marrying, return to this state and
17 cohabit as man and wife.

18 (c) For purposes of this section, the fact of cohabitation of
19 the persons as man and wife is evidence of their marriage.

§48-2-504. Failure to endorse and return license; penalties.

1 If a person who is authorized to celebrate marriages in this
2 state willfully fails to comply with the provisions of section 2-
3 202, relating to the endorsement and return of a license, his or
4 her authority must be suspended for a period of not less than six
5 months nor more than one year. If the person gave bond under
6 the provisions of section 2-402, the conditions of the bond are
7 deemed to be broken and the bond must be forfeited as other-
8 wise provided by law. The county clerk shall notify the prose-
9 cuting attorney of the county of any failure to comply with
10 section 2-202. The prosecuting attorney shall institute proceed-
11 ings before the circuit court to suspend the person's authority
12 to celebrate marriages. The court shall determine all questions
13 of law and fact.

§48-2-505. Unlawful solicitation of a celebration of marriage.

1 (a) It is unlawful for any religious representative in any
2 manner to solicit the celebration of a marriage ceremony.

3 (b) It is unlawful for a religious representative to give
4 anything of value, directly or indirectly, as a reward to any
5 person who may accompany, bring, send or direct the holders
6 of a marriage license to the religious representative.

7 (c) If a person violates the provisions of subsection (a) or
8 (b) of this section, his or her license to celebrate marriages shall
9 be revoked, and no such license shall thereafter be issued to the
10 person. It is the duty of the prosecuting attorney of the county
11 in which the violation occurs to institute proceedings in the
12 circuit court to revoke the license. Reasonable notice of
13 proceedings to revoke a license shall be given to the licensee.
14 The court shall determine all questions of law and fact.

PART 6. MISCELLANEOUS PROVISIONS.

§48-2-601. Belief of parties in lawful marriage validates certain defects.

1 If a marriage is solemnized by a person professing to be
2 authorized to celebrate marriages when, in fact, the person is
3 not authorized, or if a marriage is solemnized after the license
4 is expired, the marriage is not void and subject to a judgment of
5 nullity based on that fact alone if:

6 (1) The marriage is lawful in all other respects, and

7 (2) The marriage is consummated with a full belief on the
8 part of either or both of the persons married that they have been
9 lawfully joined in marriage.

§48-2-602. Marriage out of state to evade law.

1 If a resident of this state marries in another state or country,
2 the marriage is governed by the same law, in all respects, as if
3 it had been solemnized in this state if, at the time of the
4 marriage:

5 (1) The marriage would have been in violation of section 3-
6 103 if performed in this state;

7 (2) The person intended to evade the law of this state; and

8 (3) The person intended to return and reside in this state.

§48-2-603. Certain acts, records, and proceedings not to be given effect in this state.

1 A public act, record or judicial proceeding of any other
2 state, territory, possession or tribe respecting a relationship
3 between persons of the same sex that is treated as a marriage
4 under the laws of the other state, territory, possession, or tribe,
5 or a right or claim arising from such relationship, shall not be
6 given effect by this state.

§48-2-604. Additional fee to be collected for each marriage license issued.

1 In addition to any fee heretofore established for the
2 issuance of a marriage license, the county clerk shall collect a
3 sum of fifteen dollars for each marriage license issued which
4 additional sum shall be paid into a special revenue account of
5 the state treasury to be dispersed to local family protection
6 shelters as provided in article 26-101, et seq.

ARTICLE 3. ANNULMENT OR AFFIRMATION OF MARRIAGE.

§48-3-101. Right to sue to annul or affirm marriage.

§48-3-102. Venue of actions for annulment or affirmation.

§48-3-103. Voidable marriages.

§48-3-104. Affirmation or annulment of marriage.

§48-3-105. What persons may not institute annulment action.

§48-3-106. Relief ordered in annulment.

§48-3-107. Modification of order granting annulment.

§48-3-101. Right to sue to annul or affirm marriage.

1 (a) Except as otherwise provided in subsection (b) of this
2 section, an action to annul or affirm a marriage is not maintain-
3 able unless one of the parties is a resident of this state at the
4 time the action is commenced.

5 (b) Even if neither party is a resident of this state, an action
6 to annul a marriage that was performed in this state is maintain-
7 able if the parties have not established a matrimonial domicile
8 elsewhere.

§48-3-102. Venue of actions for annulment or affirmation.

1 (a) If the respondent to an action for annulling or affirming
2 a marriage is a resident of this state, the petitioner has an option
3 to bring the action in the county in which the parties last
4 cohabited or in the county where the respondent resides.

5 (b) If the respondent to an action for annulling or affirming
6 a marriage is not a resident of this state, the petitioner has an
7 option to bring the action in the county in which the parties last
8 cohabited or in the county where the petitioner resides.

9 (c) If neither party is a resident of this state, the action must
10 be brought in the county where the marriage was performed.

§48-3-103. Voidable marriages.

1 (a) The following marriages are voidable and are void from
2 the time they are so declared by a judgment order of nullity:

3 (1) Marriages that are prohibited by law on account of
4 either of the parties having a wife or husband of a prior mar-

5 riage, when the prior marriage has not been terminated by
6 divorce, annulment or death;

7 (2) Marriages that are prohibited by law on account of
8 consanguinity or affinity between the parties;

9 (3) Marriages solemnized when either of the parties:

10 (A) Was an insane person, idiot or imbecile;

11 (B) Was afflicted with a venereal disease;

12 (C) Was incapable, because of natural or incurable impo-
13 tency of the body, of entering into the marriage state;

14 (D) Was under the age of consent; or

15 (E) Had been, prior to the marriage and without the
16 knowledge of the other party, convicted of an infamous offense;

17 (4) Marriages solemnized when, at the time of the marriage,
18 the wife, without the knowledge of the husband:

19 (A) Was with child by some person other than the husband;
20 or

21 (B) Had been, prior to the marriage, notoriously a prosti-
22 tute; or

23 (5) Marriages solemnized when, prior to the marriage, the
24 husband, without the knowledge of the wife, had been notori-
25 ously a licentious person.

§48-3-104. Affirmation or annulment of marriage.

1 If a marriage is supposed to be void, or voidable, or any
2 doubt exists as to its validity, for any of the causes set forth in
3 section 3-103, or for any other cause recognized in law, either

4 party may, except as provided in section 3-105, institute an
5 action for annulling or affirming the marriage. Upon hearing the
6 proofs and allegations of the parties, the court shall enter a
7 judgment order annulling or affirming the marriage. In every
8 case where the validity of a marriage is called into question, it
9 is presumed that the marriage is valid, unless the contrary is
10 clearly proved. If the court orders that the marriage is valid, the
11 finding of the court is conclusive upon all persons concerned.

§48-3-105. What persons may not institute annulment action.

1 An action for annulling a marriage may not be instituted:

2 (a) Where the cause is the natural or incurable impotency
3 of body of either of the parties to enter the marriage state, by
4 the party who had knowledge of such incapacity at the time of
5 marriage; or

6 (b) Where the cause is fraud, force or coercion, by the party
7 who was guilty of such fraud, force or coercion, nor by the
8 injured party if, after knowledge of the facts, he or she has by
9 acts or conduct confirmed such marriage; or

10 (c) Where the cause is affliction with a venereal disease
11 existing at the time of marriage, by the party who was so
12 afflicted if such party has subsequent to the marriage become
13 cured of such disease, nor by the person who was not so
14 afflicted if he or she after the curing of the afflicted person has
15 by acts or conduct confirmed the marriage; or

16 (d) Where the cause is the nonage of either of the parties,
17 by the party who was capable of consenting, nor by the party
18 not so capable if he or she has by acts or conduct confirmed the
19 marriage after arriving at the age of consent; or

20 (e) Where the cause is lack of consent on the part of either
21 of the parties, by the party consenting or bringing about the
22 marriage; or

23 (f) Where the cause is that either of the parties has been
24 convicted of an infamous offense prior to marriage, by the other
25 party if, after knowledge of such fact, he or she has cohabited
26 with the party so convicted; or

27 (g) Where the cause is that the wife was at the time of
28 marriage with child by some person other than the husband, or
29 that prior to the marriage the wife had been notoriously a
30 prostitute, by the husband, if after knowledge of the fact, he has
31 cohabited with the wife; or

32 (h) Where the cause is that the husband was prior to the
33 marriage notoriously a licentious person, by the wife if, after
34 knowledge of the fact, she has cohabited with the husband.

§48-3-106. Relief ordered in annulment.

1 In an action for annulment, the court may order all or any
2 portion of the final relief provided for in sections 5-603 through
3 5-614 and all or any portion of the temporary relief provided for
4 in part 5, article 5 of this chapter.

§48-3-107. Modification of order granting annulment.

1 Upon the petition of either party, the court may revise or
2 alter an order entered in an action for annulment or make
3 further orders, concerning the following matters:

4 (1) The support and maintenance of either spouse;

5 (2) The interest of one spouse in the property of the other
6 spouse;

7 (3) The allocation of responsibility for the children of the
8 parties; and

9 (4) The support of the children of the parties.

ARTICLE 4. SEPARATE MAINTENANCE.

§48-4-101. Where an action for separate maintenance may be brought.

§48-4-102. Grounds for separate maintenance.

§48-4-103. Award of relief in action for separate maintenance.

§48-4-104. Modification of order awarding separate maintenance.

§48-4-101. Where an action for separate maintenance may be brought.

1 An action for separate maintenance may be brought in the
2 circuit court of any county where an action for divorce between
3 the parties could be brought. An action for separate mainte-
4 nance may be brought whether or not a divorce is prayed for.

§48-4-102. Grounds for separate maintenance.

1 Separate maintenance may be ordered:

2 (1) If the party seeking separate maintenance has grounds
3 for divorce; or

4 (2) If the party from whom separate maintenance is sought,
5 without good and sufficient cause:

6 (A) Has failed to provide suitable support for the other
7 spouse; or

8 (B) Has abandoned or deserted the other spouse.

§48-4-103. Award of relief in action for separate maintenance.

1 (a) In an action for separate maintenance, the court may
2 order all or any portion of the temporary or final relief that the
3 court may order in an action for divorce, other than a divorce.

4 (b) During the pendency of the action, the court has the
5 same powers to make temporary orders as the court would have
6 in actions for divorce, insofar as those powers are applicable, on
7 behalf of either spouse.

8 (c) Any order entered in the case is effective during the
9 time the court by its order directs, until further order of the
10 court.

§48-4-104. Modification of order awarding separate maintenance.

1 Upon the petition of either party, the court may revise or
2 alter an order entered in an action for separate maintenance, or
3 may make further orders, concerning the following matters:

4 (1) The support and maintenance of either spouse;

5 (2) The interest of one spouse in the property of the other
6 spouse;

7 (3) The allocation of responsibility for the children of the
8 parties; and

9 (4) The support of the children of the parties.

ARTICLE 5. DIVORCE.

§48-5-101. Absolute divorce.

§48-5-102. Circuit court vested with subject matter jurisdiction.

§48-5-103. Jurisdiction of parties; service of process.

§48-5-104. Retention of jurisdiction when divorce is denied.

§48-5-105. Residency requirements for maintaining an action for divorce.

§48-5-106. Venue of actions for divorce.

§48-5-107. Parties to a divorce action.

§48-5-201. Grounds for divorce; irreconcilable differences.

- §48-5-202. Grounds for divorce; voluntary separation.
- §48-5-203. Grounds for divorce; cruel or unhuman treatment.
- §48-5-204. Grounds for divorce; adultery.
- §48-5-205. Grounds for divorce; conviction of crime.
- §48-5-206. Grounds for divorce; permanent and incurable insanity.
- §48-5-207. Grounds for divorce; habitual drunkenness or drug addiction.
- §48-5-208. Grounds for divorce; desertion.
- §48-5-209. Grounds for divorce; abuse or neglect of a child.
- §48-5-301. When a divorce not to be granted.
- §48-5-401. Verification of pleadings.
- §48-5-402. Petition for divorce.
- §48-5-403. Answer to petition.
- §48-5-404. Advance filing of divorce petition in actions alleging abandonment or voluntary separation.
- §48-5-405. Amendments to pleadings.
- §48-5-501. Relief that may be included in temporary order of divorce.
- §48-5-502. Temporary spousal support.
- §48-5-503. Temporary parenting order; child support.
- §48-5-504. Attorney's fees and court costs.
- §48-5-505. Costs of health care and hospitalization.
- §48-5-506. Use and occupancy of the marital home.
- §48-5-507. Use and possession of motor vehicles.
- §48-5-508. Preservation of the properties of the parties.
- §48-5-509. Enjoining abuse.
- §48-5-510. Consideration of financial factors in ordering temporary relief.
- §48-5-511. Disclosure of assets.
- §48-5-512. Ex parte orders granting temporary relief.
- §48-5-513. Granting of ex parte relief.
- §48-5-514. Temporary order not subject to appeal or review.
- §48-5-601. Relief that may be included in final order of divorce.
- §48-5-602. Court may require payment of spousal support.
- §48-5-603. Relief regarding minor child or children.
- §48-5-604. Use and occupancy of marital home.
- §48-5-605. Use and possession of motor vehicles.
- §48-5-606. Relief regarding costs of health care and hospitalization.
- §48-5-607. Court may order transfer of accounts for recurring expenses.
- §48-5-608. Court may enjoin abuse.
- §48-5-609. Court may restore to either party his or her property.
- §48-5-610. Court may order just and equitable distribution of property.
- §48-5-611. Suit money, counsel fees and costs.
- §48-5-612. Court may order a party to deliver separate property.
- §48-5-613. Former name of party; restoration.

- §48-5-701. Revision of order concerning spousal support.
- §48-5-702. Revision of order enjoining abuse.
- §48-5-703. Revision of order allocating custodial responsibility and decision-making responsibility.
- §48-5-704. Revision of order establishing child support.
- §48-5-705. Bureau for child support enforcement may seek revision of order establishing child support.
- §48-5-706. Revision of order concerning distribution of marital property.
- §48-5-707. Reduction or termination of spousal support because of de facto marriage.

PART 1. GENERAL PROVISIONS.

§48-5-101. Absolute divorce.

- 1 A divorce ordered in this state is an absolute divorce.

§48-5-102. Circuit courts vested with subject matter jurisdiction.

- 1 The circuit courts of this state, by act of the Legislature, are
2 vested with jurisdiction over the subject matter of divorce. A
3 circuit court has the right and authority to adjudicate actions for
4 divorce, and the power to carry its judgment and order into
5 execution. Jurisdiction of the subject matter of divorce em-
6 braces the power to determine every issue or controverted
7 question in an action for divorce, according to the court's view
8 of the law and the evidence.

§48-5-103. Jurisdiction of parties; service of process.

- 1 (a) In an action for divorce, it is immaterial where the
2 marriage was celebrated, where the parties were domiciled at
3 the time the grounds for divorce arose, or where the marital
4 offense was committed. If one or both of the parties is domi-
5 ciled in this state at the time the action is commenced, the
6 circuit courts of this state have jurisdiction to grant a divorce
7 for any grounds fixed by law in this state, without any reference
8 to the law of the place where the marriage occurred or where
9 the marital offense was committed.

10 (b) A judgment order may be entered upon service of
11 process in the manner specified in the Rules of Civil Procedure
12 for the service of process upon individuals.

§48-5-104. Retention of jurisdiction when divorce is denied.

1 If a divorce is denied, the court shall retain jurisdiction of
2 the case and may order all or any portion of the relief provided
3 for in this article that has been demanded in the pleadings.

§48-5-105. Residency requirements for maintaining an action for divorce.

1 (a) Except as otherwise provided in subsection (b) of this
2 section:

3 (1) If the marriage was entered into within this state, an
4 action for divorce is maintainable if one of the parties is an
5 actual bona fide resident of this state at the time of commence-
6 ment of the action, without regard to the length of time resi-
7 dency has continued; or

8 (2) If the marriage was not entered into within this state, an
9 action for divorce is maintainable if:

10 (A) One of the parties was an actual bona fide resident of
11 this state at the time the cause of action arose, or has become a
12 resident since that time; and

13 (B) The residency has continued uninterrupted through the
14 one-year period immediately preceding the filing of the action.

15 (b) An action for divorce cannot be maintained if the cause
16 for divorce is adultery, whether the cause of action arose in or
17 out of this state, unless one of the parties, at the commencement
18 of the action, is a bona fide resident of this state. In such case,
19 if the respondent is a nonresident of this state and cannot be

20 personally served with process within this state, the action is
21 not maintainable unless the petitioner has been an actual bona
22 fide resident of this state for at least one year next preceding the
23 commencement of the action; or

24 (c) When a divorce is granted in this state upon constructive
25 service of process and personal jurisdiction is thereafter
26 obtained of the respondent in the case, the court may order all
27 or any portion of the relief that has been demanded in the
28 pleadings.

§48-5-106. Venue of actions for divorce.

1 (a) If the respondent in an action for divorce is a resident of
2 this state, the petitioner has an option to bring the action in the
3 county in which the parties last cohabited or in the county
4 where the respondent resides.

5 (b) If the respondent in an action for divorce is not a
6 resident of this state, the petitioner has an option to bring the
7 action in the county in which the parties last cohabited or in the
8 county where the petitioner resides.

§48-5-107. Parties to a divorce action.

1 (a) Either or both of the parties to a marriage may initiate
2 an action for divorce.

3 (b) A spouse who is under the age of majority has standing
4 in a divorce action to sue, answer, or plead by a next friend.

5 (c) An incompetent or insane person shall sue, answer or
6 plead by his or her committee. If a person has not been adjudi-
7 cated incompetent or insane and has not been divested of the
8 power to act on his or her own behalf, it is presumed that the
9 person has the capacity to bring the action or be made a party
10 respondent. This presumption may be rebutted by evidence

11 which shows that the person cannot reasonably understand the
12 nature and purpose of the action and the effect of his or her acts
13 with reference to the action.

14 (d) The appointment of a guardian ad litem for a minor, an
15 incompetent or an insane party is not required unless specifi-
16 cally ordered by the judge or law master hearing the action.

17 (e) Anyone charged as a particeps criminis shall be made a
18 party to a divorce action, upon his or her application to the
19 court, subject to such terms and conditions as the court may
20 prescribe.

21 (f) In a divorce action where the interests of the minor
22 children of the parties are or may be substantially different from
23 those of either or both of the parents, and the best interests of
24 the children may be in conflict with the desires of either or both
25 parents, the court may make the children parties respondent and
26 appoint a guardian ad litem to advocate and protect their rights
27 and welfare.

PART 2. GROUNDS FOR DIVORCE.

§48-5-201. Grounds for divorce; irreconcilable differences.

1 A circuit judge may order a divorce if the complaint alleges
2 that irreconcilable differences exist between the parties and an
3 answer is filed admitting that allegation. A complaint alleging
4 irreconcilable differences shall set forth the names of any
5 dependent children of either or both of the parties. A divorce on
6 this ground does not require corroboration of the irreconcilable
7 differences or of the issues of jurisdiction or venue. The court
8 may approve, modify or reject any agreement of the parties and
9 make orders concerning spousal support, custodial responsibil-
10 ity, child support, visitation rights or property interests.

§48-5-202. Grounds for divorce; voluntary separation.

1 (a) A divorce may be ordered when the parties have lived
2 separate and apart in separate places of abode without any
3 cohabitation and without interruption for one year. The separa-
4 tion may occur as a result of the voluntary act of one of the
5 parties or the mutual consent of both parties.

6 (b) Allegations of res judicata or recrimination with respect
7 to any other alleged grounds for divorce are not a bar to either
8 party obtaining a divorce on the ground of voluntary separation.

9 (c) When required by the circumstances of a particular case,
10 the court may receive evidence bearing on alleged marital
11 misconduct and may consider issues of fault for the limited
12 purpose of deciding whether spousal support should be
13 awarded. Establishment of fault does not affect the right of
14 either party to obtain a divorce on the ground of voluntary
15 separation.

§48-5-203. Grounds for divorce; cruel or inhuman treatment.

1 (a) A divorce may be ordered for cruel or inhuman treat-
2 ment by either party against the other. Cruel or inhuman
3 treatment includes, but is not limited to, the following:

4 (1) Reasonable apprehension of bodily harm;

5 (2) False accusation of adultery or homosexuality; or

6 (3) Conduct or treatment which destroys or tends to destroy
7 the mental or physical well-being, happiness and welfare of the
8 other and render continued cohabitation unsafe or unendurable.

9 (b) It is not necessary to allege or prove acts of physical
10 violence in order to establish cruel and inhuman treatment as a
11 ground for divorce.

§48-5-204. Grounds for divorce; adultery.

1 A divorce may be ordered for adultery. Adultery is the
2 voluntary sexual intercourse of a married man or woman with
3 a person other than the offender's wife or husband. The burden
4 is on the party seeking the divorce to prove the alleged adultery
5 by clear and convincing evidence.

§48-5-205. Grounds for divorce; conviction of crime.

1 A divorce may be ordered when either of the parties
2 subsequent to the marriage has, in or out of this state, been
3 convicted for the commission of a crime that is a felony, and
4 the conviction is final.

§48-5-206. Grounds for divorce; permanent and incurable insanity.

1 (a) A divorce may be ordered for permanent and incurable
2 insanity, only if the person is permanently and incurably insane
3 and has been confined in a mental hospital or other similar
4 institution for a period of not less than three consecutive years
5 next preceding the filing of the complaint and the court has
6 heard competent medical testimony that such insanity is
7 permanently incurable.

8 (b) A court granting a divorce on this grounds may in its
9 discretion order support and maintenance for the permanently
10 incurably insane party by the other.

11 (c) In an action for divorce or annulment, where the
12 petitioner is permanently incurably insane, the respondent shall
13 not enter a plea of recrimination based upon the insanity of the
14 petitioner.

§48-5-207. Grounds for divorce; habitual drunkenness or drug addiction.

1 (a) A divorce may be ordered for habitual drunkenness of
2 either party subsequent to the marriage.

3 (b) A divorce may be ordered for the addiction of either
4 party, subsequent to the marriage, to the habitual use of any
5 narcotic or dangerous drug defined in this code.

§48-5-208. Grounds for divorce; desertion.

1 A divorce may be ordered to the party abandoned, when
2 either party willfully abandons or deserts the other for six
3 months.

§48-5-209. Grounds for divorce; abuse or neglect of a child.

1 (a) A divorce may be ordered for abuse or neglect of a child
2 of the parties or of one of the parties, "abuse" meaning any
3 physical or mental injury inflicted on such child including, but
4 not limited to, sexual molestation; and "neglect" is willful
5 failure to provide, by a party who has legal responsibility for
6 such child, the necessary support, education as required by law,
7 or medical, surgical or other care necessary for the well-being
8 of such child.

9 (b) A divorce shall not be granted on this ground except
10 upon clear and convincing evidence sufficient to justify
11 permanently depriving the offending party of any allocation of
12 custodial responsibility for the abused or neglected child.

PART 3. DEFENSES.

§48-5-301. When a divorce not to be granted.

1 No divorce for adultery shall be granted on the uncorrobo-
2 rated testimony of a prostitute, or a particeps criminis, or when
3 it appears that the parties voluntarily cohabited after the
4 knowledge of the adultery, or that it occurred more than three

5 years before the institution of the action; nor shall a divorce be
6 granted for any cause when it appears that the offense charged
7 has been condoned, or was committed by the procurement or
8 connivance of the plaintiff, or that the plaintiff has, within three
9 years before the institution of action, been guilty of adultery not
10 condoned, but such exception shall not be applicable to causes
11 of action brought pursuant to sections 5-201 and 5-202 of this
12 chapter . The defense of collusion shall not be pleaded as a bar
13 to a divorce.

PART 4. PRACTICE AND PROCEDURE.

§48-5-401. Verification of pleadings.

1 All pleadings in a divorce action must be verified by the
2 party in whose name they are filed.

§48-5-402. Petition for divorce.

1 (a) An action for divorce is instituted by a verified petition,
2 and the formal style and the caption for all pleadings is “In Re
3 the marriage of _____ and _____”. The parties shall be
4 identified in all pleadings as “petitioner” and “respondent”.

5 (b) The petition must set forth the ground or grounds for
6 divorce. It is not necessary to allege the facts constituting a
7 ground relied on, and a petition or counter-petition is sufficient
8 if a ground for divorce is alleged in the language of the statute
9 as set forth in this article. A judge or law master has the
10 discretionary authority to grant a motion to require a more
11 definite and certain statement, set forth in ordinary and concise
12 language, alleging facts and not conclusions of law.

13 (c) If the jurisdiction of the circuit court to grant a divorce
14 depends upon the existence of certain facts, including, but not
15 limited to, facts showing domicile or domicile for a certain length
16 of time, the petition must allege those facts. It is not necessary

17 that allegations showing requisite domicile be in the language of
18 the statute, but they should conform substantially thereto so that
19 everything material to the fact of requisite domicile can be
20 ascertained therefrom.

21 (d) A petition shall not be taken for confessed, and whether
22 the respondent answers or not, the case shall be tried and heard
23 independently of the admissions of either party in the pleadings
24 or otherwise. No judgment order shall be granted on the
25 uncorroborated testimony of the parties or either of them,
26 except for a proceeding in which the grounds for divorce are
27 irreconcilable differences.

§48-5-403. Answer to petition.

1 (a) The responsive pleading to a petition for divorce is
2 denominated an answer. The form and requisites for an answer
3 to a petition for divorce are governed by the rules of civil
4 procedure for trial courts of record.

5 (b) Except as provided in subsection (c) of this section, an
6 allegedly guilty party who relies upon an affirmative defense
7 must assert such defense by both pleadings and proof. Affirma-
8 tive defenses include, but are not limited to, condonation,
9 connivance, collusion, recrimination, insanity, and lapse of
10 time.

11 (c) In an action in which a party seeks a divorce based on
12 an allegation that the parties have lived separate and apart in
13 separate places of abode without any cohabitation and without
14 interruption for one year, the affirmative defenses including,
15 but not limited to, condonation, connivance, collusion, recrimi-
16 nation, insanity, and lapse of time, shall not be raised.

**§48-5-404. Advance filing of divorce petition in actions alleging
abandonment or voluntary separation.**

1 (a) At any time after the parties to a marriage have lived
2 separate and apart in separate places of abode without any
3 cohabitation or after a party is abandoned or deserted, either
4 party living separate and apart or the party abandoned may
5 apply for temporary relief in accordance with the provisions of
6 part 5 of this article by instituting an action for divorce alleging
7 that the petitioner reasonably believes that the period of living
8 separate and apart or of abandonment will continue for the
9 periods prescribed by the applicable provisions of sections 5-
10 202 and 5-208.

11 (b) If the period of abandonment or living separate and
12 apart continues for the period prescribed by the applicable
13 provisions of sections 5-202 and 5-208, the divorce action may
14 proceed to a final hearing without a new petition being filed.

15 (c) The petitioner shall give the respondent at least twenty
16 days' notice of the time, place and purpose of the final hearing,
17 unless the respondent files a verified waiver of notice of further
18 proceedings. If the notice is required to be served, it must be
19 served in the same manner as original process under rule 4(d)
20 of the rules of civil procedure, regardless of whether the
21 respondent has appeared or answered.

§48-5-405. Amendments to pleadings.

1 Amendments to pleadings in an action for divorce are
2 permitted upon the same general considerations which govern
3 the practice in other proceedings, and are properly allowed for
4 the purpose of making the allegations of the pleading more
5 definite and certain, of asserting an essential allegation which
6 has been omitted, or of including allegations of misconduct
7 committed subsequent to the commencement of the action.

PART 5. TEMPORARY RELIEF DURING PENDENCY OF ACTION FOR DIVORCE.

§48-5-501. Relief that may be included in temporary order of divorce.

1 At the time of the filing of the complaint or at any time
2 after the commencement of an action for divorce under the
3 provisions of this article and upon motion for temporary relief,
4 notice of hearing and hearing, the court may order all or any
5 portion of the following temporary relief described in this part
6 5, to govern the marital rights and obligations of the parties
7 during the pendency of the action.

§48-5-502. Temporary spousal support.

1 The court may require either party to pay temporary spousal
2 support in the form of periodic installments, or a lump sum, or
3 both, for the maintenance of the other party.

§48-5-503. Temporary parenting order; child support.

1 (a) The court shall enter a temporary parenting order in
2 accordance with the provisions of sections 9-203 and 9-204 of
3 this chapter that incorporates a temporary parenting plan.

4 (b) When the action involves a minor child or children, the
5 court shall require either party to pay temporary child support
6 in the form of periodic installments for the maintenance of the
7 minor children of the parties.

8 (c) When the action involves a minor child or children, the
9 court shall provide for medical support for any minor children.

§48-5-504. Attorney's fees and court costs.

1 (a) The court may compel either party to pay attorney's fees
2 and court costs reasonably necessary to enable the other party
3 to prosecute or defend the action. The question of whether or
4 not a party is entitled to temporary spousal support is not

5 decisive of that party's right to a reasonable allowance of
6 attorney's fees and court costs.

7 (b) An order for temporary relief awarding attorney fees
8 and court costs may be modified at any time during the pen-
9 dency of the action, as the exigencies of the case or equity and
10 justice may require, including, but not limited to, a modification
11 which would require full or partial repayment of fees and costs
12 by a party to the action to whom or on whose behalf payment
13 of fees and costs was previously ordered. If an appeal is taken
14 or an intention to appeal is stated, the court may further order
15 either party to pay attorney fees and costs on appeal.

16 (c) If it appears to the court that a party has incurred
17 attorney fees and costs unnecessarily because the opposing
18 party has asserted unfounded claims or defenses for vexatious,
19 wanton or oppressive purposes, thereby delaying or diverting
20 attention from valid claims or defenses asserted in good faith,
21 the court may order the offending party, or his or her attorney,
22 or both, to pay reasonable attorney fees and costs to the other
23 party.

§48-5-505. Costs of health care and hospitalization.

1 As an incident to requiring the payment of temporary
2 spousal support, the court may order either party to continue in
3 effect existing policies of insurance covering the costs of health
4 care and hospitalization of the other party. If there is no such
5 existing policy or policies, the court may order that such health
6 care insurance coverage be paid for by a party if the court
7 determines that such health care coverage is available to that
8 party at a reasonable cost. Payments made to an insurer
9 pursuant to this subdivision, either directly or by a deduction
10 from wages, may be deemed to be temporary spousal support.

§48-5-506. Use and occupancy of the marital home.

1 (a) The court may grant the exclusive use and occupancy of
2 the marital home to one of the parties during the pendency of
3 the action, together with all or a portion of the household goods,
4 furniture and furnishings, reasonably necessary for such use and
5 occupancy.

6 (b) The court may require payments to third parties in the
7 form of home loan installments, land contract payments, rent,
8 payments for utility services, property taxes and insurance
9 coverage. If these third party payments are ordered, the court
10 may specify whether such payments or portions of payments
11 are temporary spousal support, temporary child support, a
12 partial distribution of marital property or an allocation of
13 marital debt.

14 (c) If the court does not set forth in the temporary order that
15 all or a portion of payments made to third parties pursuant to
16 this section are to be deemed temporary child support, then all
17 the payments made pursuant to this section are deemed to be
18 temporary spousal support. The court may order third party
19 payments to be made without denominating them as either
20 temporary spousal support or temporary child support, reserv-
21 ing such decision until the court determines the interests of the
22 parties in marital property and equitably divides the same. At
23 the time the court determines the interests of the parties in
24 marital property and equitably divides the same, the court may
25 consider the extent to which payments made to third parties
26 under the provisions of this subdivision have affected the rights
27 of the parties in marital property and may treat these payments
28 as a partial distribution of marital property notwithstanding the
29 fact that these payments were denominated temporary spousal
30 support or temporary child support or not so denominated under
31 the provisions of this section.

32 (d) If the payments are not designated in an order and the
33 parties have waived any right to receive spousal support, the
34 court may designate the payments upon motion by any party.

35 (e) Nothing contained in this section shall abrogate an
36 existing contract between either of the parties and a third party,
37 or affect the rights and liabilities of either party or a third party
38 under the terms of a contract.

§48-5-507. Use and possession of motor vehicles.

1 (a) As an incident to requiring the payment of temporary
2 alimony, the court may grant the exclusive use and possession
3 of one or more motor vehicles to either of the parties during the
4 pendency of the action.

5 (b) The court may require payments to third parties in the
6 form of automobile loan installments or insurance coverage,
7 and payments made to third parties pursuant to this section are
8 deemed to be temporary spousal support, subject to any
9 reservation provided for in subsection (c) of this section.

10 (c) The court may order that third party payments made
11 pursuant to this section be made without denominating them as
12 temporary spousal support, reserving that decision until the
13 court determines the interests of the parties in marital property
14 and equitably divides the same. At the time the court deter-
15 mines the interests of the parties in marital property and
16 equitably divides the same, the court may consider the extent to
17 which payments made to third parties under the provisions of
18 this section have affected the rights of the parties in marital
19 property and may treat such payments as a partial distribution
20 of marital property notwithstanding the fact that such payments
21 have been denominated temporary spousal support or not so
22 denominated under the provisions of this section.

23 (d) Nothing contained in this section will abrogate an
24 existing contract between either of the parties and a third party
25 or affect the rights and liabilities of either party or a third party
26 under the terms of a contract.

§48-5-508. Preservation of the properties of the parties.

1 (a) If the pleadings include a specific request for specific
2 property or raise issues concerning the equitable division of
3 marital property, the court may enter an order that is reasonably
4 necessary to preserve the estate of either or both of the parties.

5 (b) The court may impose a constructive trust, so that the
6 property is forthcoming to meet any order that is made in the
7 action, and may compel either party to give security to comply
8 with the order, or may require the property in question to be
9 delivered into the temporary custody of a third party.

10 (c) The court may order either or both of the parties to pay
11 the costs and expenses of maintaining and preserving the
12 property of the parties during the pendency of the action. At the
13 time the court determines the interests of the parties in marital
14 property and equitably divides the same, the court may consider
15 the extent to which payments made for the maintenance and
16 preservation of property under the provisions of this section
17 have affected the rights of the parties in marital property and
18 may treat such payments as a partial distribution of marital
19 property. The court may release all or any part of such protected
20 property for sale and substitute all or a portion of the proceeds
21 of the sale for such property.

***§48-5-509. Enjoining abuse.**

1 (a) The court may enjoin the offending party from molest-
2 ing or interfering with the other, or otherwise imposing any
3 restraint on the personal liberty of the other, or interfering with

***Clerk's Note:** This section was also amended by S. B. 652 (Chapter 93), which passed subsequent to this act.

4 the custodial or visitation rights of the other. This order may
5 permanently enjoin the offending party from:

6 (1) Entering the school, business or place of employment of
7 the other for the purpose of molesting or harassing the other;

8 (2) Contacting the other, in person or by telephone, for the
9 purpose of harassment or threats; or

10 (3) Verbally abusing the other in a public place.

11 (b) Any order entered by the court to protect a party from
12 abuse may grant any other relief that may be appropriate for
13 inclusion under the provisions of article 27 of this chapter.

§48-5-510. Consideration of financial factors in ordering temporary relief.

1 (a) In ordering temporary relief under the provisions of this
2 part 5, the court shall consider the financial needs of the parties,
3 the present income of each party from any source, their
4 income-earning abilities and the respective legal obligations of
5 each party to support himself or herself and to support any other
6 persons.

7 (b) Except in extraordinary cases supported by specific
8 findings set forth in the order granting relief, payments of
9 temporary spousal support and temporary child support are to
10 be made from a party's income and not from the corpus of a
11 party's separate estate, and an award of such relief shall not be
12 disproportionate to a party's ability to pay as disclosed by the
13 evidence before the court: *Provided*, That child support shall be
14 established in accordance with the child support guidelines set
15 forth in article 13 of this chapter.

§48-5-511. Disclosure of assets.

1 To facilitate the resolution of issues arising at a hearing for
2 temporary relief, the court may, or upon the motion of either
3 party shall, order the parties to comply with the disclosure
4 requirements set forth in article 7 of this chapter prior to the
5 hearing for temporary relief. The form for this disclosure shall
6 substantially comply with the form promulgated by the supreme
7 court of appeals, pursuant to said section. If either party fails to
8 timely file a complete disclosure as required by this section or
9 as ordered by the court, the court may accept the statement of
10 the other party as accurate.

§48-5-512. Ex parte orders granting temporary relief.

1 An ex parte order granting all or part of the relief provided
2 for in this part 5 may be granted without written or oral notice
3 to the adverse party if:

4 (1) It appears from specific facts shown by affidavit or by
5 the verified complaint that immediate and irreparable injury,
6 loss or damage will result to the applicant before the adverse
7 party or such party's attorney can be heard in opposition. The
8 potential injury, loss or damage may be anticipated when the
9 following conditions exist: *Provided*, That the following list of
10 conditions is not exclusive:

11 (A) There is a real and present threat of physical injury to
12 the applicant at the hands or direction of the adverse party;

13 (B) The adverse party is preparing to quit the state with a
14 minor child or children of the parties, thus depriving the court
15 of jurisdiction in the matter of child custody;

16 (C) The adverse party is preparing to remove property from
17 the state or is preparing to transfer, convey, alienate, encumber
18 or otherwise deal with property which could otherwise be
19 subject to the jurisdiction of the court and subject to judicial

20 order under the provisions of this section or part 5-601, et seq.;

21 and

22 (2) The moving party or his or her attorney certifies in

23 writing any effort that has been made to give the notice and the

24 reasons supporting his or her claim that notice should not be

25 required.

§48-5-513. Granting of ex parte relief.

1 (a) Every ex parte order granted without notice must:

2 (1) Be endorsed with the date and hour of issuance;

3 (2) Be filed forthwith in the circuit clerk's office and

4 entered of record; and

5 (3) Set forth the finding of the court that unless the order is

6 granted without notice there is probable cause to believe that

7 existing conditions will result in immediate and irreparable

8 injury, loss or damage to the moving party before the adverse

9 party or his or her attorney can be heard in opposition.

10 (b) The order granting ex parte relief must fix a time for a

11 hearing for temporary relief to be held within a reasonable time,

12 not to exceed twenty days, unless before the time fixed for

13 hearing, the hearing is continued for good cause shown or with

14 the consent of the party against whom the ex parte order is

15 directed. The reasons for the continuance must be entered of

16 record. Within the time limits described herein, when an ex

17 parte order is made, a motion for temporary relief must be set

18 down for hearing at the earliest possible time and takes prece-

19 dence over all matters except older matters of the same charac-

20 ter. If the party who obtained the ex parte order fails to proceed

21 with a motion for temporary relief, the court shall set aside the

22 ex parte order.

23 (c) At any time after ex parte relief is granted, and on two
24 days' notice to the party who obtained the relief or on such
25 shorter notice as the court may direct, the adverse party may
26 appear and move the court to set aside or modify the ex parte
27 order on the grounds that the effects of the order are onerous or
28 otherwise improper. In that event, the court shall proceed to
29 hear and determine such motion as expeditiously as the ends of
30 justice require.

§48-5-514. Temporary order not subject to appeal or review.

1 An order granting temporary relief may not be the subject
2 of an appeal or a petition for review.

PART 6. JUDGMENT ORDERING DIVORCE.

§48-5-601. Relief that may be included in final order of divorce.

1 In ordering a divorce, the court may order additional relief,
2 including, but not limited to, the relief described in the follow-
3 ing sections of this part 6.

§48-5-602. Court may require payment of spousal support.

1 The court, in ordering a divorce may require either party to
2 pay spousal support in accordance with the provisions of article
3 8-101, et seq., of this chapter.

§48-5-603. Relief regarding minor child or children.

1 (a) If the action involves a minor child or children, the court
2 may, if appropriate, order the allocation of custodial responsi-
3 bility and the allocation of decision-making responsibility in
4 accordance with the provisions of article 9-101, et seq., of this
5 chapter.

6 (b) If the action involves a minor child or children, the
7 court shall order either or both parties to pay child support in
8 accordance with the provisions of articles 11-101, et seq., and
9 13-101, et seq., of this chapter.

10 (c) If the action involves a minor child or children, the court
11 shall order medical support to be provided for the child or
12 children in accordance with the provisions of article 12-101, et
13 seq., of this chapter.

§48-5-604. Use and occupancy of marital home.

1 (a) A circuit court may award the exclusive use and
2 occupancy of the marital home to a party. An order granting use
3 and occupancy of the marital home shall include the use of any
4 necessary household goods, furniture and furnishings. The order
5 shall establish a definite period for the use and occupancy,
6 ending at a specific time set forth in the order, subject to
7 modification upon the petition of either party.

8 (b) Generally, an award of the exclusive use and occupancy
9 of the marital home is appropriate when necessary to accommo-
10 date rearing minor children of the parties. Otherwise, the court
11 may award exclusive use and occupancy only in extraordinary
12 cases supported by specific findings set forth in the order that
13 grants relief.

14 (c) An order awarding the exclusive use and occupancy of
15 the marital home may also require payments to third parties for
16 home loan installments, land contract payments, rent, property
17 taxes and insurance coverage. When requiring third-party
18 payments, the court shall reduce them to a fixed monetary
19 amount set forth in the order. The court shall specify whether
20 third-party payments or portions of payments are spousal
21 support, child support, a partial distribution of marital property
22 or an allocation of marital debt. Unless the court identifies third

23 party payments as child support payments or as installment
24 payments for the distribution of marital property, then such
25 payments are spousal support. If the court does not identify the
26 payments and the parties have waived any right to receive
27 spousal support, the court may identify the payments upon
28 motion by any party.

29 (d) This section is not intended to abrogate a contract
30 between either party and a third party or affect the rights and
31 liabilities of either party or a third party under the terms of a
32 contract.

§48-5-605. Use and possession of motor vehicles.

1 (a) A circuit court may award the exclusive use and
2 possession of a motor vehicle or vehicles to either of the
3 parties.

4 (b) The court may require payments to third parties in the
5 form of automobile loan installments or insurance coverage, if
6 coverage is available at reasonable rates. When requiring
7 third-party payments, the court shall reduce them to a fixed
8 monetary amount set forth in the order. The court shall specify
9 whether third-party payments or portions of payments are
10 spousal support or installment payments for the distribution of
11 marital property.

12 (c) This section is not intended to abrogate a contract
13 between either party and a third party or affect the rights and
14 liabilities of either party or a third party under the terms of a
15 contract.

**§48-5-606. Relief regarding costs of health care and hospitaliza-
tion.**

1 As an incident to requiring the payment of spousal support
2 or child support, the court may order either party to provide

3 medical support to the other party. Payments made to an insurer
4 pursuant to this subdivision, either directly or by a deduction
5 from wages, shall be deemed to be spousal support or install-
6 ment payments for the distribution of marital property, in such
7 proportion as the court shall direct: *Provided*, That if the court
8 does not set forth in the order that a portion of the payments is
9 to be deemed installment payments for the distribution of
10 marital property, then all payments made pursuant to this
11 section are spousal support. The designation of insurance
12 coverage as spousal support under the provisions of this
13 subdivision shall not, in and of itself, give rise to a subsequent
14 modification of the order to provide for spousal support other
15 than insurance for covering the costs of health care and hospi-
16 talization.

§48-5-607. Court may order transfer of accounts for recurring expenses.

1 The court may order either party to take necessary steps to
2 transfer utility accounts and other accounts for recurring
3 expenses from the name of one party into the name of the other
4 party or from the joint names of the parties into the name of one
5 party. This section is not intended to affect the liability of the
6 parties for indebtedness on any account incurred before the
7 transfer of the account.

§48-5-608. Court may enjoin abuse.

1 When allegations of abuse have been proved, the court shall
2 enjoin the offending party from molesting or interfering with
3 the other, or otherwise imposing any restraint on the personal
4 liberty of the other or interfering with the custodial or visitation
5 rights of the other. The order may permanently enjoin the
6 offending party from entering the school, business or place of
7 employment of the other for the purpose of molesting or
8 harassing the other; or from contacting the other, in person or

9 by telephone, for the purpose of harassment or threats; or from
10 harassing or verbally abusing the other in a public place.

§48-5-609. Court may restore to either party his or her property.

1 Upon ordering a divorce, the court has the power to award
2 to either of the parties whatever of his or her property, real or
3 personal, may be in the possession, or under the control, or in
4 the name, of the other, and to compel a transfer or conveyance.

§48-5-610. Court may order just and equitable distribution of property.

1 (a) When the pleadings include a specific request for
2 specific property or raise issues concerning the equitable
3 division of marital property, the court shall order such relief as
4 may be required to effect a just and equitable distribution of the
5 property and to protect the equitable interests of the parties
6 therein.

7 (b) In addition to the disclosure requirements set forth in
8 part 7-201, et seq., of this chapter, the court may order accounts
9 to be taken as to all or any part of marital property or the
10 separate estates of the parties and may direct that the accounts
11 be taken as of the date of the marriage, the date upon which the
12 parties separated or any other time in assisting the court in the
13 determination and equitable division of property.

§48-5-611. Suit money, counsel fees and costs.

1 (a) Costs may be awarded to either party as justice requires,
2 and in all cases the court, in its discretion, may require payment
3 of costs at any time, and may suspend or withhold any order
4 until the costs are paid.

5 (b) The court may compel either party to pay attorney's
6 fees and court costs reasonably necessary to enable the other

7 party to prosecute or defend the action in the trial court. An
8 order for temporary relief awarding attorney fees and court
9 costs may be modified at any time during the pendency of the
10 action, as the exigencies of the case or equity and justice may
11 require, including, but not limited to, a modification which
12 would require full or partial repayment of fees and costs by a
13 party to the action to whom or on whose behalf payment of
14 such fees and costs was previously ordered. If an appeal be
15 taken or an intention to appeal be stated, the court may further
16 order either party to pay attorney fees and costs on appeal.

17 (c) When it appears to the court that a party has incurred
18 attorney fees and costs unnecessarily because the opposing
19 party has asserted unfounded claims or defenses for vexatious,
20 wanton or oppressive purposes, thereby delaying or diverting
21 attention from valid claims or defenses asserted in good faith,
22 the court may order the offending party, or his or her attorney,
23 or both, to pay reasonable attorney fees and costs to the other
24 party.

§48-5-612. Court may order a party to deliver separate property.

1 Unless a contrary disposition is ordered pursuant to other
2 provisions of this section, then upon the motion of either party,
3 the court may compel the other party to deliver to the moving
4 party any of his or her separate estate which may be in the
5 possession or control of the respondent party and may make
6 such further order as is necessary to prevent either party from
7 interfering with the separate estate of the other.

§48-5-613. Former name of party; restoration.

1 The court, upon ordering a divorce, shall if requested to do
2 so by either party, allow such party to resume the name used
3 prior to his or her first marriage. The court shall, if requested to
4 do so by either party, allow such party to resume the name of a

- 5 former spouse if such party has any living child or children by
6 marriage to such former spouse.

PART 7. MODIFICATION OF FINAL DIVORCE ORDER.

§48-5-701. Revision of order concerning spousal support.

- 1 After the entry of a final divorce order, the court may revise
2 the order concerning spousal support or the maintenance of the
3 parties and enter a new order concerning the same, as the
4 circumstances of the parties may require.

§48-5-702. Revision of order enjoining abuse.

- 1 After entering an order enjoining abuse in accordance with
2 the provisions of section 5-508, the court may from time to time
3 afterward, upon motion of either of the parties and upon proper
4 service, revise the order and enter a new order concerning the
5 same, as the circumstances of the parties and the benefit of
6 children may require.

**§48-5-703. Revision of order allocating custodial responsibility
and decision-making responsibility.**

- 1 After entering an order allocating custodial responsibility
2 and decision-making responsibility in accordance with the
3 provisions of sections 9-206 and 9-207, the court may also from
4 time to time afterward, upon the motion of either of the parties
5 or other proper person having actual or legal custody of the
6 minor child or children of the parties, revise or alter the order
7 concerning the allocation of custodial responsibility or alloca-
8 tion of decision-making responsibility in accordance with the
9 provisions of article 9 of this chapter, and make a new order
10 concerning the same, issuing it forthwith, as the circumstances
11 of the parents or other proper person or persons and the benefit
12 of the children may require.

§48-5-704. Revision of order establishing child support.

1 (a) After entering an order establishing child support in
2 accordance with the provisions of section 5-603, the court may
3 from time to time afterward, upon the motion of either of the
4 parties or other proper person having actual or legal custody of
5 the minor child or children of the parties, revise or alter the
6 order concerning the support of the children, and make a new
7 order concerning the same, issuing it forthwith, as the circum-
8 stances of the parents or other proper person or persons and the
9 benefit of the children may require.

10 (b) All orders modifying an award of child support must
11 conform to the provisions regarding child support guidelines
12 that are set forth in article 13 of this chapter.

13 (c) An order providing for child support payments may be
14 revised or altered for the reason, inter alia, that the existing
15 order provides for child support payments in an amount that is
16 less than eighty-five percent or more than one hundred fifteen
17 percent of the amount that would be required to be paid under
18 the provisions of the child support guidelines that are set forth
19 in article 13 of this chapter.

§48-5-705. Bureau for child support enforcement may seek revision of order establishing child support.

1 The bureau for child support enforcement may review a
2 child support order and, if appropriate, file a motion with the
3 court for modification of the child support order.

§48-5-706. Revision of order concerning distribution of marital property.

1 In modifying a final divorce order, the court may, when
2 other means are not conveniently available, alter any prior order

3 of the court with respect to the distribution of marital property,
4 if:

5 (1) The property is still held by the parties;

6 (2) The alteration of the prior order as it relates the distribu-
7 tion of marital property is necessary to give effect to a modifi-
8 cation of spousal support, child support or child custody; or

9 (3) The alteration of the prior order as it relates the distribu-
10 tion of marital property is necessary to avoid an inequitable or
11 unjust result which would be caused by the manner in which the
12 modification will affect the prior distribution of marital
13 property.

**§48-5-707. Reduction or termination of spousal support because
of de facto marriage.**

1 (a)(1) In the discretion of the court, an award of spousal
2 support may be reduced or terminated upon specific written
3 findings by the court that since the granting of a divorce and the
4 award of spousal support a de facto marriage has existed
5 between the spousal support payee and another person.

6 (2) In determining whether an existing award of spousal
7 support should be reduced or terminated because of an alleged
8 de facto marriage between a payee and another person, the court
9 should elicit the nature and extent of the relationship in ques-
10 tion. The court should give consideration, without limitation, to
11 circumstances such as the following in determining the relation-
12 ship of an ex-spouse to another person:

13 (A) The extent to which the ex-spouse and the other person
14 have held themselves out as a married couple by engaging in
15 conduct such as using the same last name, using a common
16 mailing address, referring to each other in terms such as "my

17 husband” or “my wife”, or otherwise conducting themselves in
18 a manner that evidences a stable marriage-like relationship;

19 (B) The period of time that the ex-spouse has resided with
20 another person not related by consanguinity or affinity in a
21 permanent place of abode;

22 (C) The duration and circumstances under which the
23 ex-spouse has maintained a continuing conjugal relationship
24 with the other person;

25 (D) The extent to which the ex-spouse and the other person
26 have pooled their assets or income or otherwise exhibited
27 financial interdependence;

28 (E) The extent to which the ex-spouse or the other person
29 has supported the other, in whole or in part;

30 (F) The extent to which the ex-spouse or the other person
31 has performed valuable services for the other;

32 (G) The extent to which the ex-spouse or the other person
33 has performed valuable services for the other’s company or
34 employer;

35 (H) Whether the ex-spouse and the other person have
36 worked together to create or enhance anything of value;

37 (I) Whether the ex-spouse and the other person have jointly
38 contributed to the purchase of any real or personal property;

39 (J) Evidence in support of a claim that the ex-spouse and
40 the other person have an express agreement regarding property
41 sharing or support; or

42 (K) Evidence in support of a claim that the ex-spouse and
43 the other person have an implied agreement regarding property
44 sharing or support.

45 (3) On the issue of whether spousal support should be
46 reduced or terminated under this subsection, the burden is on
47 the payor to prove by a preponderance of the evidence that a de
48 facto marriage exists. If the court finds that the payor has failed
49 to meet burden of proof on the issue, the court may award
50 reasonable attorney's fees to a payee who prevails in an action
51 that sought to reduce or terminate spousal support on the
52 ground that a de facto marriage exists.

53 (4) The court shall order that a reduction or termination of
54 spousal support is retroactive to the date of service of the
55 petition on the payee, unless the court finds that reimbursement
56 of amounts already paid would cause an undue hardship on the
57 payee.

58 (5) An award of rehabilitative spousal support shall not be
59 reduced or terminated because of the existence of a de facto
60 marriage between the spousal support payee and another
61 person.

62 (6) An award of spousal support in gross shall not be
63 reduced or terminated because of the existence of a de facto
64 marriage between the spousal support payee and another
65 person.

66 (7) An award of spousal support shall not be reduced or
67 terminated under the provisions of this subsection for conduct
68 by a spousal support payee that occurred before the first day of
69 October, one thousand nine hundred ninety-nine.

70 (b) Nothing in this subsection shall be construed to abrogate
71 the requirement that every marriage in this state be solemnized

72 under a license or construed to recognize a common law
73 marriage as valid.

ARTICLE 6. PROPERTY SETTLEMENT OR SEPARATION AGREEMENTS.

§48-6-101. Property settlement or separation agreement defined.

§48-6-201. Effect of separation agreement.

§48-6-202. Agreement for spousal support beyond the death of the payor.

§48-6-203. Agreement for spousal support beyond the remarriage of the payee.

§48-6-301. Factors considered in awarding spousal support, child support or separate maintenance.

PART 1. DEFINITIONS.

§48-6-101. Property settlement or separation agreement defined.

1 (a) "Property settlement or separation agreement" means a
2 written agreement between a husband and wife whereby they
3 agree to live separate and apart from each other. A separation
4 agreement may also:

5 (1) Settle the property rights of the parties;

6 (2) Provide for child support;

7 (3) Provide for the allocation of custodial responsibility and
8 the determination of decision-making responsibility for the
9 children of the parties;

10 (4) Provide for the payment or waiver of spousal support by
11 either party; or

12 (5) Otherwise settle and compromise issues arising from the
13 marital rights and obligations of the parties.

14 (b) To the extent that an antenuptial agreement affects the
15 property rights of the parties or the disposition of property after

16 an annulment of the marriage or after a divorce or separation of
17 the parties, the antenuptial agreement is a separation agreement.

PART 2. RELIEF BASED ON AGREEMENT.

§48-6-201. Effect of separation agreement.

1 (a) In cases where the parties to an action commenced
2 under the provisions of this chapter 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 parts 5 and 6, article 5 of this chapter to
11 the separation agreement of the parties. The separation agree-
12 ment may contractually fix the division of property between the
13 parties and may determine whether spousal support shall be
14 awarded, whether an award of spousal support, other than an
15 award of rehabilitative spousal support or spousal support in
16 gross, may be reduced or terminated because a de facto mar-
17 riage exists between the spousal support payee and another
18 person, whether a court shall have continuing jurisdiction over
19 the amount of a spousal support award so as to increase or
20 decrease the amount of spousal support to be paid, whether
21 spousal support shall be awarded as a lump sum settlement in
22 lieu of periodic payments, whether spousal support shall
23 continue beyond the death of the payor party or the remarriage
24 of the payee party, or whether the spousal support award shall
25 be enforceable by contempt proceedings or other judicial
26 remedies aside from contractual remedies.

27 (b) Any award of periodic payments of spousal support
28 shall be deemed to be judicially decreed and subject to subse-

29 quent modification unless there is some explicit, well ex-
30 pressed, clear, plain and unambiguous provision to the contrary
31 set forth in the court-approved separation agreement or the
32 order granting the divorce. Child support shall, under all
33 circumstances, always be subject to continuing judicial modifi-
34 cation.

§48-6-202. Agreement for spousal support beyond the death of the payor.

1 When a separation agreement is the basis for an award of
2 spousal support, the court, in approving the agreement, shall
3 examine the agreement to ascertain whether it clearly provides
4 for spousal support to continue beyond the death of the payor
5 or the payee or to cease in such event. When spousal support is
6 to be paid pursuant to the terms of a separation agreement
7 which does not state whether the payment of spousal support is
8 to continue beyond the death of the payor or payee or is to
9 cease, or when the parties have not entered into a separation
10 agreement and spousal support is awarded, the court shall have
11 the discretion to determine, as a part of its order, whether such
12 payments of spousal support are to be continued beyond the
13 death of the payor or payee or cease. In the event neither an
14 agreement nor an order makes provision for the death of the
15 payor or payee, spousal support other than rehabilitative
16 spousal support or spousal support in gross shall cease on the
17 death of the payor or payee. In the event neither an agreement
18 nor an order makes provision for the death of the payor,
19 rehabilitative spousal support continues beyond the payor's
20 death, in the absence of evidence that the payor's estate is likely
21 to be insufficient to meet other obligations or that other matters
22 would make continuation after death inequitable. Rehabilitative
23 spousal support ceases with the payee's death. In the event
24 neither an agreement nor an order makes provision for the death
25 of the payor or payee, spousal support in gross continues
26 beyond the payor's or payee's death.

§48-6-203. Agreement for spousal support beyond the remarriage of the payee.

1 When a separation agreement is the basis for an award of
2 spousal support, the court, in approving the agreement, shall
3 examine the agreement to ascertain whether it clearly provides
4 for spousal support to continue beyond the remarriage of the
5 payee or to cease in such event. When spousal support is to be
6 paid pursuant to the terms of a separation agreement which does
7 not state whether the payment of spousal support is to continue
8 beyond the remarriage of the payee or is to cease, or when the
9 parties have not entered into a separation agreement and
10 spousal support is awarded, the court shall have the discretion
11 to determine, as a part of its order, whether such payments of
12 spousal support are to be continued beyond the remarriage of
13 the payee. In the event neither an agreement nor an order makes
14 provision for the remarriage of the payee, spousal support other
15 than rehabilitative spousal support or spousal support in gross
16 shall cease on the remarriage of the payee. Rehabilitative
17 spousal support does not cease upon the remarriage of the payee
18 during the first four years of a rehabilitative period. In the event
19 neither an agreement nor an order makes provision for the
20 remarriage of the payee, spousal support in gross continues
21 beyond the payee's remarriage.

PART 3. RELIEF IN ABSENCE OF AGREEMENT.

§48-6-301. Factors considered in awarding spousal support, child support or separate maintenance.

1 (a) In cases where the parties to an action commenced
2 under the provisions of this article have not executed a separa-
3 tion agreement, or have executed an agreement which is
4 incomplete or insufficient to resolve the outstanding issues
5 between the parties, or where the court finds the separation
6 agreement of the parties not to be fair and reasonable or clear

7 and unambiguous, the court shall proceed to resolve the issues
8 outstanding between the parties.

9 (b) The court shall consider the following factors in
10 determining the amount of spousal support, child support or
11 separate maintenance, if any, to be ordered under the provisions
12 of parts 5 and 6, article five of this chapter, as a supplement to
13 or in lieu of the separation agreement:

14 (1) The length of time the parties were married;

15 (2) The period of time during the marriage when the parties
16 actually lived together as husband and wife;

17 (3) The present employment income and other recurring
18 earnings of each party from any source;

19 (4) The income-earning abilities of each of the parties,
20 based upon such factors as educational background, training,
21 employment skills, work experience, length of absence from the
22 job market and custodial responsibilities for children;

23 (5) The distribution of marital property to be made under
24 the terms of a separation agreement or by the court under the
25 provisions of article seven of this chapter, insofar as the
26 distribution affects or will affect the earnings of the parties and
27 their ability to pay or their need to receive spousal support,
28 child support or separate maintenance: *Provided*, That for the
29 purposes of determining a spouse's ability to pay spousal
30 support, the court may not consider the income generated by
31 property allocated to the payor spouse in connection with the
32 division of marital property unless the court makes specific
33 findings that a failure to consider income from the allocated
34 property would result in substantial inequity;

35 (6) The ages and the physical, mental and emotional
36 condition of each party;

- 37 (7) The educational qualifications of each party;
- 38 (8) Whether either party has foregone or postponed
39 economic, education or employment opportunities during the
40 course of the marriage;
- 41 (9) The standard of living established during the marriage;
- 42 (10) The likelihood that the party seeking spousal support,
43 child support or separate maintenance can substantially increase
44 his or her income-earning abilities within a reasonable time by
45 acquiring additional education or training;
- 46 (11) Any financial or other contribution made by either
47 party to the education, training, vocational skills, career or
48 earning capacity of the other party;
- 49 (12) The anticipated expense of obtaining the education and
50 training described in subdivision (10) above;
- 51 (13) The costs of educating minor children;
- 52 (14) The costs of providing health care for each of the
53 parties and their minor children;
- 54 (15) The tax consequences to each party;
- 55 (16) The extent to which it would be inappropriate for a
56 party, because said party will be the custodian of a minor child
57 or children, to seek employment outside the home;
- 58 (17) The financial need of each party;
- 59 (18) The legal obligations of each party to support himself
60 or herself and to support any other person;
- 61 (19) Costs and care associated with a minor or adult child's
62 physical or mental disabilities; and

63 (20) Such other factors as the court deems necessary or
 64 appropriate to consider in order to arrive at a fair and equitable
 65 grant of spousal support, child support or separate maintenance.

ARTICLE 7. EQUITABLE DISTRIBUTION OF PROPERTY.

- §48-7-101. Equal division of marital property.
- §48-7-102. Division of marital property in accordance with a separation agreement.
- §48-7-103. Division of marital property without a valid agreement.
- §48-7-104. Determination of worth of marital property.
- §48-7-105. Transfers of property to achieve equitable distribution of marital property.
- §48-7-106. Findings; rationale for division of property.
- §48-7-107. Refusal to transfer property; appointment of special commissioner.
- §48-7-108. Interest or title in property prior to judicial determination.
- §48-7-109. Tax consequences of transfer of interest or title.
- §48-7-110. Requiring sums to be paid out of disposable retired or retainer pay.
- §48-7-111. No equitable distribution of property between individuals not married to one another.
- §48-7-112. Prospective effect of prior amendments.
- §48-7-201. Required disclosure and updates.
- §48-7-202. Assets that are required to be disclosed.
- §48-7-203. Forms for disclosure of assets.
- §48-7-204. Discovery under rules; optional disclosure of tax returns.
- §48-7-205. Confidentiality of disclosed information.
- §48-7-206. Failure to disclose required financial information.
- §48-7-301. Injunction to prevent removal or disposition of property.
- §48-7-302. Notice of hearing for injunction; temporary injunction.
- §48-7-303. Applicability of injunction procedures to sale of goods or disposition of major business assets.
- §48-7-304. Setting aside encumbrance or disposition of property to third persons.
- §48-7-401. Lis pendens.
- §48-7-402. Notice of lis pendens.
- §48-7-501. Retroactive effect of amendments.

PART 1. MARITAL PROPERTY DISPOSITION.

§48-7-101. Equal division of marital property.

1 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.

**§48-7-102. Division of marital property in accordance with a
separation agreement.**

1 In cases where the parties to an action commenced under
2 the provisions of this chapter have executed a separation
3 agreement, then the court shall divide the marital property in
4 accordance with the terms of the agreement, unless the court
5 finds:

6 (1) That the agreement was obtained by fraud, duress or
7 other unconscionable conduct by one of the parties; or

8 (2) That the parties, in the separation agreement, have not
9 expressed themselves in terms which, if incorporated into a
10 judicial order, would be enforceable by a court in future
11 proceedings; or

12 (3) That the agreement, viewed in the context of the actual
13 contributions of the respective parties to the net value of the
14 marital property of the parties, is so inequitable as to defeat the
15 purposes of this section, and such agreement was inequitable at
16 the time the same was executed.

**§48-7-103. Division of marital property without a valid agree-
ment.**

1 In the absence of a valid agreement, the court shall presume
2 that all marital property is to be divided equally between the
3 parties, but may alter this distribution, without regard to any
4 attribution of fault to either party which may be alleged or
5 proved in the course of the action, after a consideration of the
6 following:

7 (1) The extent to which each party has contributed to the
8 acquisition, preservation and maintenance, or increase in value
9 of marital property by monetary contributions, including, but
10 not limited to:

11 (A) Employment income and other earnings; and

12 (B) Funds which are separate property.

13 (2) The extent to which each party has contributed to the
14 acquisition, preservation and maintenance or increase in value
15 of marital property by nonmonetary contributions, including,
16 but not limited to:

17 (A) Homemaker services;

18 (B) Child care services;

19 (C) Labor performed without compensation, or for less than
20 adequate compensation, in a family business or other business
21 entity in which one or both of the parties has an interest;

22 (D) Labor performed in the actual maintenance or improve-
23 ment of tangible marital property; and

24 (E) Labor performed in the management or investment of
25 assets which are marital property.

26 (3) The extent to which each party expended his or her
27 efforts during the marriage in a manner which limited or
28 decreased such party's income-earning ability or increased the
29 income-earning ability of the other party, including, but not
30 limited to:

31 (A) Direct or indirect contributions by either party to the
32 education or training of the other party which has increased the
33 income-earning ability of such other party; and

34 (B) Foregoing by either party of employment or other
35 income-earning activity through an understanding of the parties
36 or at the insistence of the other party.

37 (4) The extent to which each party, during the marriage,
38 may have conducted himself or herself so as to dissipate or
39 depreciate the value of the marital property of the parties:
40 *Provided*, That except for a consideration of the economic
41 consequences of conduct as provided for in this subdivision,
42 fault or marital misconduct shall not be considered by the court
43 in determining the proper distribution of marital property.

§48-7-104. Determination of worth of marital property.

1 After considering the factors set forth in section 7-103, the
2 court shall:

3 (1) Determine the net value of all marital property of the
4 parties as of the date of the separation of the parties or as of
5 such later date determined by the court to be more appropriate
6 for attaining an equitable result. Where the value of the marital
7 property portion of a spouse's entitlement to future payments
8 can be determined at the time of entering a final order in a
9 domestic relations action, the court may include it in reckoning
10 the worth of the marital property assigned to each spouse. In the
11 absence of an agreement between the parties, when the value of
12 the future payments is not known at the time of entering a final
13 order in a domestic relations action, if their receipt is contingent
14 on future events or not reasonably assured, or if for other
15 reasons it is not equitable under the circumstances to include
16 their value in the property assigned at the time of dissolution,
17 the court may decline to do so; and

18 (A) Fix the spouses' respective shares in such future
19 payments if and when received; or

20 (B) If it is not possible and practical to fix their share at the
21 time of entering a final order in a domestic relations action,
22 reserve jurisdiction to make an appropriate order at the earliest
23 practical date;

24 If a valuation is made after a contingent or other future fee
25 has been earned through the personal services or skills of a
26 spouse, the portion that is marital property shall be in the same
27 proportion to the total fee that the personal services or skills
28 expended before the separation of the parties bears to the total
29 personal skills or services expended. The provisions of this
30 subdivision apply to pending cases when the issues of contin-
31 gent fees or future earned fees have not been finally adjudi-
32 cated.

33 (2) Designate the property which constitutes marital
34 property, and define the interest therein to which each party is
35 entitled and the value of their respective interest therein. In the
36 case of an action wherein there is no agreement between the
37 parties and the relief demanded requires the court to consider
38 such factors as are described in subdivisions (1), (2), (3) and
39 (4), section 7-103, if a consideration of factors only under said
40 subdivisions (1) and (2) would result in an unequal division of
41 marital property, and if an examination of the factors described
42 in said subdivisions (3) and (4) produce a finding that a party:
43 (A) Expended his or her efforts during the marriage in a manner
44 which limited or decreased such party's income-earning ability
45 or increased the income-earning ability of the other party; or
46 (B) conducted himself or herself so as to dissipate or depreciate
47 the value of the marital property of the parties, then the court
48 may, in the absence of a fair and just spousal support award
49 under the provisions of section 5-602 which adequately takes
50 into account the facts which underlie the factors described in
51 subdivisions (3) and (4), section 7-103, equitably adjust the
52 definition of the parties' interest in marital property, increasing
53 the interest in marital property of a party adversely affected by

54 the factors considered under said subdivisions who would
55 otherwise be awarded less than one half of the marital property,
56 to an interest not to exceed one half of the marital property;

57 (3) Designate the property which constitutes separate
58 property of the respective parties or the separate property of
59 their children;

60 (4) Determine the extent to which marital property is
61 susceptible to division in accordance with the findings of the
62 court as to the respective interests of the parties therein;

63 (5) In the case of any property which is not susceptible to
64 division, ascertain the projected results of a sale of such
65 property;

66 (6) Ascertain the projected effect of a division or transfer of
67 ownership of income-producing property, in terms of the
68 possible pecuniary loss to the parties or other persons which
69 may result from an impairment of the property's capacity to
70 generate earnings; and

71 (7) Transfer title to such component parts of the marital
72 property as may be necessary to achieve an equitable distribu-
73 tion of the marital property. To make such equitable distribu-
74 tion, the court may:

75 (A) Direct either party to transfer their interest in specific
76 property to the other party;

77 (B) Permit either party to purchase from the other party
78 their interest in specific property;

79 (C) Direct either party to pay a sum of money to the other
80 party in lieu of transferring specific property or an interest
81 therein, if necessary to adjust the equities and rights of the

82 parties, which sum may be paid in installments or otherwise, as
83 the court may direct;

84 (D) Direct a party to transfer his or her property to the other
85 party in substitution for property of the other party of equal
86 value which the transferor is permitted to retain and assume
87 ownership of; or

88 (E) Order a sale of specific property and an appropriate
89 division of the net proceeds of such sale: *Provided*, That such
90 sale may be by private sale, or through an agent or by judicial
91 sale, whichever would facilitate a sale within a reasonable time
92 at a fair price.

**§48-7-105. Transfers of property to achieve equitable distribution
of marital property.**

1 In order to achieve the equitable distribution of marital
2 property, the court shall, unless the parties otherwise agree,
3 order, when necessary, the transfer of legal title to any property
4 of the parties, giving preference to effecting equitable distribu-
5 tion through periodic or lump sum payments: *Provided*, That
6 the court may order the transfer of legal title to motor vehicles,
7 household goods and the former marital domicile without
8 regard to such preference where the court determines it to be
9 necessary or convenient. In any case involving the equitable
10 distribution of: (1) Property acquired by bequest, devise,
11 descent, distribution or gift; or (2) ownership interests in a
12 business entity, the court shall, unless the parties otherwise
13 agree, give preference to the retention of the ownership interests
14 in such property. In the case of such business interests, the court
15 shall give preference to the party having the closer involvement,
16 larger ownership interest or greater dependency upon the
17 business entity for income or other resources required to meet
18 responsibilities imposed under this article, and shall also
19 consider the effects of transfer or retention in terms of which

20 alternative will best serve to preserve the value of the business
21 entity or protect the business entity from undue hardship or
22 from interference caused by one of the parties or by the divorce,
23 annulment or decree of separate maintenance: *Provided,*
24 *however,* That the court may, unless the parties otherwise agree,
25 sever the business relationship of the parties and order the
26 transfer of legal title to ownership interests in the business
27 entity from one party to the other, without regard to the
28 limitations on the transfer of title to such property otherwise
29 provided in this subsection, if such transfer is required to
30 achieve the other purposes of this article: *Provided further,* That
31 in all such cases the court shall order, or the agreement of the
32 parties shall provide for, equitable payment or transfer of legal
33 title to other property, of fair value in money or moneys' worth,
34 in lieu of any ownership interests in a business entity which are
35 ordered to be transferred under this subsection: *And provided*
36 *further,* That the court may order the transfer of such business
37 interests to a third party (such as the business entity itself or
38 another principal in the business entity) where the interests of
39 the parties under this article can be protected and at least one
40 party consents thereto.

§48-7-106. Findings; rationale for division of property.

1 In any order which divides or transfers the title to any
2 property, determines the ownership or value of any property,
3 designates the specific property to which any party is entitled
4 or grants any monetary award, the court shall set out in detail its
5 findings of fact and conclusions of law, and the reasons for
6 dividing the property in the manner adopted.

§48-7-107. Refusal to transfer property; appointment of special commissioner.

1 If an order entered in accordance with the provisions of this
2 article requires the transfer of title to property and a party fails

3 or refuses to execute a deed or other instrument necessary to
4 convey title to such property, the deed or other instrument shall
5 be executed by a special commissioner appointed by the court
6 for the purpose of effecting such transfer of title pursuant to
7 section seven, article twelve, chapter fifty-five of this code.

§48-7-108. Interest or title in property prior to judicial determination.

1 As to any third party, the doctrine of equitable distribution
2 of marital property and the provisions of this article shall be
3 construed as creating no interest or title in property until and
4 unless an order is entered under this article judicially defining
5 such interest or approving a separation agreement which defines
6 such interest. Neither this article nor the doctrine of equitable
7 distribution of marital property shall be construed to create
8 community property nor any other interest or estate in property
9 except those previously recognized in this state. A husband or
10 wife may alienate property at any time prior to the entry of an
11 order under the provisions of this article or prior to the
12 recordation of a notice of lis pendens in accordance with the
13 provisions of part 7-401, et seq., and at anytime and in any
14 manner not otherwise prohibited by an order under this chapter,
15 in like manner and with like effect as if this article and the
16 doctrine of equitable distribution had not been adopted:
17 *Provided,* That as to any transfer prior to the entry of an order
18 under the provisions of this article, a transfer other than to a
19 bona fide purchaser for value shall be voidable if the court finds
20 such transfer to have been effected to avoid the application of
21 the provisions of this article or to otherwise be a fraudulent
22 conveyance. Upon the entry of any order under this article or
23 the admission to record of any notice with respect to an action
24 under this article, restraining the alienation of property of a
25 party, a bona fide purchaser for value shall take such title or
26 interest as he or she might have taken prior to the effective date
27 of this section and no purchaser for value need see to the

28 application of the proceeds of such purchase except to the
29 extent he or she would have been required so to do prior to the
30 effective date of this section: *Provided, however,* That as to
31 third parties nothing in this section shall be construed to limit
32 or otherwise defeat the interests or rights to property which any
33 husband or wife would have had in property prior to the
34 enactment of this section or prior to the adoption of the doctrine
35 of equitable distribution by the supreme court of appeals on the
36 twenty-fifth day of May, one thousand nine hundred eighty-
37 three: *Provided further,* That no order entered under this article
38 shall be construed to defeat the title of a third party transferee
39 thereof except to the extent that the power to effect such a
40 transfer of title or interest in such property is secured by a valid
41 and duly perfected lien and, as to any personal property,
42 secured by a duly perfected security interest.

§48-7-109. Tax consequences of transfer of interest or title.

1 Notwithstanding the provisions of chapter eleven of this
2 code, no transfer of interest in or title to property under this
3 article is taxable as a transfer of property without consideration
4 nor, except as to spousal support, create liability for sales, use,
5 inheritance and transfer or income taxes due the state or any
6 political subdivision nor require the payment of the excise tax
7 imposed under article twenty-two, chapter eleven of this code.

**§48-7-110. Requiring sums to be paid out of disposable retired or
retainer pay.**

1 Whenever under the terms of this article a court enters an
2 order requiring a division of property, if the court anticipates
3 the division of property will be effected by requiring sums to be
4 paid out of "disposable retired or retainer pay" as that term is
5 defined in 10 U.S.C. §1408, relating to members or former
6 members of the uniformed services of the United States, the
7 court shall specifically provide for the payment of an amount,

8 expressed in dollars or as a percentage of disposable retired or
9 retainer pay, from the disposable retired or retainer pay of the
10 payor party to the payee party.

§48-7-111. No equitable distribution of property between individuals not married to one another.

1 A court may not award spousal support or order equitable
2 distribution of property between individuals who are not
3 married to one another in accordance with the provisions of
4 article one of this chapter.

§48-7-112. Prospective effect of prior amendments.

1 The amendments to this section effected by the reenactment
2 of section 48-2-32 during the regular session of the Legislature,
3 1996, are to be applied prospectively and have no application
4 to any action for annulment, divorce or separate maintenance
5 that was commenced on or before June 7, 1996.

PART 2. DISCLOSURE OF ASSETS REQUIRED.

§48-7-201. Required disclosure and updates.

1 In all divorce actions and in any other action involving
2 child support, all parties shall fully disclose their assets and
3 liabilities within forty days after the service of summons or at
4 such earlier time as ordered by the court. The information
5 contained on these forms shall be updated on the record to the
6 date of the hearing.

§48-7-202. Assets that are required to be disclosed.

1 The disclosure required by this part 2 may be made by each
2 party individually or by the parties jointly. Assets required to be
3 disclosed shall include, but are not limited to, real property,
4 savings accounts, stocks and bonds, mortgages and notes, life

5 insurance, health insurance coverage, interest in a partnership
6 or corporation, tangible personal property, income from
7 employment, future interests whether vested or nonvested and
8 any other financial interest or source.

§48-7-203. Forms for disclosure of assets.

1 The supreme court of appeals shall make available to the
2 circuit courts a standard form for the disclosure of assets and
3 liabilities required by this part 2. The clerk of the circuit court
4 shall make these forms available to all parties in any divorce
5 action or action involving child support. All disclosure required
6 by this part 2 shall be on a form that substantially complies with
7 the form promulgated by the supreme court of appeals. The
8 form used shall contain a statement in conspicuous print that
9 complete disclosure of assets and liabilities is required by law
10 and deliberate failure to provide complete disclosure as ordered
11 by the court constitutes false swearing.

§48-7-204. Discovery under rules; optional disclosure of tax returns.

1 Nothing contained in this part 2 shall be construed to
2 prohibit the court from ordering discovery pursuant to rule
3 eighty-one of the rules of civil procedure. Additionally, the
4 court may on its own initiative and shall at the request of either
5 party require the parties to furnish copies of all state and federal
6 income tax returns filed by them for the past two years and may
7 require copies of such returns for prior years.

§48-7-205. Confidentiality of disclosed information.

1 Information disclosed under this part 2 is confidential and
2 may not be made available to any person for any purpose other
3 than the adjudication, appeal, modification or enforcement of
4 judgment of an action affecting the family of the disclosing
5 parties. The court shall include in any order compelling

6 disclosure of assets such provisions as the court considers
7 necessary to preserve the confidentiality of the information
8 ordered disclosed.

§48-7-206. Failure to disclose required financial information.

1 Any failure to timely or accurately disclose financial
2 information required by this part 2 may be considered as
3 follows:

4 (1) Upon the failure by either party timely to file a complete
5 disclosure statement as required by this part 2 or as ordered by
6 the court, the court may accept the statement of the other party
7 as accurate.

8 (2) If any party deliberately or negligently fails to disclose
9 information which is required by this part 2 and in consequence
10 thereof any asset or assets with a fair market value of five
11 hundred dollars or more is omitted from the final distribution of
12 property, the party aggrieved by the nondisclosure may at any
13 time petition a court of competent jurisdiction to declare the
14 creation of a constructive trust as to all undisclosed assets, for
15 the benefit of the parties and their minor or dependent children,
16 if any, with the party in whose name the assets are held de-
17 clared the constructive trustee, such trust to include such terms
18 and conditions as the court may determine. The court shall
19 impose the trust upon a finding of a failure to disclose such
20 assets as required under this part 2.

21 (3) Any assets with a fair market value of five hundred
22 dollars or more which would be considered part of the estate of
23 either or both of the parties if owned by either or both of them
24 at the time of the action, but which was transferred for inade-
25 quate consideration, wasted, given away or otherwise unac-
26 counted for by one of the parties, within five years prior to the
27 filing of the petition or length of the marriage, whichever is

28 shorter, shall be presumed to be part of the estate and shall be
29 subject to the disclosure requirement contained in this part 2 .
30 With respect to such transfers the spouse shall have the same
31 right and remedies as a creditor whose debt was contracted at
32 the time the transfer was made under article one-a, chapter forty
33 of this code. Transfers which resulted in an exchange of assets
34 of substantially equivalent value need not be specifically
35 disclosed when such assets are otherwise identified in the
36 statement of net worth.

37 (4) A person who knowingly provides incorrect information
38 or who deliberately fails to disclose information pursuant to the
39 provisions of this part 2 is guilty of false swearing.

PART 3. INJUNCTION; SETTING ASIDE CERTAIN TRANSFERS.

§48-7-301. Injunction to prevent removal or disposition of property.

1 Where it appears to the court that a party is about to remove
2 himself or herself or his or her property from the jurisdiction of
3 the court or is about to dispose of, alienate or encumber
4 property in order to defeat a fair distribution of marital prop-
5 erty, or the payment of alimony, child support or separate
6 maintenance, an injunction may issue to prevent the removal or
7 disposition and the property may be attached as provided by
8 this code. The court may issue such injunction or attachment
9 without bond.

§48-7-302. Notice of hearing for injunction; temporary injunction.

1 Any such injunction may be granted upon proper hearing
2 after notice. For good cause shown, a temporary injunction may
3 be issued after an ex parte proceeding with notice and proper
4 hearing for a permanent injunction to be held forthwith thereaf-
5 ter.

§48-7-303. Applicability of injunction procedures to sale of goods or disposition of major business assets.

1 The procedures of this part 3 are not intended to apply to
2 the sale of goods in the ordinary course of operating a business
3 but shall apply to the disposition of the major assets of a
4 business.

§48-7-304. Setting aside encumbrance or disposition of property to third persons.

1 Any encumbrance or disposition of property to third
2 persons, except to bona fide purchasers without notice for full
3 and adequate consideration, may be set aside by the court.

PART 4. LIS PENDENS.

§48-7-401. Lis pendens.

1 Upon the commencement of an action under the provisions
2 of this article, any party claiming an interest in real property in
3 which the other party has an interest, may cause a notice of lis
4 pendens to be recorded in the office of the clerk of the county
5 commission of the county wherein the property is located.

§48-7-402. Notice of lis pendens.

1 The notice shall contain the names of the parties, the nature
2 of the complaint, the court having jurisdiction, the date the
3 complaint was filed, and a description of the real property. Such
4 notice shall, from the time of the recording only, be notice to
5 any person thereafter acquiring any interest in such property of
6 the pendency of the complaint. Each person whose conveyance
7 or encumbrance is subsequently executed or subsequently
8 recorded or whose interest is thereafter acquired by descent, or
9 otherwise, shall be deemed to be a subsequent purchaser or
10 encumbrancer, and shall be bound by all proceedings taken

11 after the recording of the notice, to the same extent as if he were
12 made a party to the complaint. A notice of lis pendens recorded
13 in accordance with this section may be discharged by the court
14 upon substitution of a bond with surety in an amount estab-
15 lished by the court, if the court finds that the claim against the
16 property subject to the notice of lis pendens can be satisfied by
17 a monetary award. In cases in which the sale of property is
18 already in process when the notice of lis pendens is filed, and
19 upon application, proper notice and hearing, the court may
20 substitute a lien on the net proceeds of the sale.

PART 5. MISCELLANEOUS PROVISIONS
RELATING TO EQUITABLE DISTRIBUTION.

§48-7-501. Retroactive effect of amendments.

1 Amendments made to the provisions of former article two
2 of this chapter during the regular session of the Legislature in
3 the year one thousand nine hundred eighty-four, shall be of
4 retroactive effect to the extent that such amended provisions
5 shall apply to the distribution of marital property, but not an
6 award of spousal support, in all actions filed under the provi-
7 sions of former article two of this chapter after the twenty-fifth
8 day of May, one thousand nine hundred eighty-three, or actions
9 pending on that date in which a claim for equitable distribution
10 of marital property had been pleaded: *Provided*, That the
11 amendments are not applicable to actions where, prior to the
12 effective date of the amendments, there has been a final decree
13 entered or the taking of evidence has been completed and the
14 case has been submitted for decision.

ARTICLE 8. SPOUSAL SUPPORT.

§48-8-101. General provisions regarding spousal support.

§48-8-102. Jurisdiction to award spousal support.

§48-8-103. Payment of spousal support.

§48-8-104. Effect of fault or misconduct on award of spousal support.

§48-8-105. Rehabilitative spousal support.

§48-8-106. Payments out of disposable retired or retainer pay.

§48-8-101. General provisions regarding spousal support.

1 (a) An obligation that compels a person to pay spousal
2 support may arise from the terms of a court order, an antenu-
3 tial agreement or a separation agreement. In an order or
4 agreement, a provision that has the support of a spouse or
5 former spouse as its sole purpose is to be regarded as an
6 allowance for spousal support whether expressly designated as
7 such or not, unless the provisions of this chapter specifically
8 require the particular type of allowance to be treated as child
9 support or a division of marital property. Spousal support may
10 be paid as a lump sum or as periodic installments without
11 affecting its character as spousal support.

12 (b) Spousal support is divided into four classes which are:
13 (1) Permanent spousal support; (2) temporary spousal support,
14 otherwise known as spousal support pendente lite; (3) rehabili-
15 tative spousal support; and (4) spousal support in gross.

16 (c) An award of spousal support cannot be ordered unless
17 the parties are actually living separate and apart from each
18 other.

§48-8-102. Jurisdiction to award spousal support.

1 Jurisdiction to make a judicial award of spousal support is
2 vested in the circuit courts of this state. A circuit court has
3 jurisdiction to provide for the maintenance of a spouse during
4 the pendency of an appeal to the supreme court of appeals.

***§48-8-103. Payment of spousal support.**

1 Upon ordering a divorce or granting a decree of separate
2 maintenance, the court may require either party to pay spousal

***Clerk's Note:** This section was also amended by S. B. 652 (Chapter 93), which passed subsequent to this act.

3 support in the form of periodic installments, or a lump sum, or
4 both, for the maintenance of the other party. Payments of
5 spousal support are to be ordinarily made from a party's
6 income, but when the income is not sufficient to adequately
7 provide for those payments, the court may, upon specific
8 findings set forth in the order, order the party required to make
9 those payments to make them from the corpus of his or her
10 separate estate. An award of spousal support shall not be
11 disproportionate to a party's ability to pay as disclosed by the
12 evidence before the court.

***§48-8-104. Effect of fault or misconduct on award of spousal support.**

1 (a) In determining whether spousal support is to be
2 awarded, or in determining the amount of spousal support, if
3 any, to be awarded, the court shall consider and compare the
4 fault or misconduct of either or both of the parties and the effect
5 of such fault or misconduct as a contributing factor to the
6 deterioration of the marital relationship. However, spousal
7 support shall not be awarded when both parties prove grounds
8 for divorce and are denied a divorce, nor shall an award of
9 spousal support under the provisions of this section be ordered
10 which directs the payment of spousal support to a party
11 determined to be at fault, when, as a grounds granting the
12 divorce, such party is determined by the court:

13 (1) To have committed adultery; or

14 (2) To have been convicted for the commission of a crime
15 which is a felony, subsequent to the marriage if such conviction
16 has become final; or

17 (3) To have actually abandoned or deserted his or her
18 spouse for six months.

***Clerk's Note:** This section was also amended by S. B. 652 (Chapter 93), which passed subsequent to this act.

19 (b) At any time after the entry of an order pursuant to the
20 provisions of this section, the court may, upon motion of either
21 party, revise or alter the order concerning the maintenance of
22 the parties, or either of them, and make a new order concerning
23 the same, issuing it forthwith, as the altered circumstances or
24 needs of the parties may render necessary to meet the ends of
25 justice.

§48-8-105. Rehabilitative spousal support.

1 (a) A circuit court may award rehabilitative spousal support
2 for a limited period of time to allow the recipient spouse,
3 through reasonable efforts, to become gainfully employed.
4 When awarding rehabilitative spousal support, the court shall
5 make specific findings of fact to explain the basis for the award,
6 giving due consideration to the factors set forth in section 8-103
7 of this article. An award of rehabilitative spousal support is
8 appropriate when the dependent spouse evidences a potential
9 for self-support that could be developed through rehabilitation,
10 training or academic study.

11 (b) A circuit court may modify an award of rehabilitative
12 spousal support if a substantial change in the circumstances
13 under which rehabilitative spousal support was granted war-
14 rants terminating, extending or modifying the award or replac-
15 ing it with an award of permanent spousal support. In determin-
16 ing whether a substantial change of circumstances exists which
17 would warrant a modification of a rehabilitative spousal support
18 award, the trial court may consider a reassessment of the
19 dependent spouse's potential work skills and the availability of
20 a relevant job market, the dependent spouse's age, health and
21 skills, the dependent spouse's ability or inability to meet the
22 terms of the rehabilitative plan, and other relevant factors as
23 provided for in section 8-103 of this article.

§48-8-106. Payments out of disposable retired or retainer pay.

1 Whenever the court enters an order requiring the payment
2 of spousal support, if the court anticipates the payment or any
3 portion thereof is to be paid out of “disposable retired or
4 retainer pay” as that term is defined in 10 U. S. C. §1408,
5 relating to members or former members of the uniformed
6 services of the United States, the court shall specifically
7 provide for the payment of an amount, expressed in dollars or
8 as a percentage of disposable retired or retainer pay, from the
9 disposable retired or retainer pay of the payor party to the payee
10 party.

ARTICLE 9. CUSTODY OF CHILDREN.

§48-9-101. Scope of article; legislative findings and declarations.

§48-9-102. Objectives; best interests of the child.

§48-9-103. Parties to an action under this article.

§48-9-104. Parent education classes.

§48-9-201. Parenting agreements.

§48-9-202. Court-ordered services.

§48-9-203. Proposed temporary parenting plan; temporary order;
amendment; vacation of order.

§48-9-204. Criteria for temporary parenting plan.

§48-9-205. Permanent parenting plan.

§48-9-206. Allocation of custodial responsibility.

§48-9-207. Allocation of significant decision-making responsibility.

§48-9-208. Criteria for parenting plan; dispute resolution.

§48-9-209. Parenting plan; limiting factors.

§48-9-301. Court-ordered investigation.

§48-9-302. Appointment of guardian.

§48-9-303. Interview of the child by the court.

§48-9-401. Modification upon showing of changed circumstances or harm.

§48-9-402. Modification without showing of changed circumstances.

§48-9-403. Relocation of a parent.

§48-9-501. Enforcement of parenting plans.

§48-9-601. Access to a child’s records.

§48-9-602. Designation of custody for the purpose of other state and federal statutes.

§48-9-603. Effect of enactment; operative dates.

PART 1. SCOPE; OBJECTIVES; PARTIES AND PARENT EDUCATION CLASSES.

§48-9-101. 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 deci-
7 sion-making responsibilities between parents who do not live
8 together. In furtherance of this policy, the Legislature declares
9 that a child's best interest will be served by assuring that minor
10 children have frequent and continuing contact with parents who
11 have shown the ability to act in the best interest of their
12 children, to educate parents on their rights and responsibilities
13 and the effect their separation may have on children, to encour-
14 age mediation of disputes, and to encourage parents to share in
15 the rights and responsibilities of rearing their children after the
16 parents have separated or divorced.

§48-9-102. Objectives; best interests of the child.

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 decision-making and avoidance
14 of prolonged uncertainty respecting arrangements for the
15 child's care and control.

16 (b) A secondary objective of article is to achieve fairness
17 between the parents.

§48-9-103. Parties to an action under this article.

1 (a) Persons who have a right to be notified of and partici-
2 pate as a party in an action filed by another are:

3 (1) A legal parent of the child, as defined in section 1-232
4 of this chapter;

5 (2) An adult allocated custodial responsibility or deci-
6 sion-making responsibility under a parenting plan regarding the
7 child that is then in effect; or

8 (3) 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 (b) 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.

§48-9-104. 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 subsec-
14 tion (a) of this section unless the court determines that atten-
15 dance 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.

PART 2. PARENTING PLANS.

§48-9-201. 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 49-1-3 of this
11 code or domestic violence as defined by section 27-202 of this
12 code has occurred, a hearing is mandatory and if the court
13 determines that abuse has occurred, appropriate protective
14 measures shall be ordered.

15 (c) If an agreement, in whole or in part, is not accepted by
16 the court under the standards set forth in subsection (a) of this
17 section, the court shall allow the parents the opportunity to
18 negotiate another agreement.

§48-9-202. Court-ordered services.

1 (a)(1) The court shall inform the parents, or require them to
2 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.

**§48-9-203. Proposed temporary parenting plan; temporary
order; amendment; vacation of order.**

1 (a) A parent seeking a temporary order relating to parenting
2 shall file and serve a proposed temporary parenting plan by

3 motion. The other parent, if contesting the proposed temporary
4 parenting plan, shall file and serve a responsive proposed
5 parenting plan. Either parent may move to have a proposed
6 temporary parenting plan entered as part of a temporary order.
7 The parents may enter an agreed temporary parenting plan at
8 any time as part of a temporary order. The proposed temporary
9 parenting plan may be supported by relevant evidence and shall
10 be verified and shall state at a minimum the following:

11 (1) The name, address and length of residence with the
12 person or persons with whom the child has lived for the
13 preceding twelve months;

14 (2) The performance by each parent during the last twelve
15 months of the parenting functions relating to the daily needs of
16 the child;

17 (3) The parents' work and child-care schedules for the
18 preceding twelve months;

19 (4) The parents' current work and child-care schedules; and

20 (5) Any of the circumstances set forth in section 9-209 that
21 are likely to pose a serious risk to the child and that warrant
22 limitation on the award to a parent of temporary residence or
23 time with the child pending entry of a permanent parenting
24 plan.

25 (b) At the hearing, the court shall enter a temporary
26 parenting order incorporating a temporary parenting plan which
27 includes:

28 (1) A schedule for the child's time with each parent when
29 appropriate;

30 (2) Designation of a temporary residence for the child;

31 (3) Allocation of decision-making authority, if any. Absent
32 allocation of decision-making authority consistent with section
33 two hundred seven of this article, neither party shall make any
34 decision for the child other than those relating to day-to-day or
35 emergency care of the child, which shall be made by the party
36 who is present with the child;

37 (4) Provisions for temporary support for the child; and

38 (5) Restraining orders, if applicable.

39 (c) A parent may make a motion for an order to show cause
40 and the court may enter a temporary order, including a tempo-
41 rary parenting plan, upon a showing of necessity.

42 (d) A parent may move for amendment of a temporary
43 parenting plan, and the court may order amendment to the
44 temporary parenting plan, if the amendment conforms to the
45 limitations of section 9-209 and is in the best interest of the
46 child.

§48-9-204. Criteria for temporary parenting plan.

1 (a) After considering the proposed temporary parenting
2 plan filed pursuant to section 9-203 and other relevant evidence
3 presented, the court shall make a temporary parenting plan that
4 is in the best interest of the child. In making this determination,
5 the court shall give particular consideration to:

6 (1) Which parent has taken greater responsibility during the
7 last twelve months for performing caretaking functions relating
8 to the daily needs of the child; and

9 (2) Which parenting arrangements will cause the least
10 disruption to the child's emotional stability while the action is
11 pending.

12 (b) The court shall also consider the factors used to deter-
13 mine residential provisions in the permanent parenting plan.

14 (c) Upon credible evidence of one or more of the circum-
15 stances set forth in subsection 9-209(a), the court shall issue a
16 temporary order limiting or denying access to the child as
17 required by that section, in order to protect the child or the other
18 party, pending adjudication of the underlying facts.

19 (d) Expedited procedures shall be instituted to facilitate the
20 prompt issuance of a parenting plan.

§48-9-205. 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 9-103;

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
17 twenty-four months preceding the filing of an action under this
18 article;

19 (4) A description of the work and child-care schedules of
20 any person seeking an allocation of custodial responsibility, and
21 any expected changes to these schedules in the near future;

22 (5) A description of the child's school and extracurricular
23 activities;

24 (6) A description of any of the limiting factors as described
25 in section 9-209 that are present, including any restraining
26 orders against either parent to prevent domestic or family
27 violence, by case number and jurisdiction;

28 (7) Required financial information; and

29 (8) A description of the known areas of agreement and
30 disagreement with any other parenting plan submitted in the
31 case.

32 The court shall maintain the confidentiality of any informa-
33 tion required to be filed under this section when the person
34 giving that information has a reasonable fear of domestic abuse
35 and disclosure of the information would increase that fear.

36 (b) The court shall develop a process to identify cases in
37 which there is credible information that child abuse or neglect,
38 as defined in section 49-1-3 of this code, or domestic violence
39 as defined in section 27-202 has occurred. The process shall
40 include assistance for possible victims of domestic abuse in
41 complying with subdivision (6), subsection (a) of this section,
42 and referral to appropriate resources for safe shelter, counsel-
43 ing, safety planning, information regarding the potential impact
44 of domestic abuse on children, and information regarding civil
45 and criminal remedies for domestic abuse. The process shall
46 also include a system for ensuring that jointly submitted
47 parenting plans that are filed in cases in which there is credible
48 information that child abuse or domestic abuse has occurred

49 receive the court review that is mandated by subsection 9-201(b).

50 (c) Upon motion of a party and after consideration of the
51 evidence, the court shall order a parenting plan consistent with
52 the provisions of sections 9-206 through 9-209 of this article,
53 containing:

54 (1) A provision for the child's living arrangements and each
55 parent's custodial responsibility, which shall include either:

56 (A) A custodial schedule that designates in which parent's
57 home each minor child will reside on given days of the year; or

58 (B) A formula or method for determining such a schedule
59 in sufficient detail that, if necessary, the schedule can be
60 enforced in subsequent proceedings by the court;

61 (2) An allocation of decision-making responsibility as to
62 significant matters reasonably likely to arise with respect to the
63 child; and

64 (3) A provision consistent with section 9-202 for resolution
65 of disputes that arise under the plan, and remedies for violations
66 of the plan.

67 (d) A parenting plan may, at the court's discretion, contain
68 provisions that address matters that are expected to arise in the
69 event of a party's relocation, or provide for future modifications
70 in the parenting plan if specified contingencies occur.

§48-9-206. Allocation of custodial responsibility.

1 (a) Unless otherwise resolved by agreement of the parents
2 under section 9-201 or unless manifestly harmful to the child,
3 the court shall allocate custodial responsibility so that the
4 proportion of custodial time the child spends with each parent
5 approximates the proportion of time each parent spent perform-

6 ing caretaking functions for the child prior to the parents'
7 separation or, if the parents never lived together, before the
8 filing of the action, except to the extent required under section
9 9-209 or necessary to achieve any of the following objectives:

10 (1) To permit the child to have a relationship with each
11 parent who has performed a reasonable share of parenting
12 functions;

13 (2) To accommodate the firm and reasonable preferences of
14 a child who is fourteen years of age or older, and with regard to
15 a child under fourteen years of age, but sufficiently matured
16 that he or she can intelligently express a voluntary preference
17 for one parent, to give that preference such weight as circum-
18 stances warrant;

19 (3) To keep siblings together when the court finds that
20 doing so is necessary to their welfare;

21 (4) To protect the child's welfare when, under an otherwise
22 appropriate allocation, the child would be harmed because of a
23 gross disparity in the quality of the emotional attachments
24 between each parent and the child or in each parent's demon-
25 strated ability or availability to meet a child's needs;

26 (5) To take into account any prior agreement of the parents
27 that, under the circumstances as a whole including the reason-
28 able expectations of the parents in the interest of the child,
29 would be appropriate to consider;

30 (6) To avoid an allocation of custodial responsibility that
31 would be extremely impractical or that would interfere substan-
32 tially with the child's need for stability in light of economic,
33 physical or other circumstances, including the distance between
34 the parents' residences, the cost and difficulty of transporting
35 the child, the parents' and child's daily schedules, and the
36 ability of the parents to cooperate in the arrangement;

37 (7) To apply the principles set forth in 9-403(d) of this
38 article if one parent relocates or proposes to relocate at a
39 distance that will impair the ability of a parent to exercise the
40 amount of custodial responsibility that would otherwise be
41 ordered under this section; and

42 (8) To consider the stage of a child's development.

43 (b) In determining the proportion of caretaking functions
44 each parent previously performed for the child under subsection
45 (a) of this section, the court shall not consider the divisions of
46 functions arising from temporary arrangements after separation,
47 whether those arrangements are consensual or by court order.
48 The court may take into account information relating to the
49 temporary arrangements in determining other issues under this
50 section.

51 (c) If the court is unable to allocate custodial responsibility
52 under subsection (a) of this section because the allocation under
53 that subsection would be manifestly harmful to the child, or
54 because there is no history of past performance of caretaking
55 functions, as in the case of a newborn, or because the history
56 does not establish a pattern of caretaking sufficiently
57 dispositive of the issues of the case, the court shall allocate
58 custodial responsibility based on the child's best interest, taking
59 into account the factors in considerations that are set forth in
60 this section and in section two hundred nine and 9-403(d) of
61 this article and preserving to the extent possible this section's
62 priority on the share of past caretaking functions each parent
63 performed.

64 (d) In determining how to schedule the custodial time
65 allocated to each parent, the court shall take account of the
66 economic, physical and other practical circumstances such as
67 those listed in subdivision (6), subsection (a) of this section.

§48-9-207. Allocation of significant decision-making responsibility.

1 (a) Unless otherwise resolved by agreement of the parents
2 under section 9-201, the court shall allocate responsibility for
3 making significant life decisions on behalf of the child, includ-
4 ing the child's education and health care, to one parent or to
5 two parents jointly, in accordance with the child's best interest,
6 in light of:

7 (1) The allocation of custodial responsibility under section
8 9-206 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 9-209 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.

§48-9-208. 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 9-201, the court shall order a method of resolving
4 disputes that serves the child's best interest in light of:

5 (1) The parents' wishes and the stability of the child;

6 (2) Circumstances, including, but not limited to, financial
7 circumstances, that may affect the parents ability to participate
8 in a prescribed dispute resolution process; and

9 (3) The existence of any limiting factor, as set forth in
10 section 9-209 of this article.

11 (b) The court may order a nonjudicial process of dispute
12 resolution by designating with particularity the person or
13 agency to conduct the process or the method for selecting such
14 a person or agency. The disposition of a dispute through a
15 nonjudicial method of dispute resolution that has been ordered
16 by the court without prior parental agreement is subject to de
17 novo judicial review. If the parents have agreed in a parenting
18 plan or by agreement thereafter to a binding resolution of their
19 dispute by nonjudicial means, a decision by such means is
20 binding upon the parents and must be enforced by the court,
21 unless it is shown to be contrary to the best interests of the
22 child, beyond the scope of the parents' agreement, or the result
23 of fraud, misconduct, corruption or other serious irregularity.

24 (c) This section is subject to the limitations imposed by
25 section two hundred two of this article.

§48-9-209. 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 27-202;

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 deci-
61 sion-making responsibility to that parent will not endanger the
62 child or the other parent.

PART 3. FACT FINDING.

§48-9-301. 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.

§48-9-302. 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 9-301 or make an appointment under subsection (a) or (b) of
15 this section, unless the court is satisfied that the information

16 necessary to evaluate the allegations will be adequately
17 presented to the court without such order or appointment.

18 (d) Subject to whatever restrictions the court may impose
19 or that may be imposed by the attorney-client privilege or by
20 subsection 9-202(d), the court may require the child or parent
21 to provide information to an individual or agency appointed by
22 the court under section 9-301 or subsection (a) or (b) of this
23 section, and it may require any person having information about
24 the child or parent to provide that information, even in the
25 absence of consent by a parent or by the child, except if the
26 information is otherwise protected by law.

27 (e) The investigator who submits a report or evidence to the
28 court that has been requested under section 9-301 and a
29 guardian ad litem appointed under subsection (a) of this section
30 who submits information or recommendations to the court are
31 subject to cross-examination by the parties. A lawyer appointed
32 under subsection (b) of this section may not be a witness in the
33 proceedings, except as allowed under standards applicable in
34 other civil proceedings.

35 (f) 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.

§48-9-303. 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.

§48-9-401. Modification upon showing of changed circumstances or harm.

1 (a) Except as provided in section 9-402 or 9-403, a court
2 shall modify a parenting plan order if it finds, on the basis of
3 facts that were not known or have arisen since the entry of the
4 prior order and were not anticipated therein, that a substantial
5 change has occurred in the circumstances of the child or of one
6 or both parents and a modification is necessary to serve the best
7 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 9-209, after a parenting plan has been
26 ordered by the court, constitutes a substantial change of
27 circumstances and measures shall be ordered pursuant to
28 section 9-209 to protect the child or the child's parent.

§48-9-402. Modification without showing of changed circumstances.

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 9-401(a) if the modification is in the child's best
8 interests, and the modification:

9 (1) Reflects the de facto arrangements under which the
10 child has been receiving care from the petitioner, without
11 objection, in substantial deviation from the parenting plan, for
12 the preceding six months before the petition for modification is
13 filed, provided the arrangement is not the result of a parent's
14 acquiescence resulting from the other parent's domestic abuse;

15 (2) Constitutes a minor modification in the plan; or

16 (3) Is necessary to accommodate the reasonable and firm
17 preferences of a child who has attained the age of fourteen.

18 (c) Evidence of repeated filings of fraudulent reports of
19 domestic violence or child abuse is admissible in a domestic
20 relations action between the involved parties when the alloca-
21 tion of custodial responsibilities is in issue, and the fraudulent
22 accusations may be a factor considered by the court in making
23 the allocation of custodial responsibilities.

§48-9-403. Relocation of a parent.

1 (a) The relocation of a parent constitutes a substantial
2 change in the circumstances under subsection 9-401(a) of the

3 child only when it significantly impairs either parent's ability
4 to exercise responsibilities that the parent has been exercising.

5 (b) Unless otherwise ordered by the court, a parent who has
6 responsibility under a parenting plan who changes, or intends
7 to change, residences for more than ninety days must give a
8 minimum of sixty days' advance notice, or the most notice
9 practicable under the circumstances, to any other parent with
10 responsibility under the same parenting plan. Notice shall
11 include:

12 (1) The relocation date;

13 (2) The address of the intended new residence;

14 (3) The specific reasons for the proposed relocation;

15 (4) A proposal for how custodial responsibility shall be
16 modified, in light of the intended move; and

17 (5) Information for the other parent as to how he or she may
18 respond to the proposed relocation or modification of custodial
19 responsibility.

20 Failure to comply with the notice requirements of this
21 section without good cause may be a factor in the determination
22 of whether the relocation is in good faith under subsection (d)
23 of this section, and is a basis for an award of reasonable
24 expenses and reasonable attorneys fees to another parent that
25 are attributable to such failure.

26 The supreme court of appeals shall make available through
27 the offices of the circuit clerks and the family law masters a
28 form notice that complies with the provisions of this subsection.
29 The supreme court of appeals shall promulgate procedural rules
30 that provide for an expedited hearing process to resolve issues
31 arising from a relocation or proposed relocation.

32 (c) When changed circumstances are shown under subsec-
33 tion (a) of this section, the court shall, if practical, revise the
34 parenting plan so as to both accommodate the relocation and
35 maintain the same proportion of custodial responsibility being
36 exercised by each of the parents. In making such revision, the
37 court may consider the additional costs that a relocation
38 imposes upon the respective parties for transportation and
39 communication, and may equitably allocate such costs between
40 the parties.

41 (d) When the relocation constituting changed circumstances
42 under subsection (a) of this section renders it impractical to
43 maintain the same proportion of custodial responsibility as that
44 being exercised by each parent, the court shall modify the
45 parenting plan in accordance with the child's best interests and
46 in accordance with the following principles:

47 (1) A parent who has been exercising a significant majority
48 of the custodial responsibility for the child should be allowed
49 to relocate with the child so long as that parent shows that the
50 relocation is in good faith for a legitimate purpose and to a
51 location that is reasonable in light of the purpose. The percent-
52 age of custodial responsibility that constitutes a significant
53 majority of custodial responsibility is seventy percent or more.
54 A relocation is for a legitimate purpose if it is to be close to
55 significant family or other support networks, for significant
56 health reasons, to protect the safety of the child or another
57 member of the child's household from significant risk of harm,
58 to pursue a significant employment or educational opportunity,
59 or to be with one's spouse who is established, or who is
60 pursuing a significant employment or educational opportunity,
61 in another location. The relocating parent has the burden of
62 proving of the legitimacy of any other purpose. A move with a
63 legitimate purpose is reasonable unless its purpose is shown to
64 be substantially achievable without moving, or by moving to a

65 location that is substantially less disruptive of the other parent's
66 relationship to the child.

67 (2) If a relocation of the parent is in good faith for legiti-
68 mate purpose and to a location that is reasonable in light of the
69 purpose, and if neither has been exercising a significant
70 majority of custodial responsibility for the child, the court shall
71 reallocate custodial responsibility based on the best interest of
72 the child, taking into account all relevant factors including the
73 effects of the relocation on the child.

74 (3) If a parent does not establish that the purpose for that
75 parent's relocation is in good faith for a legitimate purpose into
76 a location that is reasonable in light of the purpose, the court
77 may modify the parenting plan in accordance with the child's
78 best interests and the effects of the relocation on the child.
79 Among the modifications the court may consider is a realloca-
80 tion of primary custodial responsibility, effective if and when
81 the relocation occurs, but such a reallocation shall not be
82 ordered if the relocating parent demonstrates that the child's
83 best interests would be served by the relocation.

84 (4) The court shall attempt to minimize impairment to a
85 parent-child relationship caused by a parent's relocation
86 through alternative arrangements for the exercise of custodial
87 responsibility appropriate to the parents' resources and circum-
88 stances and the developmental level of the child.

89 (e) In determining the proportion of caretaking functions
90 each parent previously performed for the child under the
91 parenting plan before relocation, the court may not consider a
92 division of functions arising from any arrangements made after
93 a relocation but before a modification hearing on the issues
94 related to relocation.

95 (f) In determining the effect of the relocation or proposed
96 relocation on a child, any interviewing or questioning of the
97 child shall be conducted in accordance with the provisions of
98 rule 17 of the rules of practice and procedure for family law, as
99 promulgated by the supreme court of appeals.

PART 5. ENFORCEMENT OF PARENTING PLANS.

§48-9-501. 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 9-209, section 9-401, 402 or
16 403 of this article, including an adjustment of the custodial
17 responsibility of the parents or an allocation of exclusive
18 custodial responsibility to one of them;

19 (4) An order that the parent who violated the plan obtain
20 appropriate counseling;

21 (5) A civil penalty, in an amount of not more than one
22 hundred dollars for a first offense, not more than five hundred

23 dollars for a second offense, or not more than one thousand
24 dollars for a third or subsequent offense, to be paid to the parent
25 education fund as established under section 9-104;

26 (6) Court costs, reasonable attorney's fees and any other
27 reasonable expenses in enforcing the plan; and

28 (7) Any other appropriate remedy.

29 (b) Except as provided in a jointly submitted plan that has
30 been ordered by the court, obligations established in a parenting
31 plan are independent obligations, and it is not a defense to an
32 action under this section by one parent that the other parent
33 failed to meet obligations under a parenting plan or child
34 support order.

35 (c) An agreement between the parents to depart from the
36 parenting plan can be a defense to a claim that the plan has been
37 violated, even though the agreement was not made part of a
38 court order, but only as to acts or omissions consistent with the
39 agreement that occur before the agreement is disaffirmed by
40 either parent.

PART 6. MISCELLANEOUS PROVISIONS.

§48-9-601. 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.

**§48-9-602. 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 is deemed
9 to be the custodian of the child for the purposes of such federal
10 and state statutes.

§48-9-603. Effect of enactment; operative dates.

1 (a) The enactment of this article, formerly enacted as article
2 eleven of this chapter during the second extraordinary session
3 of the Legislature, one thousand nine hundred ninety-nine, is
4 prospective in operation unless otherwise expressly indicated.

5 (b) The provisions of section 9-202, insofar as they provide
6 for parent education and mediation, become operative on the
7 first day of January, two thousand. Until that date, parent
8 education and mediation with regard to custody issues are
9 discretionary unless made mandatory under a particular
10 program or pilot project by rule or direction of the supreme
11 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, became operative on
16 the first day of January, two thousand, at which time the
17 primary caretaker doctrine was replaced with a system that
18 allocates custodial and decision-making responsibility to the
19 parents in accordance with this article. Any order entered prior
20 to the first day of January, two thousand, based on the primary
21 caretaker doctrine remains in full force and effect until modi-
22 fied by a court of competent jurisdiction.

ARTICLE 10. GRANDPARENT VISITATION.

§48-10-101. Legislative findings.

§48-10-102. Legislative intent.

§48-10-201. Applicability of definitions.

§48-10-202. Child defined.

§48-10-203. Grandparent defined.

§48-10-301. Persons who may apply for grandparent visitation; venue.

§48-10-401. Motion for grandparent visitation when action for divorce, custody,
legal separation, annulment or establishment of paternity is
pending.

- §48-10-402. Petition for grandparent visitation when action for divorce, custody, legal separation, annulment or establishment of paternity is not pending.
- §48-10-403. Appointment of guardian ad litem for the child.
- §48-10-501. Necessary findings for grant of reasonable visitation to a grandparent.
- §48-10-502. Factors to be considered in making a determination as to a grant of visitation to a grandparent.
- §48-10-601. Interview of child in chambers.
- §48-10-602. Prohibitions on use of child's written or recorded statement or affidavit; child not to be called as a witness.
- §48-10-701. Proof required when an action is pending for divorce, custody, legal separation, annulment or establishment of paternity.
- §48-10-702. Proof required when an action is not pending for divorce, custody, legal separation, annulment or establishment of paternity.
- §48-10-801. Order granting or refusing grandparent visitation must state findings of fact and conclusions of law.
- §48-10-802. Supervised visitation; conditions on visitation.
- §48-10-901. Effect of remarriage of the custodial parents.
- §48-10-902. Effect of adoption of the child.
- §48-10-1001. Continuing jurisdiction of circuit court.
- §48-10-1002. Termination of grandparent visitation.
- §48-10-1101. Attorney's fees; reasonable costs.
- §48-10-1201. Misdemeanor offense for allowing contact between child and person who has been precluded visitation rights; penalties.

PART 1. GENERAL PROVISIONS.

§48-10-101. Legislative findings.

1 The Legislature finds that circumstances arise where it is
2 appropriate for circuit courts of this state to order that grandpar-
3 ents of minor children may exercise visitation with their
4 grandchildren. The Legislature further finds that in such
5 situations, as in all situations involving children, the best
6 interests of the child or children are the paramount consider-
7 ation.

§48-10-102. Legislative intent.

1 It is the express intent of the Legislature that the provisions
2 for grandparent visitation that are set forth in this article are
3 exclusive.

PART 2. DEFINITIONS.**§48-10-201. Applicability of definitions.**

1 For the purposes of this article the words or terms defined
2 in this article, and any variation of those words or terms
3 required by the context, have the meanings ascribed to them in
4 this article. These definitions are applicable unless a different
5 meaning clearly appears from the context.

§48-10-202. Child defined.

1 “Child” means a person under the age of eighteen years
2 who has not been married or otherwise emancipated.

§48-10-203. Grandparent defined.

1 “Grandparent” means a biological grandparent, a person
2 married or previously married to a biological grandparent, or a
3 person who has previously been granted custody of the parent
4 of a minor child with whom visitation is sought.

**PART 3. APPLICATION TO THE CIRCUIT COURT
FOR GRANDPARENT VISITATION.****§48-10-301. Persons who may apply for grandparent visitation;
venue.**

1 A grandparent of a child residing in this state may, by
2 motion or petition, make application to the circuit court of the
3 county in which that child resides for an order granting visita-
4 tion with his or her grandchild.

PART 4. PROCEEDINGS FOR VISITATION FOR GRANDPARENTS.**§48-10-401. Motion for grandparent visitation when action for
divorce, custody, legal separation, annulment or
establishment of paternity is pending.**

1 (a) The provisions of this section apply to any pending
2 actions for divorce, custody, legal separation, annulment or
3 establishment of paternity.

4 (b) After the commencement of the action, a grandparent
5 seeking visitation with his or her grandchild may, by motion,
6 apply to the circuit court for an order granting visitation. A
7 grandparent moving for an order of visitation will not be
8 afforded party status, but may be called as a witness by the
9 court, and will be subject to cross-examination by the parties.

**§48-10-402. Petition for grandparent visitation when action for
divorce, custody, legal separation, annulment or
establishment of paternity is not pending.**

1 (a) The provisions of this section apply when no proceeding
2 for divorce, custody, legal separation, annulment or establish-
3 ment of paternity is pending.

4 (b) A grandparent may petition the circuit court for an order
5 granting visitation with his or her grandchild, regardless of
6 whether the parents of the child are married. If the grandparent
7 filed a motion for visitation in a previous proceeding for
8 divorce, custody, legal separation, annulment or establishment
9 of paternity, and a decree or final order has issued in that earlier
10 action, the grandparent may petition for visitation if the
11 circumstances have materially changed since the entry of the
12 earlier order or decree.

13 (c) When a petition under this section is filed, the matter
14 shall be styled "In re grandparent visitation of [petitioner's(s)'
15 name(s)]."

§48-10-403. Appointment of guardian ad litem for the child.

1 When a motion or petition is filed seeking grandparent
2 visitation, the court, on its own motion or upon the motion of a

- 3 party or grandparent, may appoint a guardian ad litem for the
- 4 child to assist the court in determining the best interests of the
- 5 child regarding grandparent visitation.

**PART 5. FACTORS AFFECTING A DECISION
TO GRANT VISITATION FOR GRANDPARENTS.**

**§48-10-501. Necessary findings for grant of reasonable visitation
to a grandparent.**

- 1 The circuit court shall grant reasonable visitation to a
- 2 grandparent upon a finding that visitation would be in the best
- 3 interests of the child and would not substantially interfere with
- 4 the parent-child relationship.

**§48-10-502. Factors to be considered in making a determination
as to a grant of visitation to a grandparent.**

- 1 In making a determination on a motion or petition the court
- 2 shall consider the following factors:
 - 3 (1) The age of the child;
 - 4 (2) The relationship between the child and the grandparent;
 - 5 (3) The relationship between each of the child's parents or
 - 6 the person with whom the child is residing and the grandparent;
 - 7 (4) The time which has elapsed since the child last had
 - 8 contact with the grandparent;
 - 9 (5) The effect that such visitation will have on the relation-
 - 10 ship between the child and the child's parents or the person
 - 11 with whom the child is residing;
 - 12 (6) If the parents are divorced or separated, the custody and
 - 13 visitation arrangement which exists between the parents with
 - 14 regard to the child;

15 (7) The time available to the child and his or her parents,
16 giving consideration to such matters as each parent's employ-
17 ment schedule, the child's schedule for home, school and
18 community activities, and the child's and parents' holiday and
19 vacation schedule;

20 (8) The good faith of the grandparent in filing the motion or
21 petition;

22 (9) Any history of physical, emotional or sexual abuse or
23 neglect being performed, procured, assisted or condoned by the
24 grandparent;

25 (10) Whether the child has, in the past, resided with the
26 grandparent for a significant period or periods of time, with or
27 without the child's parent or parents;

28 (11) Whether the grandparent has, in the past, been a
29 significant caretaker for the child, regardless of whether the
30 child resided inside or outside of the grandparent's residence;

31 (12) The preference of the parents with regard to the
32 requested visitation; and

33 (13) Any other factor relevant to the best interests of the
34 child.

PART 6. INTERVIEW OF CHILD BY JUDGE.

§48-10-601. Interview of child in chambers.

1 In considering the factors listed in section 10-502 for
2 purposes of determining whether to grant visitation, establish-
3 ing a specific visitation schedule, and resolving any issues
4 related to the making of any determination with respect to
5 visitation or the establishment of any specific visitation
6 schedule, the court, in its discretion, may interview in chambers

7 any or all involved children regarding their wishes and con-
8 cerns. No person shall be present other than the court, the child,
9 the child's attorney or guardian ad litem, if any, and any
10 necessary court personnel.

§48-10-602. Prohibitions on use of child's written or recorded statement or affidavit; child not to be called as a witness.

1 (a) No person shall obtain or attempt to obtain from a child
2 a written or recorded statement or affidavit setting forth the
3 wishes and concerns of the child regarding grandparent
4 visitation matters, and the court, in considering the factors listed
5 in section 10-502 of this article for purposes of determining
6 whether to grant any visitation, establishing a visitation
7 schedule, or resolving any issues related to the making of any
8 determination with respect to visitation or the establishment of
9 any specific visitation schedule, shall not accept or consider
10 such a written or recorded statement or affidavit.

11 (b) A child shall not be called as a witness in any proceed-
12 ing to determine whether grandparent visitation should be
13 awarded.

**PART 7. PROOF REQUIRED FOR GRANT OF
GRANDPARENT VISITATION.**

**§48-10-701. Proof required when action is pending for divorce,
custody, legal separation, annulment or estab-
lishment of paternity.**

1 If a motion for grandparent visitation is filed in a pending
2 action for divorce, custody, legal separation, annulment or
3 establishment of paternity pursuant to section 21-401, the
4 grandparent shall be granted visitation if a preponderance of the
5 evidence shows that visitation is in the best interest of the child
6 and that:

7 (1) The party to the divorce through which the grandparent
8 is related to the minor child has failed to answer or otherwise
9 appear and defend the cause of action; or

10 (2) The whereabouts of the party through which the
11 grandparent is related to the minor child are unknown to the
12 party bringing the action and to the grandparent who filed the
13 motion for visitation.

§48-10-702. Proof required when action is not pending for divorce, custody, legal separation, annulment or establishment of paternity.

1 (a) If a petition is filed pursuant to section 10-402 when the
2 parent through whom the grandparent is related to the grand-
3 child does not: (1) Have custody of the child; (2) share custody
4 of the child; or (3) exercise visitation privileges with the child
5 that would allow participation in the visitation by the grandpar-
6 ent if the parent so chose, the grandparent shall be granted
7 visitation if a preponderance of the evidence shows that
8 visitation is in the best interest of the child.

9 (b) If a petition is filed pursuant to section 10-402, there is
10 a presumption that visitation privileges need not be extended to
11 the grandparent if the parent through whom the grandparent is
12 related to the grandchild has custody of the child, shares
13 custody of the child, or exercises visitation privileges with the
14 child that would allow participation in the visitation by the
15 grandparent if the parent so chose. This presumption may be
16 rebutted by clear and convincing evidence that an award of
17 grandparent visitation is in the best interest of the child.

**PART 8. ORDERS GRANTING OR REFUSING
GRANDPARENT VISITATION.**

**§48-10-801. Order granting or refusing grandparent visitation
must state findings of fact and conclusions of law.**

1 An order granting or refusing the grandparent's motion or
2 petition for visitation must state in writing the court's findings
3 of fact and conclusions of law.

§48-10-802. Supervised visitation; conditions on visitation.

1 In the court's discretion, an order granting visitation
2 privileges to a grandparent may require supervised visitation or
3 may place such conditions on visitation that it finds are in the
4 best interests of the child, including, but not limited to, the
5 following:

6 (1) That the grandparent not attempt to influence any
7 religious beliefs or practices of the children in a manner
8 contrary to the preferences of the child's parents;

9 (2) That the grandparent not engage in, permit or encourage
10 activities, or expose the grandchild to conditions or circum-
11 stances, that are contrary to the preferences of the child's
12 parents; or

13 (3) That the grandparent not otherwise act in a manner to
14 contradict or interfere with child-rearing decisions made by the
15 child's parents.

**PART 9. EFFECT OF REMARRIAGE OR ADOPTION
ON GRANDPARENT VISITATION.**

§48-10-901. Effect of remarriage of the custodial parent.

1 The remarriage of the custodial parent of a child does not
2 affect the authority of a circuit court to grant reasonable
3 visitation to any grandparent.

§48-10-902. Effect of adoption of the child.

1 If a child who is subject to a grandparent visitation order
2 under this article is later adopted, the order for grandparent
3 visitation is automatically vacated when the order for adoption
4 is entered, unless the adopting parent is a stepparent, grandpar-
5 ent or other relative of the child.

**PART 10. MODIFICATION OR TERMINATION
OF GRANDPARENT VISITATION.**

§48-10-1001. Continuing jurisdiction of circuit court.

1 Any circuit court that grants visitation rights to a grandpar-
2 ent shall retain jurisdiction throughout the minority of the minor
3 child with whom visitation is granted to modify or terminate
4 such rights as dictated by the best interests of the minor child.

§48-10-1002. Termination of grandparent visitation.

1 A circuit court shall, based upon a petition brought by an
2 interested person, terminate any grant of the right of grandpar-
3 ent visitation upon presentation of a preponderance of the
4 evidence that a grandparent granted visitation has materially
5 violated the terms and conditions of the order of visitation.

PART 11. ATTORNEY'S FEES AND COSTS.

§48-10-1101. Attorney's fees; reasonable costs.

1 In an action brought under the provisions of this article, a
2 circuit court may order payment of reasonable attorney's fees
3 and costs based upon the equities of the positions asserted by
4 the parties to pay such fees and costs.

PART 12. OFFENSES.

**§48-10-1201. Misdemeanor offense for allowing contact between
child and person who has been precluded visita-
tion rights; penalties.**

1 Any grandparent who knowingly allows contact between a
2 minor grandchild and a parent or other person who has been
3 precluded visitation rights with the child by court order is guilty
4 of a misdemeanor and, upon conviction thereof, shall be
5 confined in the county or regional jail not more than thirty days
6 or fined not less than one hundred dollars nor more than one
7 thousand dollars.

ARTICLE 11. SUPPORT OF CHILDREN.

§48-11-101. General provisions relating to child support.

§48-11-102. Required information in support orders.

§48-11-103. Child support beyond age eighteen.

§48-11-104. Payments out of disposable retired or retainer pay.

§48-11-105. Modification of child support order.

§48-11-106. Expedited process for modification.

§48-11-107. Modification resulting in reduction and overpayment of support.

§48-11-101. General provisions relating to child support.

1 (a) It is one of the purposes of the Legislature in enacting
2 this chapter to improve and facilitate support enforcement
3 efforts in this state, with the primary goal being to establish and
4 enforce reasonable child support orders and thereby improve
5 opportunities for children. It is the intent of the Legislature that
6 to the extent practicable, the laws of this state should encourage
7 and require a child's parents to meet the obligation of providing
8 that child with adequate food, shelter, clothing, education, and
9 health and child care.

10 (b) When the domestic relations action involves a minor
11 child or children, the court shall require either party to pay child
12 support in the form of periodic installments for the maintenance
13 of the minor children of the parties in accordance with support
14 guidelines promulgated pursuant to article 13-101, et seq., of
15 this chapter. Payments of child support are to be ordinarily
16 made from a party's income, but in cases when the income is
17 not sufficient to adequately provide for those payments, the

18 court may, upon specific findings set forth in the order, order
19 the party required to make those payments to make them from
20 the corpus of his or her separate estate.

§48-11-102. Required information in support orders.

1 (a) Any order which provides for the custody or support of
2 a minor child shall include:

3 (1) The name of the custodian;

4 (2) The amount of the support payments;

5 (3) The date the first payment is due;

6 (4) The frequency of the support payments;

7 (5) The event or events which trigger termination of the
8 support obligation;

9 (6) A provision regarding wage withholding;

10 (7) The address where payments shall be sent;

11 (8) A provision for medical support;

12 (9) When child support guidelines are not followed, a
13 specific written finding pursuant to section 13-702.

14 (b) Effective the first day of October, one thousand nine
15 hundred ninety-nine, any order entered that provides for the
16 payment of child support shall also include a statement that
17 requires both parties to report any changes in gross income,
18 either in source of employment or in the amount of gross
19 income, to the bureau for child support enforcement and to the
20 other party. The notice shall not be required if the change in
21 gross income is less than a fifteen percent change in gross
22 income.

23 (c) All child support orders shall contain a notice which
24 contains language substantially similar to the following: "The
25 amount of the monthly child support can be modified as
26 provided by law based upon a change in the financial or other
27 circumstances of the parties if those circumstances are among
28 those considered in the child support formula. In order to make
29 the modification a party must file a motion to modify the child
30 support amount. Unless a motion to modify is filed, the child
31 support amount will continue to be due and cannot later be
32 changed retroactively even though there has been a change of
33 circumstances since the entry of the order. Self help forms for
34 modification can be found at the circuit clerk's office." The
35 failure of an order to have such a provision does not alter the
36 effectiveness of the order.

§48-11-103. Child support beyond age eighteen.

1 (a) Upon a specific finding of good cause shown and upon
2 findings of fact and conclusions of law in support thereof, an
3 order for child support may provide that payments of such
4 support continue beyond the date when the child reaches the
5 age of eighteen, so long as the child is unmarried and residing
6 with a parent and is enrolled as a full-time student in a second-
7 ary educational or vocational program and making substantial
8 progress towards a diploma: *Provided*, That such payments may
9 not extend past the date that the child reaches the age of twenty.

10 (b) Nothing herein shall be construed to abrogate or modify
11 existing case law regarding the eligibility of handicapped or
12 disabled children to receive child support beyond the age of
13 eighteen.

14 (c) The reenactment of this section during the regular
15 session of the Legislature in the year one thousand nine hundred
16 ninety-four shall not, by operation of law, have any effect upon
17 or vacate any order or portion thereof entered under the prior

18 enactment of this section which awarded educational and
19 related expenses for an adult child accepted or enrolled and
20 making satisfactory progress in an educational program at a
21 certified or accredited college. Any such order or portion
22 thereof shall continue in full force and effect until the court,
23 upon motion of a party, modifies or vacates the order upon a
24 finding that:

25 (1) The facts and circumstances which supported the entry
26 of the original order have changed, in which case the order may
27 be modified;

28 (2) The facts and circumstances which supported the entry
29 of the original order no longer exist because the child has not
30 been accepted or is not enrolled in and making satisfactory
31 progress in an educational program at a certified or accredited
32 college, or the parent ordered to pay such educational and
33 related expenses is no longer able to make such payments, in
34 which case the order shall be vacated;

35 (3) The child, at the time the order was entered, was under
36 the age of sixteen years, in which case the order shall be
37 vacated;

38 (4) The amount ordered to be paid was determined by an
39 application of child support guidelines in accordance with the
40 provisions of article 13-101, et seq., or legislative rules promul-
41 gated thereunder, in which case the order may be modified or
42 vacated; or

43 (5) The order was entered after the fourteenth day of
44 March, one thousand nine hundred ninety-four, in which case
45 the order shall be vacated.

§48-11-104. Payments out of disposable retired or retainer pay.

1 Whenever under the terms of article 5-601, et seq., or
2 article 5-501, et seq., a court enters an order requiring the
3 payment of child support, if the court anticipates the payment
4 of such child support or any portion thereof to be paid out of
5 “disposable retired or retainer pay” as that term is defined in 10
6 U.S.C. §1408, relating to members or former members of the
7 uniformed services of the United States, the court shall specifi-
8 cally provide for the payment of an amount, expressed in
9 dollars or as a percentage of disposable retired or retainer pay,
10 from the disposable retired or retainer pay of the payor party to
11 the payee party.

§48-11-105. Modification of child support order.

1 (a) A circuit court may modify a child support order, for the
2 benefit of the child, when a motion is made that alleges a
3 change in the circumstances of a parent or another proper
4 person or persons. A motion for modification of a child support
5 order may be brought by a custodial parent or any other lawful
6 custodian or guardian of the child, by a parent or other person
7 obligated to pay child support for the child, or by the bureau for
8 child support enforcement of the department of health and
9 human resources of this state.

10 (b) The provisions of the order may be modified if there is
11 a substantial change in circumstances. If application of the
12 guideline would result in a new order that is more than fifteen
13 percent different, then the circumstances are considered a
14 substantial change.

15 (c) An order that modifies the amount of child support to be
16 paid shall conform to the support guidelines set forth in article
17 13-101, et seq., of this chapter unless the court disregards the
18 guidelines or adjusts the award as provided for in section 13-
19 702.

20 (d) The supreme court of appeals shall make available to
21 the courts a standard form for a petition for modification of an
22 order for support, which form will allege that the existing order
23 should be altered or revised because of a loss or change of
24 employment or other substantial change affecting income, or
25 that the amount of support required to be paid is not within
26 fifteen percent of the child support guidelines. The clerk of the
27 circuit shall make the forms available to persons desiring to file
28 a motion pro se for a modification of the support award.

§48-11-106. Expedited process for modification.

1 (a) An expedited process for modification of a child support
2 order may be utilized if:

3 (1) Either parent experiences a substantial change of
4 circumstances resulting in a decrease in income due to loss of
5 employment or other involuntary cause;

6 (2) An increase in income due to promotion, change in
7 employment, reemployment; or

8 (3) Other such change in employment status.

9 (b) The party seeking the recalculation of support and
10 modification of the support order shall file a description of the
11 decrease or increase in income and an explanation of the cause
12 of the decrease or increase on a standardized form to be
13 provided by the secretary-clerk or other employee of the family
14 court. The standardized form shall be verified by the filing
15 party. Any available documentary evidence shall be filed with
16 the standardized form. Based upon the filing and information
17 available in the case record, the amount of support shall be
18 tentatively recalculated.

19 (c) The secretary-clerk shall serve a notice of the filing, a
20 copy of the standardized form, and the support calculations

21 upon the other party by certified mail, return receipt requested,
22 with delivery restricted to the addressee, in accordance with
23 rule 4(d)(1)(D) of the West Virginia rules of civil procedure.
24 The secretary-clerk shall also mail a copy, by first-class mail,
25 to the local office of the bureau for child support enforcement
26 for the county in which the circuit court is located in the same
27 manner as original process under rule 4(d) of the rules of civil
28 procedure.

29 (d) The notice shall fix a date fourteen days from the date
30 of mailing, and inform the party that unless the recalculation is
31 contested and a hearing request is made on or before the date
32 fixed, the proposed modification will be made effective. If the
33 filing is contested, the proposed modification shall be set for
34 hearing; otherwise, the family law master shall prepare a
35 recommended default order for entry by the circuit judge. Either
36 party may move to set aside a default entered by the circuit
37 clerk or a judgment by default entered by the clerk or the court,
38 pursuant to the provisions of rule 55 or rule 60(b) of the rules
39 of civil procedure.

40 (e) If an obligor uses the provisions of this section to
41 expeditiously reduce his or her child support obligation, the
42 order that effected the reduction shall also require the obligor
43 to notify the obligee of reemployment, new employment or
44 other such change in employment status that results in an
45 increase in income. If an obligee uses the provisions of this
46 section to expeditiously increase his or her child support
47 obligation, the order that effected the increase shall also require
48 the obligee to notify the obligor of reemployment, new employ-
49 ment or other such change in employment status that results in
50 an increase in income of the obligee.

51 (f) The supreme court of appeals shall develop the standard-
52 ized form required by this section.

§48-11-107. Modification resulting in reduction and overpayment of support.

1 In any proceeding filed after the first day of January, two
2 thousand one, where a petition to modify child support is
3 granted which results in a reduction of child support owed so
4 that the obligor has overpaid child support, the court shall grant
5 a decretal judgment to the obligor for the amount of the
6 overpayment. The court shall inquire as to whether a support
7 arrearage was owed by the obligor for support due prior to the
8 filing of the petition for modification. If an arrearage exists, the
9 court shall order an offset of the overpayment against the child
10 support arrearages. If no prior arrearage exists or if the arrear-
11 age is not sufficient to offset the overpayment, then the court
12 may direct the bureau for child support enforcement to collect
13 the overpayment through income withholding, if the person has,
14 in the court's opinion, sufficient income other than the child
15 support received. The income withholding shall be in all
16 respects as provided for in part 14-401, et seq., except that in no
17 circumstances may the amount withheld exceed thirty-five
18 percent of the disposable earnings for the period, regardless of
19 the length of time that the overpayment has been owed.

ARTICLE 12. MEDICAL SUPPORT.

- §48-12-101. Definitions applicable to medical support enforcement.
- §48-12-102. Court-ordered medical support.
- §48-12-103. Cost of medical support considered in applying support guidelines.
- §48-12-104. Proof of insurance coverage.
- §48-12-105. Notice to insurer or employer.
- §48-12-106. Copy of court order for medical support.
- §48-12-107. Enrollment of child in insurance plan.
- §48-12-108. Requirements placed on employer.
- §48-12-109. Processing of claims.
- §48-12-110. Change of employment.
- §48-12-111. Termination of employment; change in insurance coverage.
- §48-12-112. Length of coverage.
- §48-12-113. Failure to comply with order for court-ordered medical support.
- §48-12-114. Effect of failure to maintain court-ordered medical support.

***§48-12-101. Definitions applicable to medical support enforcement.**

1 For the purposes of this article:

2 (1) "Custodian for the children" means a parent, legal
3 guardian, committee or other third party appointed by court
4 order as custodian of a child or children for whom child support
5 is ordered.

6 (2) "Obligated parent" means a natural or adoptive parent
7 who is required by agreement or order to pay for insurance
8 coverage and medical care, or some portion thereof, for his or
9 her child.

10 (3) "Insurance coverage" means coverage for medical,
11 dental, including orthodontic, optical, psychological, psychiat-
12 ric or other health care service.

13 (4) "Child" means a child to whom a duty of child support
14 is owed.

15 (5) "Medical care" means medical, dental, optical, psycho-
16 logical, psychiatric or other health care service for children in
17 need of child support.

18 (6) "Insurer" means any company, health maintenance
19 organization, self-funded group, multiple employer welfare
20 arrangement, hospital or medical services corporation, trust,
21 group health plan, as defined in 29 U.S.C. § 1167, Section
22 607(1) of the Employee Retirement Income Security Act of
23 1974 or other entity which provides insurance coverage or
24 offers a service benefit plan.

§48-12-102. Court-ordered medical support.

1 In every action to establish or modify an order which
2 requires the payment of child support, the court shall ascertain
3 the ability of each parent to provide medical care for the

***Clerk's Note:** This section was also amended by S. B. 652 (Chapter 93), which passed subsequent to this act.

4 children of the parties. In any temporary or final order estab-
5 lishing an award of child support or any temporary or final
6 order modifying a prior order establishing an award of child
7 support, the court shall order one or more of the following:

8 (1) The court shall order either parent or both parents to
9 provide insurance coverage for a child, if such insurance
10 coverage is available to that parent on a group basis through an
11 employer, multiemployer trust or through an employee's union.
12 If similar insurance coverage is available to both parents, the
13 court shall order the child to be insured under the insurance
14 coverage which provides more comprehensive benefits. If such
15 insurance coverage is not available at the time of the entry of
16 the order, the order shall require that if such coverage thereafter
17 becomes available to either party, that party shall promptly
18 notify the other party of the availability of insurance coverage
19 for the child.

20 (2) If the court finds that insurance coverage is not avail-
21 able to either parent on a group basis through an employer,
22 multiemployer trust or employees' union, or that the group
23 insurer is not accessible to the parties, the court may order
24 either parent or both parents to obtain insurance coverage which
25 is otherwise available at a reasonable cost.

26 (3) Based upon the respective ability of the parents to pay,
27 the court may order either parent or both parents to be liable for
28 reasonable and necessary medical care for a child. The court
29 shall specify the proportion of the medical care for which each
30 party shall be responsible. If the amount of the award of child
31 support in the order is determined using the child support
32 guidelines, the court shall order that nonrecurring or subse-
33 quently occurring uninsured medical expenses in excess of two
34 hundred fifty dollars per year per child shall be separately
35 divided between the parties in proportion to their adjusted gross
36 incomes.

37 (4) If insurance coverage is available, the court shall also
38 determine the amount of the annual deductible on insurance
39 coverage which is attributable to the children and designate the
40 proportion of the deductible which each party shall pay.

41 (5) The order shall require the obligor to continue to
42 provide the bureau for child support enforcement with informa-
43 tion as to his or her employer's name and address and informa-
44 tion as to the availability of employer-related insurance
45 programs providing medical care coverage so long as the child
46 continues to be eligible to receive support.

§48-12-103. Cost of medical support considered in applying support guidelines.

1 The cost of insurance coverage shall be considered by the
2 court in applying the child support guidelines provided for in
3 article 13-101, et seq.

***§48-12-104. Proof of insurance coverage.**

1 Within thirty days after the entry of an order requiring the
2 obligated parent to provide insurance coverage for the children,
3 that parent shall submit to the custodian for the child written
4 proof that the insurance has been obtained or that an application
5 for insurance has been made. Such proof of insurance coverage
6 shall consist of, at a minimum:

7 (1) The name of the insurer;

8 (2) The policy number;

9 (3) An insurance card;

10 (4) The address to which all claims should be mailed;

11 (5) A description of any restrictions on usage, such as prior
12 approval for hospital admission, and the manner in which to
13 obtain such approval;

***Clerk's Note:** This section was also amended by S. B. 652 (Chapter 93), which passed subsequent to this act.

- 14 (6) A description of all deductibles; and
- 15 (7) Five copies of claim forms.

***§48-12-105. Notice to insurer or employer.**

1 The custodian for the child shall send the insurer or the
2 obligated parent's employer the children's address and notice
3 that the custodian will be submitting claims on behalf of the
4 children. Upon receipt of such notice, or an order for insurance
5 coverage under this section, the obligated parent's employer,
6 multiemployer trust or union shall, upon the request of the
7 custodian for the child, release information on the coverage for
8 the children, including the name of the insurer.

***§48-12-106. Copy of court order for medical support.**

1 A copy of the court order for insurance coverage shall not
2 be provided to the obligated parent's employer or union or the
3 insurer unless ordered by the court, or unless:

4 (1) The obligated parent, within thirty days of receiving
5 effective notice of the court order, fails to provide to the
6 custodian for the child written proof that the insurance has been
7 obtained or that an application for insurance has been made;

8 (2) The custodian for the child serves written notice by mail
9 at the obligated parent's last known address of intention to
10 enforce the order requiring insurance coverage for the child;
11 and

12 (3) The obligated parent fails within fifteen days after the
13 mailing of the notice to provide written proof to the custodian
14 for the child that the child has insurance coverage.

***§48-12-107. Enrollment of child in insurance plan.**

***Clerk's Note:** This section was also amended by S. B. 652 (Chapter 93), which passed subsequent to this act.

1 (1) Upon service of the order requiring insurance coverage
2 for the children, the employer, multiemployer trust or union
3 shall enroll the child as a beneficiary in the group insurance
4 plan and withhold any required premium from the obligated
5 parent's income or wages.

6 (2) If more than one plan is offered by the employer,
7 multiemployer trust or union, the child shall be enrolled in the
8 same plan as the obligated parent at a reasonable cost.

9 (3) Insurance coverage for the child which is ordered
10 pursuant to the provisions of this section shall not be terminated
11 except as provided in section 12-111.

***§48-12-108. Requirements placed on employer.**

1 Where a parent is required by a court or administrative
2 order to provide health coverage, which is available through an
3 employer doing business in this state, the employer is required:

4 (1) To permit the parent to enroll under family coverage
5 any child who is otherwise eligible for coverage without regard
6 to any enrollment season restrictions;

7 (2) If the parent is enrolled but fails to make application to
8 obtain coverage of the child, to enroll the child under family
9 coverage upon application by the child's other parent, by the
10 state agency administering the medicaid program or by the
11 bureau for child support enforcement;

12 (3) Not to disenroll or eliminate coverage of any such child
13 unless the employer is provided satisfactory written evidence
14 that:

15 (A) The court or administrative order is no longer in effect;
16 or

***Clerk's Note:** This section was also amended by S. B. 652 (Chapter 93), which passed subsequent to this act.

17 (B) The child is or will be enrolled in comparable coverage
18 which will take effect no later than the effective date of
19 disenrollment; or

20 (C) The employer has eliminated family health coverage for
21 all of its employees;

22 (4) To withhold from the employee's compensation the
23 employee's share, if any, of premiums for health coverage and
24 to pay this amount to the insurer: *Provided*, That the amount so
25 withheld may not exceed the maximum amount permitted to be
26 withheld under 15 U.S.C. § 1673, Section 303(b) of the
27 Consumer Credit Protection Act.

***§48-12-109. Processing of claims.**

1 (1) The signature of the custodian for the child shall
2 constitute a valid authorization to the insurer for the purposes
3 of processing an insurance payment to the provider of medical
4 care for the child.

5 (2) No insurer, employer or multiemployer trust in this state
6 may refuse to honor a claim for a covered service when the
7 custodian for the child or the obligated parent submits proof of
8 payment for medical bills for the child.

9 (3) The insurer shall reimburse the custodian for the child
10 or the obligated parent who submits copies of medical bills for
11 the child with proof of payment.

12 (4) All insurers in this state shall comply with the provi-
13 sions of section sixteen, article fifteen, chapter thirty-three of
14 this code and section eleven, article sixteen of said chapter and
15 shall provide insurance coverage for the child of a covered
16 employee notwithstanding the amount of support otherwise
17 ordered by the court and regardless of the fact that the child
18 may not be living in the home of the covered employee.

***Clerk's Note:** This section was also amended by S. B. 652 (Chapter 93), which passed subsequent to this act.

***§48-12-110. Change of employment.**

1 Where an obligated parent changes employment, and the
2 new employer provides the obligated parent's health care
3 coverage, the bureau for child support enforcement shall
4 transfer to the new employer notice of the obligated parent's
5 duty to provide health care coverage. Unless contested by the
6 obligated parent in writing and in accordance with section 14-
7 801, the notice shall operate to enroll the child in the new
8 employer's health care plan.

***§48-12-111. Termination of employment; change in insurance coverage.**

1 When an order for insurance coverage for a child pursuant
2 to this section is in effect and the obligated parent's employ-
3 ment is terminated, or the insurance coverage for the child is
4 denied, modified or terminated, the insurer shall in addition to
5 complying with the requirements of article sixteen-a, chapter
6 thirty-three of this code, within ten days after the notice of
7 change in coverage is sent to the covered employee, notify the
8 custodian for the child and provide an explanation of any
9 conversion privileges available from the insurer.

***§48-12-112. Length of coverage.**

1 A child of an obligated parent shall remain eligible for
2 insurance coverage until the child is emancipated or until the
3 insurer under the terms of the applicable insurance policy
4 terminates said child from coverage, whichever is later in time,
5 or until further order of the court.

***§48-12-113. Failure to comply with order for court-ordered medical support.**

1 If the obligated parent fails to comply with the order to
2 provide insurance coverage for the child, the court shall:

***Clerk's Note:** This section was also amended by S. B. 652 (Chapter 93), which passed subsequent to this act.

3 (1) Hold the obligated parent in contempt for failing or
4 refusing to provide the insurance coverage or for failing or
5 refusing to provide the information required in section 12-104;

6 (2) Enter an order for a sum certain against the obligated
7 parent for the cost of medical care for the child and any
8 insurance premiums paid or provided for the child by the
9 bureau for child support enforcement during any period in
10 which the obligated parent failed to provide the required
11 coverage, and directing that such judgment be collected through
12 income withholding;

13 (3) In the alternative, other enforcement remedies available
14 under part 14-201, et seq., and part 14-401, et seq., of this code,
15 or otherwise available under law, may be used to recover from
16 the obligated parent the cost of medical care or insurance
17 coverage for the child;

18 (4) In addition to other remedies available under law, the
19 bureau for child support enforcement may initiate an income
20 withholding against the wages, salary or other employment
21 income of, and withhold amounts from state tax refunds to any
22 person who:

23 (A) Is required by court or administrative order to provide
24 coverage of the cost of health services to a child; and

25 (B) Has received payment from a third party for the costs
26 of such services but has not used the payments to reimburse
27 either the other parent or guardian of the child or the provider
28 of the services, to the extent necessary to reimburse the state
29 medicaid agency for its costs: *Provided*, That claims for current
30 and past due child support shall take priority over these claims.

***§48-12-114. Effect of failure to maintain court-ordered medical support.**

***Clerk's Note:** This section was also amended by S. B. 652 (Chapter 93), which passed subsequent to this act.

- 1 Proof of failure to maintain court ordered insurance
- 2 coverage for the child constitutes a showing of substantial
- 3 change in circumstances or increased need and provides a basis
- 4 for modification of the child support order.

ARTICLE 13. GUIDELINES FOR CHILD SUPPORT AWARDS.

- §48-13-101. Guidelines to ensure uniformity and increase predictability; presumption of correctness.
- §48-13-102. Right of children to share in parents' level of living.
- §48-13-103. Financial contributions of both parents to be considered.
- §48-13-201. Use of both parents' income in determining child support.
- §48-13-202. Application of expenses and credits in determining child support.
- §48-13-203. Amount determined by guidelines presumed to be correct.
- §48-13-204. Use of worksheets.
- §48-13-205. Present income as monthly amounts.
- §48-13-301. Determining the basic child support obligation.
- §48-13-302. Incomes below the table for determining basic child support obligations.
- §48-13-303. Incomes above the table for determining basic child support obligations.
- §48-13-401. Basic child support obligation in sole custody cases.
- §48-13-402. Division of basic child support obligation in sole custody cases.
- §48-13-403. Worksheet for calculating basic child support obligation in sole custody cases.
- §48-13-404. Additional calculation to be made in sole custody cases.
- §48-13-501. Shared physical custody adjustment.
- §48-13-502. Shared physical custody worksheet.
- §48-13-503. Split physical custody adjustment.
- §48-13-601. Adjustment for child care tax credit.
- §48-13-602. Adjustment for child health care.
- §48-13-603. Adjustment for obligor's social security benefits sent directly to the child; receipt by child supplemental security income.
- §48-13-701. Rebuttable presumption that child support award is correct.
- §48-13-702. Disregard of formula.
- §48-13-801. Tax exemption for child due support.
- §48-13-802. Investment of child support.

PART 1. GENERAL PROVISIONS.

- §48-13-101. Guidelines to ensure uniformity and increase predictability; presumption of correctness.**

1 This article establishes guidelines for child support award
2 amounts so as to ensure greater uniformity by those persons
3 who make child support recommendations and enter child
4 support orders and to increase predictability for parents,
5 children and other persons who are directly affected by child
6 support orders. There is a rebuttable presumption, in any
7 proceeding before a family law master or circuit court judge for
8 the award of child support, that the amount of the award which
9 would result from the application of these guidelines is the
10 correct amount of child support to be awarded.

§48-13-102. Right of children to share in parents' level of living.

1 The Legislature recognizes that children have a right to
2 share in their natural parents' level of living. Expenditures in
3 families are not made in accordance with subsistence level
4 standards, but are made in proportion to household income, and
5 as parental incomes increase or decrease, the actual dollar
6 expenditures for children also increase or decrease correspond-
7 ingly. In order to ensure that children properly share in their
8 parents' resources, regardless of family structure, these guide-
9 lines are structured so as to provide that after a consideration of
10 respective parental incomes, child support will be related, to the
11 extent practicable, to the standard of living that children would
12 enjoy if they were living in a household with both parents
13 present.

**§48-13-103. Financial contributions of both parents to be consid-
ered.**

1 The guidelines promulgated under the provisions of this
2 article take into consideration the financial contributions of
3 both parents. The Legislature recognizes that expenditures in
4 households are made in aggregate form and that total family
5 income is pooled to determine the level at which the family can
6 live. These guidelines consider the financial contributions of

7 both parents in relationship to total income, so as to establish
8 and equitably apportion the child support obligation.

PART 2. CALCULATION OF CHILD SUPPORT ORDER.

§48-13-201. Use of both parents' income in determining child support.

1 A child support order is determined by dividing the total
2 child support obligation between the parents in proportion to
3 their income. Both parents' adjusted gross income is used to
4 determine the amount of child support.

§48-13-202. Application of expenses and credits in determining child support.

1 In determining the total child support obligation, the judge
2 or master shall:

3 (1) Add to the basic child support obligation any
4 unreimbursed child health care expenses, work-related child
5 care expenses and any other extraordinary expenses agreed to
6 by the parents or ordered by the judge or master, and

7 (2) Subtract any extraordinary credits agreed to by the
8 parents or ordered by the court or master.

§48-13-203. Amount determined by guidelines presumed to be correct.

1 The amount of support resulting from the application of the
2 guidelines is presumed to be the correct amount, unless the
3 court, in a written finding or a specific finding on the record,
4 disregards the guidelines or adjusts the award as provided for
5 in section 13-702.

§48-13-204. Use of worksheets.

1 The calculation of the amount awarded by the support
 2 order requires the use of one of two worksheets which must be
 3 completed for each case. Worksheet A is used for a sole
 4 physical custody arrangement. Worksheet B is used for a shared
 5 physical custody arrangement.

§48-13-205. Present income as monthly amounts.

1 To the extent practicable, all information relating to income
 2 shall be presented to the court or master based on monthly
 3 amounts. For example, when a party is paid wages weekly, the
 4 pay should be multiplied by fifty-two and divided by twelve to
 5 arrive at a correct monthly amount. If the court or master deems
 6 appropriate, such information may be presented in such other
 7 forms as the court or master directs.

PART 3. BASIC CHILD SUPPORT ORDER.

§48-13-301. Determining the basic child support obligation.

1 The basic child support obligation is determined from the
 2 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	ONE	TWO	THREE	FOUR	FIVE	SIX
GROSS MONTHLY INCOME	CHILD	CHIL- DREN	CHIL- DREN	CHIL- DREN	CHIL- DREN	CHIL- DREN
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

16	850	179	261	309	341	370	395
17	900	188	273	323	357	387	414
18	950	197	286	338	374	405	433
19	1000	205	299	353	390	423	452
20	1050	214	311	368	406	440	471
21	1100	223	324	382	423	458	490
22	1150	231	336	397	439	476	509
23	1200	240	349	412	455	493	528
24	1250	248	361	426	471	511	547
25	1300	257	373	441	487	528	565
26	1350	265	386	456	503	546	584
27	1400	274	398	470	519	563	602
28	1450	282	410	484	534	579	620
29	1500	291	422	498	550	596	638
30	1550	299	434	512	565	613	656
31	1600	307	446	526	581	630	674
32	1650	316	458	540	596	646	692
33	1700	324	470	554	612	663	709
34	1750	332	482	568	627	680	727
35	1800	341	494	581	643	697	745
36	1850	349	506	595	658	713	763
37	1900	357	517	609	673	730	781
38	1950	366	529	623	689	747	799
39	2000	373	540	636	703	762	816
40	2050	381	551	649	717	778	832
41	2100	388	562	662	731	793	848
42	2150	395	573	674	745	808	864
43	2200	403	583	687	759	823	881
44	2250	410	594	700	773	838	897
45	2300	417	605	712	787	853	913
46	2350	425	616	725	801	869	929
47	2400	432	626	738	815	884	946

48	2450	440	637	750	829	899	962
49	2500	447	648	763	843	914	978
50	2550	454	658	776	857	929	994
51	2600	460	667	786	868	941	1007
52	2650	465	674	794	877	951	1018
53	2700	471	682	803	887	962	1029
54	2750	475	688	810	895	970	1038
55	2800	479	694	816	902	978	1046
56	2850	484	700	823	909	986	1055
57	2900	488	705	830	917	994	1063
58	2950	492	711	836	924	1002	1072
59	3000	496	717	843	931	1010	1080
60	3050	500	723	850	939	1018	1089
61	3100	504	729	856	946	1026	1097
62	3150	509	735	863	953	1033	1106
63	3200	513	740	869	961	1041	1114
64	3250	517	746	876	968	1049	1123
65	3300	521	752	882	975	1057	1131
66	3350	524	757	888	981	1064	1138
67	3400	527	761	893	987	1070	1145
68	3450	531	766	899	993	1077	1152
69	3500	534	771	904	999	1083	1159
70	3550	537	775	910	1006	1090	1166
71	3600	541	780	916	1012	1097	1173
72	3650	544	785	921	1018	1103	1180
73	3700	547	790	927	1024	1110	1187
74	3750	550	794	932	1030	1116	1194
75	3800	554	799	937	1036	1123	1201
76	3850	557	803	943	1041	1129	1208
77	3900	560	808	948	1047	1135	1215
78	3950	563	812	953	1053	1142	1222
79	4000	566	817	959	1059	1148	1229

80	4050	570	822	964	1065	1155	1236
81	4100	574	828	972	1074	1164	1245
82	4150	579	834	979	1082	1172	1254
83	4200	583	841	986	1090	1181	1264
84	4250	588	847	993	1098	1190	1273
85	4300	592	853	1001	1106	1199	1283
86	4350	597	860	1008	1114	1207	1292
87	4400	601	866	1015	1122	1216	1301
88	4450	606	873	1023	1130	1225	1311
89	4500	610	879	1030	1138	1234	1320
90	4550	615	885	1037	1146	1242	1329
91	4600	619	892	1044	1154	1251	1339
92	4650	624	898	1052	1162	1260	1348
93	4700	628	904	1059	1170	1269	1357
94	4750	633	911	1066	1178	1277	1367
95	4800	637	917	1074	1186	1286	1376
96	4850	642	924	1082	1195	1296	1386
97	4900	647	931	1090	1204	1305	1397
98	4950	651	938	1098	1213	1315	1407
99	5000	656	945	1106	1222	1325	1418
100	5050	661	951	1114	1231	1335	1428
101	5100	666	958	1123	1240	1345	1439
102	5150	670	965	1131	1249	1354	1449
103	5200	675	972	1139	1259	1364	1460
104	5250	680	979	1147	1268	1374	1470
105	5300	685	986	1155	1277	1384	1481
106	5350	689	993	1163	1285	1393	1491
107	5400	694	999	1171	1294	1403	1501
108	5450	698	1006	1179	1302	1412	1511
109	5500	703	1012	1186	1311	1421	1521
110	5550	707	1019	1194	1319	1430	1530
111	5600	712	1025	1201	1328	1439	1540

112	5650	716	1031	1208	1335	1447	1548
113	5700	719	1036	1214	1341	1454	1556
114	5750	723	1042	1220	1348	1462	1564
115	5800	727	1047	1226	1355	1469	1572
116	5850	731	1052	1233	1362	1477	1580
117	5900	735	1058	1239	1369	1484	1588
118	5950	739	1063	1245	1376	1492	1596
119	6000	743	1069	1251	1383	1499	1604
120	6050	747	1074	1258	1390	1506	1612
121	6100	751	1080	1265	1397	1515	1621
122	6150	755	1086	1272	1405	1523	1630
123	6200	760	1093	1279	1413	1531	1639
124	6250	764	1099	1286	1420	1540	1648
125	6300	768	1105	1292	1428	1548	1657
126	6350	773	1111	1299	1436	1556	1665
127	6400	777	1117	1306	1444	1565	1674
128	6450	781	1123	1313	1451	1573	1683
129	6500	785	1129	1320	1459	1582	1692
130	6550	789	1135	1327	1467	1590	1701
131	6600	793	1140	1334	1474	1598	1710
132	6650	797	1146	1341	1482	1607	1719
133	6700	801	1152	1348	1490	1615	1728
134	6750	806	1158	1355	1498	1623	1737
135	6800	810	1164	1362	1505	1632	1746
136	6850	814	1170	1369	1513	1640	1755
137	6900	818	1176	1376	1521	1649	1764
138	6950	822	1182	1383	1529	1657	1773
139	7000	826	1188	1390	1536	1665	1782
140	7050	830	1194	1397	1544	1674	1791
141	7100	834	1200	1404	1552	1682	1800
142	7150	838	1206	1411	1560	1691	1809
143	7200	842	1212	1418	1567	1699	1818

144	7250	847	1218	1425	1575	1707	1827
145	7300	851	1224	1432	1583	1716	1836
146	7350	855	1230	1439	1591	1724	1845
147	7400	859	1236	1446	1598	1733	1854
148	7450	863	1242	1453	1606	1741	1863
149	7500	867	1248	1460	1614	1749	1872
150	7550	871	1253	1468	1622	1758	1881
151	7600	875	1259	1475	1629	1766	1890
152	7650	879	1265	1482	1637	1775	1899
153	7700	883	1271	1489	1645	1783	1908
154	7750	887	1277	1496	1653	1792	1917
155	7800	891	1283	1503	1661	1800	1926
156	7850	895	1289	1510	1669	1809	1935
157	7900	899	1295	1517	1676	1817	1944
158	7950	903	1300	1524	1684	1826	1954
159	8000	907	1306	1531	1692	1834	1963
160	8050	911	1312	1538	1700	1843	1972
161	8100	915	1318	1545	1708	1851	1981
162	8150	919	1324	1553	1716	1860	1990
163	8200	923	1330	1560	1723	1868	1999
164	8250	927	1336	1567	1731	1877	2008
165	8300	931	1342	1574	1739	1885	2017
166	8350	935	1348	1581	1747	1894	2026
167	8400	939	1353	1588	1755	1902	2035
168	8450	943	1359	1595	1763	1911	2044
169	8500	947	1365	1602	1770	1919	2053
170	8550	951	1371	1609	1778	1928	2062
171	8600	954	1377	1616	1786	1936	2072
172	8650	958	1383	1623	1794	1944	2081
173	8700	962	1389	1630	1802	1953	2090
174	8750	966	1395	1638	1809	1961	2099
175	8800	970	1401	1645	1817	1970	2108

176	8850	974	1406	1652	1825	1978	2117
177	8900	978	1412	1659	1833	1987	2126
178	8950	982	1418	1666	1840	1995	2135
179	9000	985	1423	1672	1847	2002	2142
180	9050	989	1428	1678	1854	2010	2150
181	9100	992	1433	1684	1861	2017	2158
182	9150	996	1438	1690	1867	2024	2166
183	9200	999	1443	1696	1874	2032	2174
184	9250	1003	1448	1702	1881	2039	2182
185	9300	1006	1453	1708	1888	2046	2189
186	9350	1010	1458	1714	1894	2053	2197
187	9400	1013	1463	1720	1901	2061	2205
188	9450	1016	1469	1727	1908	2068	2213
189	9500	1020	1474	1733	1915	2075	2221
190	9550	1023	1479	1739	1921	2083	2228
191	9600	1027	1484	1745	1928	2090	2236
192	9650	1030	1489	1751	1935	2097	2244
193	9700	1034	1494	1757	1942	2105	2252
194	9750	1037	1499	1763	1948	2112	2260
195	9800	1041	1504	1769	1955	2119	2268
196	9850	1044	1509	1775	1962	2127	2275
197	9900	1047	1514	1781	1969	2134	2283
198	9950	1051	1519	1788	1975	2141	2291
199	10000	1054	1524	1794	1982	2148	2299
200	10050	1058	1529	1800	1989	2156	2307
201	10100	1061	1534	1806	1995	2163	2315
202	10150	1065	1539	1812	2002	2170	2322
203	10200	1068	1545	1818	2009	2178	2330
204	10250	1072	1550	1824	2016	2185	2338
205	10300	1075	1555	1830	2022	2192	2346
206	10350	1078	1560	1836	2029	2200	2354
207	10400	1082	1565	1842	2036	2207	2361

208	10450	1086	1570	1849	2043	2215	2370
209	10500	1089	1576	1855	2050	2222	2378
210	10550	1093	1581	1861	2057	2230	2386
211	10600	1097	1586	1868	2064	2237	2394
212	10650	1101	1592	1874	2071	2245	2402
213	10700	1104	1597	1880	2078	2252	2410
214	10750	1108	1602	1887	2085	2260	2418
215	10800	1112	1608	1893	2092	2268	2426
216	10850	1115	1613	1899	2099	2275	2434
217	10900	1119	1619	1906	2106	2283	2443
218	10950	1123	1624	1912	2113	2290	2451
219	11000	1127	1629	1918	2120	2298	2459
220	11050	1130	1635	1925	2127	2306	2467
221	11100	1134	1640	1931	2134	2313	2475
222	11150	1138	1645	1937	2141	2321	2483
223	11200	1142	1651	1944	2148	2328	2491
224	11250	1145	1656	1950	2155	2336	2499
225	11300	1149	1662	1956	2162	2343	2507
226	11350	1153	1667	1963	2169	2351	2516
227	11400	1156	1672	1969	2176	2359	2524
228	11450	1160	1678	1975	2183	2366	2532
229	11500	1163	1682	1981	2189	2373	2539
230	11550	1167	1687	1987	2196	2380	2547
231	11600	1170	1692	1993	2202	2387	2554
232	11650	1174	1697	1999	2208	2394	2561
233	11700	1177	1702	2004	2215	2401	2569
234	11750	1180	1707	2010	2221	2408	2576
235	11800	1184	1712	2016	2228	2415	2584
236	11850	1187	1717	2022	2234	2422	2591
237	11900	1191	1722	2027	2240	2428	2598
238	11950	1193	1725	2031	2245	2433	2604
239	12000	1195	1729	2035	2249	2438	2609

240	12050	1198	1732	2039	2254	2443	2614
241	12100	1200	1735	2043	2258	2448	2619
242	12150	1202	1739	2047	2262	2452	2624
243	12200	1205	1742	2051	2267	2457	2629
244	12250	1207	1746	2055	2271	2462	2634
245	12300	1210	1749	2059	2276	2467	2640
246	12350	1212	1752	2063	2280	2472	2645
247	12400	1214	1756	2067	2285	2476	2650
248	12450	1217	1759	2071	2289	2481	2655
249	12500	1219	1763	2075	2293	2486	2660
250	12550	1221	1766	2079	2298	2491	2665
251	12600	1224	1770	2083	2302	2496	2670
252	12650	1226	1773	2088	2307	2500	2675
253	12700	1228	1776	2092	2311	2505	2681
254	12750	1231	1780	2096	2316	2510	2686
255	12800	1233	1783	2100	2320	2515	2691
256	12850	1236	1787	2104	2324	2520	2696
257	12900	1238	1790	2108	2329	2524	2701
258	12950	1240	1793	2112	2333	2529	2706
259	13000	1243	1797	2116	2338	2534	2711
260	13050	1245	1800	2120	2342	2539	2717
261	13100	1247	1804	2124	2347	2544	2722
262	13150	1250	1807	2128	2351	2548	2727
263	13200	1252	1811	2132	2355	2553	2732
264	13250	1255	1814	2136	2360	2558	2737
265	13300	1257	1817	2140	2364	2563	2742
266	13350	1259	1821	2144	2369	2568	2747
267	13400	1262	1824	2148	2373	2572	2753
268	13450	1264	1828	2152	2378	2577	2758
269	13500	1266	1831	2156	2382	2582	2763
270	13550	1269	1834	2160	2386	2587	2768
271	13600	1271	1838	2164	2391	2592	2773

272	13650	1274	1841	2168	2395	2596	2778
273	13700	1276	1845	2172	2400	2601	2783
274	13750	1278	1848	2176	2404	2606	2789
275	13800	1281	1852	2180	2409	2611	2794
276	13850	1283	1855	2184	2413	2616	2799
277	13900	1285	1858	2188	2417	2620	2804
278	13950	1288	1862	2192	2422	2625	2809
279	14000	1290	1865	2196	2426	2630	2814
280	14050	1292	1869	2200	2431	2635	2819
281	14100	1295	1872	2204	2435	2640	2824
282	14150	1297	1875	2208	2440	2645	2830
283	14200	1300	1879	2212	2444	2649	2835
284	14250	1302	1882	2216	2448	2654	2840
285	14300	1304	1886	2220	2453	2659	2845
286	14350	1307	1889	2224	2457	2664	2850
287	14400	1309	1893	2228	2462	2669	2855
288	14450	1311	1896	2232	2466	2673	2860
289	14500	1314	1899	2236	2471	2678	2866
290	14550	1316	1903	2240	2475	2683	2871
291	14600	1319	1906	2244	2479	2688	2876
292	14650	1321	1910	2248	2484	2693	2881
293	14700	1323	1913	2252	2488	2697	2886
294	14750	1326	1916	2256	2493	2702	2891
295	14800	1328	1920	2260	2497	2707	2896
296	14850	1330	1923	2264	2502	2712	2902
297	14900	1333	1927	2268	2506	2717	2907
298	14950	1335	1930	2272	2510	2721	2912
299	15000	1338	1934	2276	2515	2726	2917

§48-13-302. Incomes below the table for determining basic child support obligations.

1 If combined adjusted gross income is below five hundred
2 fifty dollars per month, which is the lowest amount of income
3 considered in the table of monthly basic child support obliga-
4 tions set forth in subsection (a) of this section, the basic child
5 support obligation shall be set at fifty dollars per month or a
6 discretionary amount determined by the court based on the
7 resources and living expenses of the parents and the number of
8 children due support.

§48-13-303. Incomes above the table for determining basic child support obligations.

1 If combined adjusted gross income is above fifteen
2 thousand dollars per month, which is the highest amount of
3 income considered in the table of monthly basic child support
4 obligations set forth in subsection (a) of this section, the basic
5 child support obligation shall not be less than it would be based
6 on a combined adjusted gross income of fifteen thousand
7 dollars. The court may also compute the basic child support
8 obligation for combined adjusted gross incomes above fifteen
9 thousand dollars by the following:

10 (1) One child — $\$1,338 + 0.088 \times$ combined adjusted gross
11 income above fifteen thousand dollars per month;

12 (2) Two children — $\$1,934 + 0.129 \times$ combined adjusted
13 gross income above fifteen thousand dollars per month;

14 (3) Three children — $\$2,276 + 0.153 \times$ combined adjusted
15 gross income above fifteen thousand dollars per month;

16 (4) Four children — $\$2,515 + 0.169 \times$ combined adjusted
17 gross income above fifteen thousand dollars per month;

18 (5) Five children — $\$2,726 + 0.183 \times$ combined adjusted
19 gross income above fifteen thousand dollars per month; and

- 20 (6) Six children — \$2,917 + 0.196 x combined adjusted
- 21 gross income above fifteen thousand dollars per month.

PART 4. SUPPORT IN SOLE CUSTODY CASES.

***§48-13-401. Basic child support obligation in sole custody cases.**

- 1 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.

***§48-13-402. Division of basic child support obligation in sole custody cases.**

- 1 In a sole custody case, the total basic child support obliga-
- 2 tion is divided between the parents in proportion to their
- 3 income. From this amount is subtracted the obligor’s direct
- 4 expenditures of any items which were added to the basic child
- 5 support obligation to arrive at the total child support obligation.

***§48-13-403. Worksheet for calculating basic child support obligation in sole custody cases.**

- 1 Child support for sole custody cases shall be calculated
- 2 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

***Clerk’s Note:** This section was also amended by S. B. 652 (Chapter 93), which passed subsequent to this act.

Chil- dren	SSN	Date of Birth	Chil- dren	SSN	Date of Birth

PART I. CHILD SUPPORT ORDER	Mother	Father	Com- bined
1. MONTHLY GROSS INCOME (Exclusive of overtime compensation)	\$	\$	
a. Minus preexisting child support payment	-	-	
b. Minus maintenance paid	-	-	
c. Plus overtime compensation, if not ex- cluded, and not to exceed 50%, pursuant to W. Va. Code §48-1-228(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 Ad- justed for Federal Tax Credit (0.75 x actual work-related child care costs.)	\$	\$	
b. Extraordinary Medical Expenses (Un- insured 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:

***§48-13-404. Additional calculation to be made in sole custody cases.**

1 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:

6 (1) Child support at the amount determined in Part I; or

7 (2) The difference between eighty percent of the
 8 noncustodial parent's adjusted gross income and five hundred
 9 dollars, or fifty dollars, whichever is more.

**PART 5. SUPPORT IN SHARED PHYSICAL
 CUSTODY OR SPLIT PHYSICAL CUSTODY CASES.**

***§48-13-501. Shared physical custody adjustment.**

1 Child support for cases with shared physical custody is
 2 calculated using Worksheet B. The following method is used
 3 only for shared physical custody: That is, in cases where each
 4 parent has the child for more than one hundred twenty-seven
 5 days per year (thirty-five percent).

6 (1) The basic child support obligation is multiplied by 1.5
 7 to arrive at a shared custody basic child support obligation. The
 8 shared custody basic child support obligation is apportioned to
 9 each parent according to his or her income. In turn, a child
 10 support obligation is computed for each parent by multiplying
 11 that parent's portion of the shared custody child support

***Clerk's Note:** This section was also amended by S. B. 652 (Chapter 93), which passed subsequent to this act.

12 obligation by the percentage of time the child spends with the
13 other parent. The respective basic child support obligations are
14 then offset, with the parent owing more basic child support
15 paying the difference between the two amounts. The transfer for
16 the basic obligation for the parent owing less basic child
17 support shall be set at zero dollars.

18 (2) Adjustments for each parent's additional direct expenses
19 on the child are made by apportioning the sum of the parent's
20 direct expenditures on the child's share of any unreimbursed
21 child health care expenses, work-related child care expenses and
22 any other extraordinary expenses agreed to by the parents or
23 ordered by the court or master less any extraordinary credits
24 agreed to by the parents or ordered by the court or master to each
25 parent according to their income share. In turn each parent's net
26 share of additional direct expenses is determined by subtracting
27 the parent's actual direct expenses on the child's share of any
28 unreimbursed child health care expenses, work-related child care
29 expenses and any other extraordinary expenses agreed to by the
30 parents or by the court or master less any extraordinary credits
31 agreed to by the parents or ordered by the court or master from
32 their share. The parent with a positive net share of additional
33 direct expenses owes the other parent the amount of his or her
34 net share of additional direct expenses. The parent with zero or
35 a negative net share of additional direct expenses owes zero
36 dollars for additional direct expenses.

37 (3) The final amount of the child support order is determined
38 by summing what each parent owes for the basic support
39 obligation and additional direct expenses as defined in subdivi-
40 sions (1) and (2) of this section. The respective sums are then
41 offset, with the parent owing more paying the other parent the
42 difference between the two amounts.

***§48-13-502. Shared physical custody worksheet.**

1 Child support for shared physical custody cases shall be
2 calculated using the following worksheet:

***Clerk's Note:** This section was also amended by S. B. 652 (Chapter 93), which passed subsequent to this act.

WORKSHEET B: SHARED PHYSICAL CUSTODY

IN THE CIRCUIT COURT OF _____ COUNTY, WEST VIRGINIA

CASE NO. _____

Mother: _____ SS No.: _____ Primary Custodial parent? Yes NoFather: _____ SS No.: _____ Primary Custodial parent? Yes No

Chil- dren	SSN	Date of Birth	Chil- dren	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 ex- cluded, and not to exceed 50%, pursuant to W. Va. Code §48-1-228(b)(6)	+	+	
2. MONTHLY ADJUSTED GROSS INCOME	\$	\$	\$
3. PERCENTAGE SHARE OF INCOME (Each parent's income from line 2 di- vided by Combined Income)	%	%	100%
4. BASIC OBLIGATION (Use line 2 Com- bined to find amount from Child Support Schedule.)			\$
PART II. SHARED CUSTODY ADJUSTMENT			
5. Shared Custody Basic Obligation (line 4 x 1.50)			\$
6. Each Parent's Share (Line 5 x each parent's line 3)	\$	\$	

7. Overnights with Each Parent (must total 365)			365
8. Percentage with Each Parent (Line 7 divided by 365)	%	%	100%
9. Amount Retained (Line 6 x line 8 for each parent)	\$	\$	
10. Each Parent's Obligation (Line 6 - line 9)	\$	\$	
11. AMOUNT TRANSFERRED FOR BASIC OBLIGATION (Subtract smaller amount on line 10 from larger amount on line 10. Parent with larger amount on line 10 owes the other par- ent 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 Ad- justed for Federal Tax Credit (0.75 x actual work-related child care costs.)	\$	\$	
12b. Extraordinary Medical Expenses (Un- insured 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 Com- bined.)	\$	\$	
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:

***§48-13-503. Split physical custody adjustment.**

1 In cases with split physical custody, the court or master
 2 shall use Worksheet A (Sole-Parenting) as set forth in section
 3 13-403 to calculate a separate child support order for each
 4 parent based on the number of children in that parent's custody.
 5 Instead of transferring the calculated orders between parents,
 6 the two orders are offset. The difference of the two orders is the
 7 child support order to be paid by the parent with the higher
 8 sole-parenting order.

PART 6. ADJUSTMENT OF SHARES OF SUPPORT OBLIGATIONS.

§48-13-601. Adjustment for child care tax credit.

***Clerk's Note:** This section was also amended by S. B. 652 (Chapter 93), which passed subsequent to this act.

1 (a) The amount of the federal tax credit for child care
2 expenses that can be realized by the custodial parent shall be
3 approximated by deducting twenty-five percent from
4 work-related child care costs, except that no such deduction
5 shall be made for custodial parents with monthly gross incomes
6 below the following amounts:

7 (1) One child—\$1,150;

8 (2) Two children—\$1,550;

9 (3) Three children—\$1,750;

10 (4) Four children—\$1,950;

11 (5) Five children—\$2,150; and

12 (6) Six or more children—\$2,350.

13 (b) Work-related child care costs net of any adjustment for
14 the child care tax credit shall be added to the basic child support
15 obligation and shall be divided between the parents in propor-
16 tion to their adjusted gross income.

§48-13-602. Adjustment for child health care.

1 (a) A child support order shall provide for the child's
2 current and future medical needs by providing relief in accor-
3 dance with the provisions of article 12-101, et seq., of this
4 chapter.

5 (b) The payment of a premium to provide health insurance
6 coverage on behalf of the children subject to the order is added
7 to the basic child support obligation and divided between the
8 parents in proportion to their adjusted gross income. The
9 amount added to the basic child support obligation is the actual
10 amount of the total insurance premium that is attributable to the
11 number of children due support. If this amount is not available

12 or cannot be verified, the total cost of the premium should be
13 divided by the total number of persons covered by the policy.
14 The cost per person derived from this calculation is multiplied
15 by the number of children who are the subject of the order and
16 who are covered under the policy.

17 (c) After the total child support obligation is calculated and
18 divided between the parents in proportion to their adjusted
19 gross income, the amount of the health insurance premium
20 added to the basic child support obligation is deducted from the
21 support obligor's share of the total child support obligation if
22 the support obligor is actually paying the premium.

23 (d) Extraordinary medical expenses shall be added to the
24 basic child support obligation and shall be divided between the
25 parents in proportion to their adjusted gross income.

**§48-13-603. Adjustment for obligor's social security benefits sent
directly to the child; receipt by child of supple-
mental security income.**

1 (a) If a proportion of the obligor's social security benefit is
2 paid directly to the custodian of his or her dependents who are
3 the subject of the child support order, the following adjustment
4 shall be made. The total amount of the social security benefit
5 which includes the amounts paid to the obligor and the obligee
6 shall be counted as gross income to the obligor. In turn, the
7 child support order will be calculated as described in sections
8 13-401 through 13-404. To arrive at the final child support
9 amount, however, the amount of the social security benefits
10 sent directly to the child's household will be subtracted from
11 the child support order. If the child support order amount results
12 in a negative amount it shall be set at zero.

13 (b) If a child is a recipient of disability payments as
14 supplemental security income for aged, blind and disabled,
15 under the provisions of 42 U.S.C. § 1382, et seq., and if support

16 furnished by an obligor would be considered unearned income
17 that renders the child ineligible for disability payments or
18 medical benefits, no child support order shall be entered for that
19 child. If a support order is entered for the child's siblings or
20 other persons in the household, the child shall be excluded from
21 the calculation of support, and the amount of support for the
22 child shall be set at zero.

PART 7. APPLICATION OF CHILD SUPPORT GUIDELINES.

§48-13-701. Rebuttable presumption that child support award is correct.

1 The guidelines in child support awards apply as a rebuttable
2 presumption to all child support orders established or modified
3 in West Virginia. The guidelines must be applied to all actions
4 in which child support is being determined including temporary
5 orders, interstate (URESA and UIFSA), domestic violence,
6 foster care, divorce, nondissolution, public assistance,
7 nonpublic assistance and support decrees arising despite
8 nonmarriage of the parties. The guidelines must be used by the
9 court or master as the basis for reviewing adequacy of child
10 support levels in uncontested cases as well as contested
11 hearings.

§48-13-702. 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 that may 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 spousal support, child support and
28 child care costs subtracted from an obligor's income reduces
29 that income to less than the federal poverty level and con-
30 versely, whether deviation from child support guidelines would
31 reduce the income of the child's household to less than the
32 federal poverty level.

PART 8. MISCELLANEOUS PROVISIONS RELATING TO CHILD SUPPORT ORDERS.

***§48-13-801. Tax exemption for child due support.**

***Clerk's Note:** This section was also amended by S. B. 652 (Chapter 93), which passed subsequent to this act.

1 Unless otherwise agreed to by the parties, the court shall
2 allocate the right to claim dependent children for income tax
3 purposes to the custodial parent except in cases of shared
4 custody. In shared custody cases, these rights shall be allocated
5 between the parties in proportion to their adjusted gross
6 incomes for child support calculations. In a situation where
7 allocation would be of no tax benefit to a party, the court or
8 master need make no allocation to that party. However, the tax
9 exemptions for the minor child or children should be granted to
10 the noncustodial parent only if the total of the custodial parent's
11 income and child support is greater when the exemption is
12 awarded to the noncustodial parent.

***§48-13-802. 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

***Clerk's Note:** This section was also amended by S. B. 652 (Chapter 93), which passed subsequent to this act.

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.

**ARTICLE 14. REMEDIES FOR THE ENFORCEMENT OF SUPPORT
OBLIGATIONS.**

- §48-14-101. When action may be brought for child support order.
- §48-14-102. Who may bring action for child support order.
- §48-14-103. Venue for action for child support order.
- §48-14-104. Obligee may seek spousal support in addition to child support.
- §48-14-105. Mandatory provision for wage withholding.
- §48-14-201. Arrearages stand by operation of law as judgment against support obligor.
- §48-14-202. Registration of foreign order.
- §48-14-203. Affidavit of accrued support.
- §48-14-204. Execution and notice.
- §48-14-205. Circuit clerk to provide form affidavits.
- §48-14-206. Priority over other legal process.
- §48-14-207. Amount to be withheld from income.
- §48-14-208. Filing of false affidavit constitutes false swearing.
- §48-14-209. Application to support orders of another state.
- §48-14-210. Application to income withholding.
- §48-14-211. Release of lien.
- §48-14-301. Liens against real property by operation of law.
- §48-14-302. Affidavit of accrued support.
- §48-14-303. Registration of foreign order.
- §48-14-304. Full faith and credit to liens arising in another state.
- §48-14-305. Release of lien.
- §48-14-306. Filing of false affidavit constitutes false swearing.
- §48-14-307. Application to support orders of another state.
- §48-14-308. Enforcement by bureau for child support enforcement of lien on real property.
- §48-14-401. Support orders to provide for withholding from income.
- §48-14-402. Commencement of withholding from income without further court action.
- §48-14-403. Exception to requirement for automatic withholding from income.
- §48-14-404. Enforcement of withholding by bureau for child support enforcement.
- §48-14-405. Information required in notice to obligor.

- §48-14-406. Notice to source of income; withholding in compliance with order.
- §48-14-407. Contents of notice to source of income.
- §48-14-408. Determination of amounts to be withheld.
- §48-14-409. Time for implementing withholding.
- §48-14-410. Sending amounts withheld for bureau; notice.
- §48-14-411. Time withholding is to stay in effect.
- §48-14-412. Notice of termination of employment or receipt of income.
- §48-14-413. Combining withheld income.
- §48-14-414. Sending amounts withheld to division; notice.
- §48-14-415. Misdemeanor offense of concealing payment of income to obligor; penalty.
- §48-14-416. Request to source of income for information regarding payment of income.
- §48-14-417. Priority of support collection over other legal process.
- §48-14-418. Misdemeanor offense for source of income's action against an obligor; penalty.
- §48-14-419. Proposal of legislative rules by bureau for child support enforcement.
- §48-14-501. Commencement of contempt action in circuit court.
- §48-14-502. Willful failure or refusal to comply with order to pay support.
- §48-14-503. Limitation on length of commitment.
- §48-14-504. Violation of work release conditions.
- §48-14-505. Misdemeanor offense of escape from custody; penalty.
- §48-14-601. Definitions.
- §48-14-602. Use of automated administrative enforcement.
- §48-14-603. Enforcing support orders through automated administrative enforcement.
- §48-14-701. Posting of bonds or giving security to guarantee payment of overdue support.
- §48-14-801. When monthly payments may be increased to satisfy overdue support.
- §48-14-802. Notice of increase in monthly payments to satisfy overdue support.
- §48-14-803. Application to support orders of courts of competent jurisdiction.
- §48-14-901. Procedure when person contests action proposed to be taken against him.
- §48-14-1001. Misrepresentation of delinquent support payments; penalty.

**PART 1. ACTION TO OBTAIN AN ORDER FOR
SUPPORT OF MINOR CHILD.**

§48-14-101. When action may be brought for child support order.

- 1 An action may be brought in circuit court to obtain an
- 2 order for the support of a minor child when:

3 (1) The child has a parent and child relationship with an
4 obligor;

5 (2) The obligor is not meeting an obligation to support the
6 child;

7 (3) An enforceable order for the support of the child by the
8 obligor has not been entered by a court of competent jurisdic-
9 tion; and

10 (4) There is no pending action for divorce, separate
11 maintenance or annulment in which the obligation of support
12 owing from the obligor to the child is at issue.

§48-14-102. Who may bring action for child support order.

1 An action may be brought under the provisions of section
2 14-101 by:

3 (1) A custodial parent of a child, when the divorce order or
4 other order which granted custody did not make provision for
5 the support of the child by the obligor;

6 (2) A primary caretaker of a child;

7 (3) A guardian of the property of a child or the committee
8 for a child; or

9 (4) The bureau for child support enforcement, on behalf of
10 the state, when the department of health and human resources
11 is providing assistance on behalf of the child in the form of
12 temporary assistance to needy families, and any right to support
13 has been assigned to the department or in any other case
14 wherein a party has applied for child support enforcement
15 services from the bureau for child support enforcement.

§48-14-103. Venue for action for child support order.

1 An action under the provisions of this section may be
2 brought in the county where the obligee, the obligor or the child
3 resides.

§48-14-104. Obligee may seek spousal support in addition to child support.

1 When an action for child support is brought under the
2 provisions of this section by an obligee against his or her
3 spouse, such obligee may also seek spousal support from the
4 obligor, unless such support has been previously waived by
5 agreement or otherwise.

§48-14-105. Mandatory provision for wage withholding.

1 Every order of support heretofore or hereafter entered or
2 modified under the provisions of this section shall include a
3 provision for the income withholding in accordance with the
4 provisions of 12-101, et seq., and 14-401, et seq.

**PART 2. LIENS AGAINST PERSONAL PROPERTY
FOR OVERDUE SUPPORT.**

§48-14-201. Arrearages stand by operation of law as judgment against support obligor.

1 When an obligor is in arrears in the payment of support
2 which is required to be paid by the terms of an order for support
3 of a child, an obligee or the bureau for child support enforce-
4 ment may file an abstract of the order giving rise to the support
5 obligation and an "affidavit of accrued support," setting forth
6 the particulars of such arrearage and requesting a writ of
7 execution, suggestion or suggestee execution. The filing of the
8 abstract and affidavit shall give rise, by operation of law, to a
9 lien against personal property of an obligor who resides within
10 this state or who owns property within this state for overdue
11 support.

§48-14-202. Registration of foreign order.

1 If the duty of support is based upon an order from another
2 jurisdiction, the obligee shall first register the order in accor-
3 dance with the provisions of part 16-601, et seq., of this
4 chapter: *Provided*, That nothing in this subsection shall prevent
5 the bureau for child support enforcement from enforcing
6 foreign orders for support without registration of the order in
7 accordance with the provisions of part 16-501, et seq., of this
8 chapter.

§48-14-203. Affidavit of accrued support.

1 (a) The affidavit of accrued support may be filed with the
2 clerk of the circuit court in the county in which the obligee or
3 the obligor resides, or where the obligor's source of income is
4 located.

5 (b) The affidavit may be filed when a payment required by
6 such order has been delinquent, in whole or in part, for a period
7 of fourteen days.

8 (c) The affidavit shall:

9 (1) Identify the obligee and obligor by name and address,
10 and shall list the obligor's social security number or numbers,
11 if known;

12 (2) Name the court which entered the support order and set
13 forth the date of such entry;

14 (3) State the total amount of accrued support which has not
15 been paid by the obligor;

16 (4) List the date or dates when support payments should
17 have been paid but were not, and the amount of each such
18 delinquent payment; and

19 (5) State the name and address of the obligor's source of
20 income, if known.

§48-14-204. Execution and notice.

1 (a) Upon receipt of the affidavit, the clerk shall issue a writ
2 of execution, suggestion or suggestee execution, and shall mail
3 a copy of the affidavit and a notice of the filing of the affidavit
4 to the obligor, at his last known address. If the bureau for child
5 support enforcement is not acting on behalf of the obligee in
6 filing the affidavit, the clerk shall forward a copy of the
7 affidavit and the notice of the filing to the bureau for child
8 support enforcement.

9 (b) The notice provided for in subsection (a) of this section
10 must inform the obligor that if he or she desires to contest the
11 affidavit on the grounds that the amount claimed to be in arrears
12 is incorrect or that a writ of execution, suggestion or suggestee
13 execution is not proper because of mistakes of fact, he or she
14 must, within fourteen days of the date of the notice: (1) Inform
15 the bureau for child support enforcement in writing of the
16 reasons why the affidavit is contested and request a meeting
17 with the bureau for child support enforcement; or (2) where a
18 court of this state has jurisdiction over the parties, obtain a date
19 for a hearing before the circuit court or the family law master
20 and mail written notice of such hearing to the obligee and to the
21 bureau for child support enforcement on a form prescribed by
22 the administrative office of the supreme court of appeals and
23 made available through the office of the clerk of the circuit
24 court.

25 (c) Upon being informed by an obligor that he or she
26 desires to contest the affidavit, the bureau for child support
27 enforcement shall inform the circuit court of such fact, and the
28 circuit court shall require the obligor to give security, post a

29 bond, or give some other guarantee to secure payment of
30 overdue support.

§48-14-205. Circuit clerk to provide form affidavits.

1 The clerk of the circuit court shall make available form
2 affidavits for use under the provisions of this article. Such form
3 affidavits shall be provided to the clerk by the bureau for child
4 support enforcement. The notice of the filing of an affidavit
5 shall be in a form prescribed by the bureau for child support
6 enforcement.

§48-14-206. Priority over other legal process.

1 Writs of execution, suggestions or suggestee executions
2 issued pursuant to the provisions of this article shall have
3 priority over any other legal process under the laws of this state
4 against the same income, except for withholding from income
5 of amounts payable as support in accordance with the provi-
6 sions of section 14-401 of this chapter, and shall be effective
7 notwithstanding any exemption that might otherwise be
8 applicable to the same income.

§48-14-207. Amount to be withheld from income.

1 Notwithstanding any other provision of this code to the
2 contrary, the amount to be withheld from the disposable
3 earnings of an obligor pursuant to a suggestee execution in
4 accordance with the provisions of this article shall be the same
5 amount which could properly be withheld in the case of a
6 withholding order under the provisions of 14-401, et seq.

§48-14-208. Filing of false affidavit constitutes false swearing.

1 A person who files a false affidavit is guilty of false
2 swearing and, upon conviction thereof, shall be punished as
3 provided by law for such offense.

§48-14-209. Application to support orders of another state.

- 1 The provisions of this article apply to support orders issued
- 2 by a court of competent jurisdiction of any other state.

§48-14-210. Application to income withholding.

- 1 The provisions of this article do not apply to income
- 2 withholding, as provided in section 14-401 of this chapter.

§48-14-211. Release of lien.

- 1 Upon satisfaction of the overdue support obligation, the
- 2 obligee shall issue a release to the obligor and file a copy
- 3 thereof with the clerk of the county commission in the county
- 4 in which the lien arose pursuant to this section. The bureau for
- 5 child support enforcement shall issue a release in the same
- 6 manner and with the same effect as liens taken by the tax
- 7 commissioner pursuant to section twelve, article ten, chapter
- 8 eleven of this code.

**PART 3. LIENS AGAINST REAL PROPERTY
FOR OVERDUE SUPPORT.**

§48-14-301. Liens against real property by operation of law.

- 1 An order for support entered by a court of competent
- 2 jurisdiction will give rise, by operation of law, to a lien against
- 3 real property of an obligor who resides or owns property within
- 4 this state for overdue support upon the filing by the obligee, or,
- 5 when appropriate, the bureau for child support enforcement, an
- 6 abstract of the order giving rise to the support obligation and an
- 7 "Affidavit of Accrued Support" setting forth the particulars of
- 8 the arrearage.

§48-14-302. Affidavit of accrued support.

1 The affidavit and abstract shall be filed with the clerk of
2 the county commission in which the real property is located.

3 The affidavit shall:

4 (1) Identify the obligee and obligor by name and address,
5 and shall list the obligor's social security number or numbers,
6 if known;

7 (2) Name the court which entered the support order and set
8 forth the date of such entry;

9 (3) Allege that the support obligor is at least thirty days in
10 arrears in the payment of child support;

11 (4) State the total amount of accrued support which has not
12 been paid by the obligor; and

13 (5) List the date or dates when support payments should
14 have been paid but were not, and the amount of each such
15 delinquent payment.

§48-14-303. Registration of foreign order.

1 If the duty of support is based upon a foreign order the
2 obligee shall first register the order in accordance with the
3 provisions of article 16 of this chapter: *Provided*, That nothing
4 in this subsection shall prevent the bureau for child support
5 enforcement from enforcing foreign orders for support without
6 registration of the order in accordance with the provisions of
7 article 16 of this chapter.

§48-14-304. Full faith and credit to liens arising in another state.

1 This state will accord full faith and credit to liens described
2 in section 301 of this article arising in another state, when the
3 out-of-state agency, party, or other entity seeking to enforce

- 4 such a lien complies with the procedural rules relating to
- 5 recording or serving liens that arise within the other state.

§48-14-305. Release of lien.

- 1 Upon satisfaction of the overdue support obligation, the
- 2 obligee shall issue a release to the obligor and file a copy
- 3 thereof with the clerk of the county commission in the county
- 4 in which the lien arose pursuant to this section. The bureau for
- 5 child support enforcement shall issue a release in the same
- 6 manner and with the same effect as liens taken by the tax
- 7 commissioner pursuant to section twelve, article ten, chapter
- 8 eleven of this code.

§48-14-306. Filing of false affidavit constitutes false swearing.

- 1 Any person who files a false affidavit shall be guilty of
- 2 false swearing and, upon conviction thereof, shall be punished
- 3 as provided by law for such offense.

§48-14-307. Application to support orders of another state.

- 1 The provisions of this part 14-301, et seq., shall apply to
- 2 support orders issued by a court of competent jurisdiction of
- 3 any other state.

§48-14-308. Enforcement by the bureau for child support enforcement of lien on real property.

- 1 The bureau for child support enforcement may enforce a
- 2 lien upon real property pursuant to the provisions of article
- 3 three, chapter thirty-eight of this code.

**PART 4. WITHHOLDING FROM INCOME OF
AMOUNTS PAYABLE AS SUPPORT.**

§48-14-401. Support orders to provide for withholding from income.

1 (a) Every order entered or modified under the provisions of
2 this article that requires the payment of child support or spousal
3 support must include a provision for automatic withholding
4 from income of the obligor, in order to facilitate income
5 withholding as a means of collecting support.

6 (b) Every support order heretofore or hereafter entered by
7 a court of competent jurisdiction is considered to provide for an
8 order of income withholding, notwithstanding the fact that the
9 support order does not in fact provide for an order of withhold-
10 ing. Income withholding may be instituted under this part 4 for
11 any arrearage without the necessity of additional judicial or
12 legal action.

§48-14-402. Commencement of withholding from income without further court action.

1 (a) Except as otherwise provided in section 14-403, a
2 support order as described in section 14-401 must contain or
3 must be deemed to contain language requiring automatic
4 income withholding for both current support and for any
5 arrearages to commence without further court action on the date
6 the support order is entered.

7 (b) The supreme court of appeals shall make available to
8 the circuit courts standard language to be included in all such
9 orders, so as to conform such orders to the applicable require-
10 ments of state and federal law regarding the withholding from
11 income of amounts payable as support.

§48-14-403. Exception to requirement for automatic withholding from income.

1 If one of the parties demonstrates, and the court finds, that
2 there is good cause not to require immediate income withhold-
3 ing, or in any case where there is filed with the court a written
4 agreement between the parties which provides for an alternative

5 arrangement, the support order may not provide for income
6 withholding to begin immediately.

7 (1) The order must provide that income withholding will
8 begin immediately upon the occurrence of any of the following:

9 (A) When the payments which the obligor has failed to
10 make under the order are at least equal to the support payable
11 for one month, if the order requires support to be paid in
12 monthly installments;

13 (B) When the payments which the obligor has failed to
14 make under the order are at least equal to the support payable
15 for four weeks, if the order requires support to be paid in
16 weekly or bi-weekly installments;

17 (C) When the obligor requests the bureau for child support
18 enforcement to commence income withholding; or

19 (D) When the obligee requests that such withholding begin,
20 if the request is approved by the court in accordance with
21 procedures and standards established by rules promulgated by
22 the commission pursuant to this section and to chapter
23 twenty-nine-a of this code.

24 (2) The court shall consider the best interests of the child in
25 determining whether "good cause" exists under this section.
26 The court may also consider the obligor's payment record in
27 determining whether "good cause" has been demonstrated.

28 (3) When immediate income withholding is not required
29 due to the findings required by this section, the bureau for child
30 support enforcement shall mail a notice to the obligor pursuant
31 to section 14-405 of this article upon the occurrence of any of
32 the conditions provided for in subdivision (1) of this section.

§48-14-404. Enforcement of withholding by bureau for child support enforcement.

1 The withholding from an obligor's income of amounts
2 payable as spousal or child support shall be enforced by the
3 bureau for child support enforcement in accordance with the
4 provisions of this part 4.

§48-14-405. Information required in notice to obligor.

1 When income withholding is required, the bureau for child
2 support enforcement shall send by first class mail or electronic
3 means to the obligor notice that withholding has commenced.
4 The notice shall inform the obligor of the following:

5 (1) The amount owed;

6 (2) That a withholding from the obligor's income of
7 amounts payable as support has commenced;

8 (3) That the amount withheld will be equal to the amount
9 required under the terms of the current support order, plus
10 amounts for any outstanding arrearage;

11 (4) The definition of "gross income" as defined in section
12 1-228 of this chapter;

13 (5) That the withholding will apply to the obligor's present
14 source of income, and to any future source of income and,
15 therefore, no other notice of withholding will be sent to the
16 obligor. A copy of any new or modified withholding notice will
17 be sent to the obligor at approximately the same time the
18 original is sent to the source of income;

19 (6) That any action by the obligor to purposefully minimize
20 his or her income will result in the enforcement of support
21 being based upon potential and not just actual earnings;

22 (7) That payment of the arrearage after the date of the
23 notice is not a bar to such withholding;

24 (8) That the obligor may request a review of the withhold-
25 ing by written request to the bureau for child support enforce-
26 ment when the obligor has information showing an error in the
27 current or overdue support amount or a mistake as to the
28 identity of the obligor;

29 (9) That a mistake of fact exists only when there is an error
30 in the amount of current or overdue support claimed in the
31 notice, or there is a mistake as to the identity of the obligor;

32 (10) That matters such as lack of visitation, inappropriate-
33 ness of the support award, or changed financial circumstances
34 of the obligee or the obligor will not be considered at any
35 hearing held pursuant to the withholding, but may be raised by
36 the filing of a separate petition in circuit court;

37 (11) That if the obligor desires to contest the withholding,
38 the obligor may petition the circuit court for a resolution; and

39 (12) That while the withholding is being contested through
40 the court, the income withholding may not be stayed, but may
41 be modified.

**§48-14-406. Notice to source of income; withholding in compli-
ance with order.**

1 (a) Withholding shall occur and the notice to withhold shall
2 be sent to the source of income when the support order provides
3 for immediate income withholding, or if immediate income

4 withholding is not so provided, when the support payments are
5 in arrears in the amount specified in section 403 of this article.

6 (b) The source of income shall withhold so much of the
7 obligor's income as is necessary to comply with the order
8 authorizing such withholding, up to the maximum amount
9 permitted under applicable law for both current support and for
10 any arrearages which are due. Such withholding, unless
11 otherwise terminated under the provisions of this part 4 of this
12 article, shall apply to any subsequent source of income or any
13 subsequent period of time during which income is received by
14 the obligor.

15 (c) In addition to any amounts payable as support withheld
16 from the obligor's income, the source of income may deduct a
17 fee, not to exceed one dollar, for administrative costs incurred
18 by the source of income, for each withholding.

§48-14-407. Contents of notice to source of income.

1 (a) The source of income of any obligor who is subject to
2 withholding, upon being given notice of withholding, shall
3 withhold from such obligor's income the amount specified by
4 the notice and pay such amount to the bureau for child support
5 enforcement for distribution. The notice given to the source of
6 income shall contain only such information as may be neces-
7 sary for the source of income to comply with the withholding
8 order and no source of income may require additional informa-
9 tion or documentation. Such notice to the source of income
10 shall include, at a minimum, the following:

11 (1) The amount to be withheld from the obligor's dispos-
12 able earnings, and a statement that the amount to be withheld
13 for support and other purposes, including the fee specified
14 under subdivision (3) of this subsection, may not be in excess
15 of the maximum amounts permitted under Section 303(b) of the

16 federal Consumer Credit Protection Act or limitations imposed
17 under the provisions of this code;

18 (2) That the source of income shall send the amount to be
19 withheld from the obligor's income to the bureau for child
20 support enforcement, along with such identifying information
21 as may be required by the bureau, the same day that the obligor
22 is paid;

23 (3) That, in addition to the amount withheld under the
24 provisions of subdivision (1) of this subsection, the source of
25 income may deduct a fee, not to exceed one dollar, for adminis-
26 trative costs incurred by the source of income, for each with-
27 holding;

28 (4) That withholding is binding on the source of income
29 until further notice by the bureau for child support enforcement
30 or until the source of income notifies the bureau for child
31 support enforcement of a termination of the obligor's employ-
32 ment in accordance with the provisions of subsection (1) of this
33 section;

34 (5) That the source of income is subject to a fine for
35 discharging an obligor from employment, refusing to employ,
36 or taking disciplinary action against any obligor because of the
37 withholding;

38 (6) That when the source of income fails to withhold
39 income in accordance with the provisions of the notice, the
40 source of income is liable for the accumulated amount the
41 source of income should have withheld from the obligor's
42 income;

43 (7) That the withholding under the provisions of this part 4
44 shall have priority over any other legal process under the laws
45 of this state against the same income, and shall be effective

46 despite any exemption that might otherwise be applicable to the
47 same income;

48 (8) That when an employer has more than one employee
49 who is an obligor who is subject to wage withholding from
50 income under the provisions of this code, the employer may
51 combine all withheld payments to the bureau for child support
52 enforcement when the employer properly identifies each
53 payment with the information listed in this part 4. A source of
54 income is liable to an obligee, including the state of West
55 Virginia or the department of health and human resources
56 where appropriate, for any amount which the source of income
57 fails to identify with the information required by this part 4 and
58 is therefore not received by the obligee;

59 (9) That the source of income shall implement withholding
60 no later than the first pay period or first date for payment of
61 income that occurs after fourteen days following the date the
62 notice to the source of income was mailed; and

63 (10) That the source of income shall notify the bureau for
64 child support enforcement promptly when the obligor termi-
65 nates his or her employment or otherwise ceases receiving
66 income from the source of income, and shall provide the
67 obligor's last known address and the name and address of the
68 obligor's new source of income, if known.

69 (b) The commission shall, by administrative rule, establish
70 procedures for promptly refunding to obligors amounts which
71 have been improperly withheld under the provisions of this part
72 4.

§48-14-408. Determination of amounts to be withheld.

1 Notwithstanding any other provision of this code to the
2 contrary which provides for a limitation upon the amount which

3 may be withheld from earnings through legal process, the
4 amount of an obligor's aggregate disposable earnings for any
5 given workweek which may be withheld as support payments
6 is to be determined in accordance with the provisions of this
7 subsection, as follows:

8 (1) After ascertaining the status of the payment record of
9 the obligor under the terms of the support order, the payment
10 record shall be examined to determine whether any arrearage is
11 due for amounts which should have been paid prior to a
12 twelve-week period which ends with the workweek for which
13 withholding is sought to be enforced.

14 (2) Prior to the first day of January, two thousand one,
15 when none of the withholding is for amounts which came due
16 prior to such twelve-week period, then:

17 (A) When the obligor is supporting another spouse or
18 dependent child other than the spouse or child for whom the
19 proposed withholding is being sought, the amount withheld may
20 not exceed fifty percent of the obligor's disposable earnings for
21 that week; and

22 (B) When the obligor is not supporting another spouse or
23 dependent child as described in paragraph (A) of this subdivi-
24 sion, the amount withheld may not exceed sixty percent of the
25 obligor's disposable earnings for that week.

26 (3) Prior to the first day of January, two thousand one,
27 when a part of the withholding is for amounts which came due
28 prior to such twelve-week period, then:

29 (A) Where the obligor is supporting another spouse or
30 dependent child other than the spouse or child for whom the
31 proposed withholding is being sought, the amount withheld may

32 not exceed fifty-five percent of the obligor's disposable
33 earnings for that week; and

34 (B) Where the obligor is not supporting another spouse or
35 dependent child as described in paragraph (A) of this subdivi-
36 sion, the amount withheld may not exceed sixty-five percent of
37 the obligor's disposable earnings for that week.

38 (4) Beginning the first day of January, two thousand one,
39 when none of the withholding is for amounts which came due
40 prior to such twelve-week period, then:

41 (A) When the obligor is supporting another spouse or
42 dependent child other than the spouse or child for whom the
43 proposed withholding is being sought, the amount withheld may
44 not exceed forty percent of the obligor's disposable earnings for
45 that week; and

46 (B) When the obligor is not supporting another spouse or
47 dependent child as described in paragraph (A) of this subdivi-
48 sion, the amount withheld may not exceed fifty percent of the
49 obligor's disposable earnings for that week.

50 (5) Beginning the first day of January, two thousand one,
51 when a part of the withholding is for amounts which came due
52 prior to such twelve-week period, then:

53 (A) When the obligor is supporting another spouse or
54 dependent child other than the spouse or child for whom the
55 proposed withholding is being sought, the amount withheld may
56 not exceed forty-five percent of the obligor's disposable
57 earnings for that week; and

58 (B) Where the obligor is not supporting another spouse or
59 dependent child as described in paragraph (A) of this subdivi-

60 sion, the amount withheld may not exceed fifty-five percent of
61 the obligor's disposable earnings for that week.

62 (6) In addition to the percentage limitations set forth in
63 subdivisions (2) and (3) of this subsection, it shall be a further
64 limitation that when the current month's obligation plus
65 arrearages are being withheld from salaries or wages in no case
66 shall the total amounts withheld for the current month's
67 obligation plus arrearage exceed the amounts withheld for the
68 current obligation by an amount greater than twenty-five
69 percent of the current monthly support obligation.

70 (7) The provisions of this subsection shall apply directly to
71 the withholding of disposable earnings of an obligor regardless
72 of whether the obligor is paid on a weekly, biweekly, monthly
73 or other basis.

74 (8) The bureau for child support enforcement has the
75 authority to prorate the current support obligation in accordance
76 with the pay cycle of the source of income. This prorated
77 current support obligation shall be known as the "adjusted
78 support obligation." The current support obligation or the
79 adjusted support obligation is the amount, if unpaid, on which
80 interest will be charged.

81 (9) When an obligor acts so as to purposefully minimize his
82 or her income and to thereby circumvent the provisions of this
83 part 4 which provide for withholding from income of amounts
84 payable as support, the amount to be withheld as support
85 payments may be based upon the obligor's potential earnings
86 rather than his or her actual earnings, and such obligor may not
87 rely upon the percentage limitations set forth in this subsection
88 which limit the amount to be withheld from disposable earn-
89 ings.

§48-14-409. Time for implementing withholding.

1 Every source of income who receives a notice of withhold-
2 ing under the provisions of this section shall implement
3 withholding no later than the first pay period or first date for the
4 payment of income which occurs after fourteen days following
5 the date the notice to the source of income was mailed.

§48-14-410. Sending amounts withheld to bureau; notice.

1 After implementation in accordance with the provisions of
2 section 14-409, a source of income shall send the amount to be
3 withheld from the obligor's income to the bureau for child
4 support enforcement and shall notify the bureau for child
5 support enforcement of the date of withholding, the same date
6 that the obligor is paid.

§48-14-411. Time withholding is to stay in effect.

1 Withholding of amounts payable as support under the
2 provisions of this part 4 of this article is binding on the source
3 of income until further notice by the bureau for child support
4 enforcement or until the source of income notifies the bureau
5 for child support enforcement of a termination of the obligor's
6 employment in accordance with the provisions of section 14-
7 412.

§48-14-412. Notice of termination of employment or receipt of income.

1 A source of income who employs or otherwise pays income
2 to an obligor who is subject to withholding under the provisions
3 of this part 4 shall notify the bureau for child support enforce-
4 ment promptly when the obligor terminates employment or
5 otherwise ceases receiving income from the source of income,
6 and shall provide the bureau for child support enforcement with

- 7 the obligor's last known address and the name and address of
- 8 the obligor's new source of income, if known.

§48-14-413. Combining withheld amounts.

1 When an employer has more than one employee who is an
2 obligor who is subject to wage withholding from income for
3 amounts payable as support, the employer may combine all
4 withheld payments to the bureau for child support enforcement
5 when the employer properly identifies each payment with the
6 information listed in this part 4. A source of income is liable to
7 an obligee, including the state of West Virginia or the depart-
8 ment of health and human resources where appropriate, for any
9 amount which the source of income fails to identify in accor-
10 dance with this part 4 and is therefore not received by the
11 obligee.

§48-14-414. Sending amounts withheld to division; notice.

1 A source of income is liable to an obligee, including the
2 state of West Virginia or the department of health and human
3 resources where appropriate, for any amount which the source
4 of income fails to withhold from income due an obligor
5 following receipt by such source of income of proper notice
6 under section 14-407: *Provided*, That a source of income shall
7 not be required to vary the normal pay and disbursement cycles
8 in order to comply with the provisions of this section.

**§48-14-415. Misdemeanor offense of concealing payment of
income to obligor; penalty.**

1 Any source of income who knowingly and willfully
2 conceals the fact that the source of income is paying income to
3 an obligor, with the intent to avoid withholding from the
4 obligor's income of amounts payable as support, is guilty of a

5 misdemeanor and, upon conviction thereof, shall be fined not
6 more than one hundred dollars.

§48-14-416. Request to source of income for information regarding payment of income.

1 When the bureau for child support enforcement makes a
2 written request to a source of income to provide information as
3 to whether the source of income has paid income to a specific
4 obligor, within the preceding sixty-day period, the source of
5 income shall, within fourteen days thereafter, respond to such
6 request, itemizing all such income, if any, paid to the obligor
7 during such sixty-day period. A source of income shall not be
8 liable, civilly or criminally, for providing such information in
9 good faith.

§48-14-417. Priority of support collection over other legal process.

1 Support collection under the provisions of this section shall
2 have priority over any other legal process under the laws of this
3 state against the same income, and shall be effective despite any
4 exemption that might otherwise be applicable to the same
5 income.

§48-14-418. Misdemeanor offense for source of income's action against an obligor; penalty.

1 Any source of income who discharges from employment,
2 refuses to employ, or takes disciplinary action against any
3 obligor subject to income withholding required by this part 4
4 because of the existence of such withholding and the obliga-
5 tions or additional obligations which it imposes on the source
6 of income, shall be guilty of a misdemeanor and, upon conviction
7 thereof, shall be fined not less than five hundred dollars nor
8 more than one thousand dollars.

§48-14-419. Proposal of legislative rules by bureau for child support enforcement.

1 The West Virginia support enforcement commission shall
2 promulgate legislative rules pursuant to chapter twenty-nine-a
3 of this code further defining the duties of the bureau for child
4 support enforcement and the employer in wage withholding.

**PART 5. ENFORCEMENT OF SUPPORT ORDERS
BY CONTEMPT PROCEEDINGS.**

§48-14-501. Commencement of contempt action in circuit court.

1 In addition to or in lieu of the other remedies provided by
2 this article for the enforcement of support orders, the bureau for
3 child support enforcement may commence a civil or criminal
4 contempt proceeding in accordance with the provisions of
5 section 1-305 against an obligor who is alleged to have willfully
6 failed or refused to comply with the order of a court of compe-
7 tent jurisdiction requiring the payment of support. Such
8 proceeding shall be instituted by filing with the circuit court a
9 petition for an order to show cause why the obligor should not
10 be held in contempt.

§48-14-502. Willful failure or refusal to comply with order to pay support.

1 If the court finds that the obligor willfully failed or refused
2 to comply with an order requiring the payment of support, the
3 court shall find the obligor in contempt and may do one or more
4 of the following:

5 (1) Require additional terms and conditions consistent with
6 the court's support order.

7 (2) After notice to both parties and a hearing, if requested
8 by a party, on any proposed modification of the order, modify
9 the order in the same manner and under the same requirements
10 as an order requiring the payment of support may be modified
11 under the provisions of part 5-701, *et seq.* A modification
12 sought by an obligor, if otherwise justified, shall not be denied
13 solely because the obligor is found to be in contempt.

14 (3) Order that all accrued support and interest thereon be
15 paid under such terms and conditions as the court, in its
16 discretion, may deem proper.

17 (4) Order the contemnor to pay support in accordance with
18 a plan approved by the bureau for child support enforcement or
19 to participate in such work activities as the court deems
20 appropriate.

21 (5) If appropriate under the provisions of section 1-305:

22 (A) Commit the contemnor to the county or regional jail; or

23 (B) Commit the contemnor to the county or regional jail
24 with the privilege of leaving the jail, during such hours as the
25 court determines and under such supervision as the court
26 considers necessary, for the purpose of allowing the contemnor
27 to go to and return from his or her place of employment.

§48-14-503. Limitation on length of commitment.

1 (a) A commitment under subdivision (5) of section 14-502
2 shall not exceed forty-five days for the first adjudication of
3 contempt or ninety days for any subsequent adjudication of
4 contempt.

5 (b) An obligor committed under subdivision (5), of section
6 14-502 shall be released if the court has reasonable cause to
7 believe that the obligor will comply with the court's orders.

§48-14-504. Violation of work release conditions.

1 If an obligor is committed to jail under the provisions of
2 paragraph (B), subdivision (5), of section 14-502 and violates
3 the conditions of the court, the court may commit the person to
4 the county or regional jail without the privilege provided under
5 said paragraph (B) for the balance of the period of commitment
6 imposed by the court.

§48-14-505. Misdemeanor offense of escape from custody; penalty.

1 If a person is committed to jail under the provisions of
2 paragraph (B), subdivision (5), of section 14-502 and willfully
3 fails to return to the place of confinement within the time
4 prescribed, such person shall be considered to have escaped
5 from custody and shall be guilty of a misdemeanor, punishable
6 by imprisonment for not more than one year.

**PART 6. HIGH-VOLUME AUTOMATED
ADMINISTRATIVE ENFORCEMENT
OF CHILD SUPPORT IN INTERSTATE CASES.**

§48-14-601. Definitions.

1 As used in this chapter:

2 (1) “High-volume automated administrative enforcement”
3 in interstate cases means at the request of another state, the
4 identification by a state, through automated data matches with
5 financial institutions and other entities where assets may be
6 found, of assets owned by persons who owe child support in
7 other states, and the seizure of such assets by the state, through
8 levy or other appropriate processes.

9 (2) “Assisting state” means a state which matches the
10 requesting state’s delinquent obligors against the databases of
11 financial institutions and other entities within its own state
12 boundaries where assets may be found, and, if appropriate,
13 seizes assets on behalf of the requesting state.

14 (3) “Requesting state” means a state transmitting a request
15 for administrative enforcement to another state.

16 (4) “State” means a state of the United States, or the
17 District of Columbia, Puerto Rico, the United States Virgin
18 Islands, or any territory or insular possession subject to the
19 jurisdiction of the United States. The term “state” shall also
20 include Indian tribes and a foreign jurisdiction that has enacted
21 a law or established procedures for issuance and enforcement
22 of support which are substantially similar to the procedures
23 under this chapter or under the uniform reciprocal enforcement
24 of support act, the revised uniform reciprocal enforcement of
25 support act, or the uniform interstate family support act.

§48-14-602. Use of automated administrative enforcement.

1 The bureau for child support enforcement shall use auto-
2 mated administrative enforcement to the same extent as used
3 for intrastate cases in response to a request made by another
4 state to enforce support orders, and shall promptly report the
5 results of such enforcement procedures to the requesting state.

**§48-14-603. Enforcing support orders through automated admin-
istrative enforcement.**

1 (a) The bureau for child support enforcement may, by
2 electronic or other means, transmit to, or receive from, another
3 state a request for assistance in enforcing support orders
4 through automated administrative enforcement. Such request
5 shall include:

6 (1) Information as will enable the assisting state to compare
7 the information about the cases to the information in the
8 databases of the state;

9 (2) All supporting documentation necessary under the laws
10 of this state to support an attachment of the asset or assets,
11 should such assets be located; and

12 (3) Said transmittal shall constitute a certification by the
13 requesting state:

14 (A) Of the amount of past-due support owed; and

15 (B) That the requesting state has complied with all proce-
16 dural due process requirements applicable to each case.

17 (b) A requesting state may transmit to an assisting state
18 either:

19 (1) A request to locate and seize assets; or

20 (2) A request to seize an asset already identified by the
21 requesting state.

**PART 7. BONDS OR SECURITY TO SECURE
PAYMENT OF OVERDUE SUPPORT.**

***§48-14-701. Posting of bonds or giving security to guarantee
payment of overdue support.**

1 (a) An obligor with a pattern of overdue support may be
2 required by order of the family law master or the court to post
3 bond, give security or some other guarantee to secure payment
4 of overdue support. The guarantee may include an order
5 requiring that stocks, bonds or other assets of the obligor be
6 held in escrow by the court until the obligor pays the support.

***Clerk's Note:** This section was also amended by S. B. 652 (Chapter 93), which passed subsequent to this act.

7 (b) No less than fifteen days before such an order may be
8 entered the childrens' advocate shall cause the mailing of a
9 notice by first class mail to the obligor informing the obligor of
10 the impending action, his or her right to contest it, and setting
11 forth a date, time and place for a meeting with the childrens'
12 advocate and the date, time and place of a hearing before the
13 family law master if the impending action is contested.

PART 8. INCREASE IN PAYMENTS TO SATISFY ARREARAGE.

**§48-14-801. When monthly payments may be increased to satisfy
overdue support.**

1 (a) For the purpose of securing overdue support, the bureau
2 for child support enforcement has the authority to increase the
3 monthly support payments by as much as one hundred dollars
4 per month to satisfy the arrearage where the obligor:

5 (1) Owes an arrearage of not less than eight thousand
6 dollars; or

7 (2) Has not paid support for twelve consecutive months.

8 (b) An increase in monthly support under this section will
9 be in addition to any amounts withheld from income pursuant
10 to part 4 of this article.

11 (c) This increase in monthly support may be enforced
12 through the withholding process.

**§48-14-802. Notice of increase in monthly payments to satisfy
overdue support.**

1 Notice of the increase shall be sent to the obligor at the
2 time such increase is implemented. If the obligor disagrees with
3 the increase in payments, he or she may file, within thirty days

4 of the date of the notice, a motion with the circuit court in
5 which the case is situated for a determination of whether there
6 should be an increase in monthly payments and the amount of
7 that increase, if any.

§48-14-803. Application to support orders of courts of competent jurisdiction.

1 The provisions of sections 14-801 and 14-802 apply to
2 support orders issued by a court of competent jurisdiction of
3 this or any other state.

**PART 9. PROCEDURES BEFORE THE BUREAU
FOR CHILD SUPPORT ENFORCEMENT.**

§48-14-901. Procedure when person contests action proposed to be taken against him.

1 (a) In any case arising under the provisions of this article
2 wherein a notice is served upon a person requiring him or her
3 to notify the bureau for child support enforcement if the person
4 is contesting action proposed to be taken against him:

5 (1) If the person so notified does not submit written reasons
6 for contesting the action within the time set to contest the
7 proposed action, and does not request a meeting with the bureau
8 for child support enforcement, then the bureau for child support
9 enforcement shall proceed with the proposed action; or

10 (2) If the person so notified does submit written reasons for
11 contesting the action within the time set to contest the proposed
12 action, and requests a meeting with the bureau for child support
13 enforcement, then the bureau for child support enforcement
14 shall schedule a meeting at the earliest practicable time with the
15 person and attempt to resolve the matter informally.

16 (b) If the matter cannot be resolved informally, the bureau
17 for child support enforcement shall make a determination as to
18 whether the proposed action is proper and should actually
19 occur.

20 (c) The determination of the bureau for child support
21 enforcement shall be made within forty-five days from the date
22 of the notice which first apprised the person of the proposed
23 action. Upon making the determination, the bureau for child
24 support enforcement shall inform the parties as to whether or
25 not the proposed action will occur, and, if it is to occur, of the
26 date on which it is to begin, and in the case of withholding from
27 income, shall furnish the obligor with the information contained
28 in any notice given to an employer under the provisions of
29 section 14-407 with respect to such withholding.

PART 10. OFFENSES.

§48-14-1001. Misrepresentation of delinquent support payments; penalty.

1 If any person knowingly and willfully makes any false,
2 fictitious or fraudulent statement or representation, or makes or
3 uses any false writing or document knowing the same to contain
4 any false, fictitious or fraudulent statement or entry, thus
5 misrepresenting the amount of child support actually due and
6 owing, and if such statement, representation, writing or
7 document causes bureau for support enforcement attorney in
8 reliance thereon to institute an action or proceeding or other-
9 wise commence to enforce a support obligation under this
10 article or under section 1-305, such person is guilty of false
11 swearing and, upon conviction thereof, shall be punished as
12 provided by law for such offense.

ARTICLE 15. ENFORCEMENT OF SUPPORT ORDER THROUGH ACTION AGAINST LICENSE.

- §48-15-101. Applicability of definitions.
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PART 1. DEFINITIONS.

§48-15-101. Applicability of definitions.

1 For purposes of this article, the words or terms defined in
2 this article, and any variation of those words or terms required
3 by the context, have the meanings ascribed to them. These
4 definitions are applicable unless a different meaning clearly
5 appears from the context.

§48-15-102. Action against a license defined.

1 “Action against a license” means action taken by the
2 bureau for child support enforcement to cause the denial,
3 nonrenewal, suspension or restriction of a license applied for or

- 4 held by: (A) A support obligor owing overdue support; or (B)
- 5 a person who has failed to comply with subpoenas or warrants
- 6 relating to paternity or child support proceedings.

§48-15-103. Application defined.

- 1 “Application” means a request to have a license issued, a
- 2 request for a renewal of an existing license or a request to
- 3 change the status of an existing license.

§48-15-104. License defined.

- 1 “License” means a license, permit, certificate of registra-
- 2 tion, registration, credential, stamp or other indicia that evi-
- 3 dences a personal privilege entitling a person to do an act that
- 4 he or she would otherwise not be entitled to do, or evidences a
- 5 special privilege to pursue a profession, trade, occupation,
- 6 business or vocation.

PART 2. ACTION AGAINST LICENSE.

§48-15-201. Licenses subject to action.

- 1 The following licenses are subject to an action against a
- 2 license as provided for in this article:

- 3 (1) A permit or license issued under chapter seventeen-b of
- 4 this code, authorizing a person to drive a motor vehicle;

- 5 (2) A commercial driver’s license, issued under chapter
- 6 seventeen-e of this code, authorizing a person to drive a class
- 7 of commercial vehicle;

- 8 (3) A permit, license or stamp issued under article two or
- 9 two-b, chapter twenty of this code, regulating a person’s
- 10 activities for wildlife management purposes, authorizing a

11 person to serve as an outfitter or guide, or authorizing a person
12 to hunt or fish;

13 (4) A license or registration issued under chapter thirty of
14 this code, authorizing a person to practice or engage in a
15 profession or occupation;

16 (5) A license issued under article twelve, chapter forty-
17 seven of this code, authorizing a person to transact business as
18 a real estate broker or real estate salesperson;

19 (6) A license or certification issued under article fourteen,
20 chapter thirty-seven of this code, authorizing a person to
21 transact business as a real estate appraiser;

22 (7) A license issued under article twelve, chapter thirty-
23 three of this code, authorizing a person to transact insurance
24 business as an agent, broker or solicitor;

25 (8) A registration made under article two, chapter thirty-two
26 of this code, authorizing a person to transact securities business
27 as a broker-dealer, agent or investment advisor;

28 (9) A license issued under article twenty-two, chapter
29 twenty-nine of this code, authorizing a person to transact
30 business as a lottery sales agent;

31 (10) A license issued under articles thirty-two or thirty-four,
32 chapter sixteen of this code, authorizing persons to pursue a
33 trade or vocation in asbestos abatement or radon mitigation;

34 (11) A license issued under article eleven, chapter twenty-
35 one of this code, authorizing a person to act as a contractor;

36 (12) A license issued under article two-c, chapter nineteen
37 of this code, authorizing a person to act as an auctioneer; and

38 (13) A license, permit or certificate issued under chapter
39 nineteen of this code, authorizing a person to sell, market or
40 distribute agricultural products or livestock.

§48-15-202. Persons subject to notice of action against license.

1 The bureau for child support enforcement shall send a
2 written notice of an action against a license to a person who:

3 (1) Owes overdue child support, if the child support
4 arrearage equals or exceeds the amount of child support payable
5 for six months;

6 (2) Has failed for a period of six months to pay medical
7 support ordered under article 12-101, *et seq.*, of this code; or

8 (3) Has failed, after appropriate notice, to comply with
9 subpoenas or warrants relating to paternity or child support
10 proceedings.

§48-15-203. Exhaustion of other statutory enforcement methods.

1 In the case of overdue child support or noncompliance with
2 a medical support order, notice of an action against a license
3 shall be served only if other statutory enforcement methods to
4 collect the support arrearage have been exhausted or are not
5 available.

§48-15-204. Service of notice of action against a license.

1 The bureau shall send a notice of action against a license
2 by regular mail and by certified mail, return receipt requested,
3 to the person's last-known address or place of business or
4 employment. Simultaneous certified and regular mailing of the
5 written notice shall constitute effective service unless the
6 United States Postal Service returns the mail to the bureau for

7 child support enforcement within the thirty-day response period
8 marked “moved, unable to forward,” “addressee not known,”
9 “no such number/street,” “insufficient address,” or “forwarding
10 order expired.” If the certified mail is returned for any other
11 reason without the return of the regular mail, the regular mail
12 service shall constitute effective service. If the mail is ad-
13 dressed to the person at his or her place of business or employ-
14 ment, with postal instructions to deliver to addressee only,
15 service will be deemed effective only if the signature on the
16 return receipt appears to be that of the person. Acceptance of
17 the certified mail notice signed by the person, the person’s
18 attorney, or a competent member of the person’s household
19 above the age of sixteen shall be deemed effective service.

§48-15-205. Form of notice of action against a license.

1 The notice shall be substantially in the following form:

NOTICE OF ACTION AGAINST LICENSE		
Name and address:	Date:	Case No:
	Social Security No:	
	Circuit Court of County, West Virginia	
<p>Section 1.</p> <p><input type="checkbox"/> The Bureau for Child Support Enforcement has determined that you have failed to comply with an order to pay child support, and that the amount you owe equals six months child support or more. The amount you owe is calculated to be \$_____ as of the _____ day of _____, _____.</p> <p><input type="checkbox"/> The Bureau for Child Support Enforcement has determined that you have failed to comply with a medical support order for a period of six months. The amount you owe is calculated to be \$_____ as of the _____ day of _____, _____.</p> <p><input type="checkbox"/> The Bureau for Child Support Enforcement has determined that you have failed to comply with a medical support order requiring you to obtain health insurance for your child or children.</p> <p><input type="checkbox"/> The Bureau for Child Support Enforcement has determined that you have failed to comply with a subpoena or warrant relating to a paternity or child support proceeding.</p>		

Section 2.

Under West Virginia law, your failure to comply as described in Section 1 may result in an action against certain licenses issued to you by the State of West Virginia. Action may be taken against a driver's license, a recreational license such as a hunting and fishing license, and a professional or occupational license necessary for you to work. An application for a license may be denied. A renewal of a license may be refused. A license which you currently hold may be suspended or restricted in its use.

The Bureau for Child Support Enforcement has determined that you are a current license holder, have applied for, or are likely to apply for the following license or licenses:

To avoid an action against your licenses, check which of the following actions you will take:

- I want to pay in full the overdue amount I owe as child support. I am enclosing a check or money order in the amount of \$.
- I want pay in full the amount I owe as medical support. I am enclosing a check or money order in the amount of \$.
- I am requesting a meeting with a representative of the Bureau for Child Support Enforcement to arrange a payment plan that will allow me to make my current payments as they become due and to pay on the arrearage I owe or to otherwise bring me into compliance with current support orders.
- I am requesting a hearing before the family law master or circuit judge to contest an action against my licenses. Please serve me with any petition filed, and provide me with notice of the time and place of the hearing.

Signed ✕ _____ Date: _____

Section 3.

You must check the appropriate box or boxes in Section 2, sign your name and mail this form to the Bureau for Child Support Enforcement before the _____ day of _____, _____.

Otherwise, the Bureau for Child Support Enforcement may begin an action against your licenses in the Circuit Court without further notice to you. Mail this form to the following address:

§48-15-206. Notice of consequences of failure to comply.

1 The notice shall advise the person that further failure to
2 comply may result in an action against licenses held by the
3 person, and that any pending application for a license may be
4 denied, renewal of a license may be refused, or an existing
5 license may be suspended or restricted unless, within thirty days
6 of the date of the notice, the person pays the full amount of the
7 child support arrearage or the medical support arrearage, makes
8 a request for a meeting with a representative of the bureau for
9 child support enforcement to arrange a payment plan or to
10 otherwise arrange compliance with existing support orders, or
11 makes a request for a court hearing to the bureau for child
12 support enforcement. An action against a license shall be
13 terminated if the person pays the full amount of the child
14 support arrearage or medical support arrearage, or provides
15 proof that health insurance for the child has been obtained as
16 required by a medical support order or enters into a written plan
17 with the bureau for child support enforcement for the payment
18 of current payments and payment on the arrearage.

§48-15-207. Failure to act in response to notice; entry of order.

1 If the person fails to take one of the actions described in
2 section 15-206 of this article within thirty days of the date of
3 the notice and there is proof that service on the person was
4 effective, the bureau for child support enforcement shall file a
5 certification with the circuit court setting forth the person's
6 noncompliance with the support order or failure to comply with
7 a subpoena or warrant and the person's failure to respond to the
8 written notice of the potential action against his or her license.
9 If the circuit court is satisfied that service of the notice on the
10 person was effective as set forth in this section, it shall without
11 need for further due process or hearing, enter an order suspend-
12 ing or restricting any licenses held by the person. Upon the
13 entry of the order, the bureau for child support enforcement
14 shall forward a copy to the person and to any appropriate
15 agencies responsible for the issuance of a license.

§48-15-208. Request and petition for hearing.

1 If the person requests a hearing, the bureau for child
2 support enforcement shall file a petition for a judicial hearing
3 before the family law master. The hearing shall occur within
4 forty-two days of the receipt of the person's request. If, prior to
5 the hearing, the person pays the full amount of the child support
6 arrearage or medical support arrearage or provides health
7 insurance as ordered, the action against a license shall be
8 terminated. No action against a license shall be initiated if the
9 bureau for child support enforcement has received notice that
10 the person has pending a motion to modify the child support
11 order, if that motion was filed prior to the date that the notice of
12 the action against the license was sent by the bureau for child
13 support enforcement. The court shall consider the bureau for
14 child support enforcement's petition to deny, refuse to renew,
15 suspend or restrict a license in accordance with section 15-209.

§48-15-209. Hearing on denial, nonrenewal, suspension or restriction of license.

1 (a) The court shall order a licensing authority to deny,
2 refuse to renew, suspend or restrict a license if it finds that:

3 (1) All appropriate enforcement methods have been
4 exhausted or are not available;

5 (2) The person is the holder of a license or has an applica-
6 tion pending for a license;

7 (3) The requisite amount of child support or medical
8 support arrearage exists or health insurance for the child has not
9 been provided as ordered, or the person has failed to comply
10 with a subpoena or warrant relating to a paternity or child
11 support proceeding;

12 (4) No motion to modify the child support order, filed prior
13 to the date that the notice was sent by the bureau for child
14 support enforcement, is pending before the court; and

15 (5) There is no equitable reason, such as involuntary
16 unemployment, disability, or compliance with a court-ordered
17 plan for the periodic payment of the child support arrearage
18 amount, for the person's noncompliance with the child support
19 order.

20 (b) If the court is satisfied that the conditions described in
21 subsection (a) of this section exist, it shall first consider
22 suspending or restricting a driver's license prior to professional
23 license. If the person fails to appear at the hearing after being
24 properly served with notice, the court shall order the suspension
25 of all licenses held by the person.

26 (c) If the court finds that a license suspension will result in
27 a significant hardship to the person, to the person's legal

28 dependents under eighteen years of age living in the person's
29 household, to the person's employees, or to persons, businesses
30 or entities to whom the person provides goods or services, the
31 court may allow the person to pay a percentage of the past-due
32 child support amount as an initial payment, and establish a
33 payment schedule to satisfy the remainder of the arrearage
34 within one year, and require that the person comply with any
35 current child support obligation. If the person agrees to this
36 arrangement, no suspension or restriction of any licenses shall
37 be ordered. Compliance with the payment agreement shall be
38 monitored by the bureau for child support enforcement.

39 (d) If a person has good cause for not complying with the
40 payment agreement within the time permitted, the person shall
41 immediately file a motion with the court and the bureau for
42 child support enforcement requesting an extension of the
43 payment plan. The court may extend the payment plan if it is
44 satisfied that the person has made a good faith effort to comply
45 with the plan and is unable to satisfy the full amount of past-due
46 support within the time permitted due to circumstances beyond
47 the person's control. If the person fails to comply with the
48 court-ordered payment schedule, the court shall, upon receipt
49 of a certification of noncompliance from the bureau for child
50 support enforcement, and without further hearing, order the
51 immediate suspension or restriction of all licenses held by the
52 person.

PART 3. ENFORCEMENT OF ORDER BY LICENSING AUTHORITY.

§48-15-301. Copy of order provided to licensing authority.

1 (a) The bureau for child support enforcement shall provide
2 the licensing authority with a copy of the order requiring the
3 denial, nonrenewal, suspension or restriction of a license.

4 (b) Upon receipt of an order requiring the suspension or
5 restriction of a license for nonpayment of child support, the

6 licensing authority shall immediately notify the applicant or
7 licensee of the effective date of the denial, nonrenewal,
8 suspension or limitation, which shall be twenty days after the
9 date of the notice, direct any licensee to refrain from engaging
10 in the activity associated with the license, surrender any license
11 as required by law, and inform the applicant or licensee that the
12 license shall not be approved, renewed or reinstated until the
13 court or bureau for child support enforcement certifies compli-
14 ance with court orders for the payment of current child support
15 and arrearage.

16 (c) The bureau for child support enforcement, in association
17 with the affected licensing authorities, may develop electronic
18 or magnetic tape data transfers to notify licensing authorities of
19 denials, nonrenewals, suspensions and reinstatements.

20 (d) No liability shall be imposed on a licensing authority for
21 suspending or restricting a license if the action is in response to
22 a court order issued in accordance with this article.

23 (e) Licensing authorities shall not have jurisdiction to
24 modify, remand, reverse, vacate or stay a court order to deny,
25 not renew, suspend or restrict a license for nonpayment of child
26 support.

**§48-15-302. Denial, nonrenewal, suspension or restriction contin-
ues until further order or issuance of certificate of
compliance.**

1 The denial, nonrenewal, suspension or restriction of a
2 license ordered by the court shall continue until the bureau for
3 child support enforcement files with the licensing authority
4 either a court order restoring the license or a bureau for child
5 support enforcement certification attesting to compliance with
6 court orders for the payment of current child support and
7 arrearage.

§48-15-303. License applicant to certify information regarding child support obligation.

1 (a) Each licensing authority shall require license applicants
2 to certify on the license application form, under penalty of false
3 swearing, that the applicant does not have a child support
4 obligation, the applicant does have such an obligation but any
5 arrearage amount does not equal or exceed the amount of child
6 support payable for six months, or the applicant is not the
7 subject of a child-support related subpoena or warrant. The
8 application form shall state that making a false statement may
9 subject the license holder to disciplinary action including, but
10 not limited to, immediate revocation or suspension of the
11 license.

12 (b) A license shall not be granted to any person who applies
13 for a license if there is an arrearage equal to or exceeding the
14 amount of child support payable for six months or if it is
15 determined that the applicant has failed to comply with a
16 warrant or subpoena in a paternity or child support proceeding.

§48-15-304. Procedure where license to practice law may be subject to denial, suspension or restriction.

1 If a person who has been admitted to the practice of law in
2 this state by order of the supreme court of appeals is determined
3 to be in default under a support order or has failed to comply
4 with a subpoena or warrant in a paternity or child support
5 proceeding, such that his or her other licenses are subject to
6 suspension or restriction under this article, the bureau for child
7 support enforcement may send a notice listing the name and
8 social security number or other identification number to the
9 lawyer disciplinary board established by the supreme court of
10 appeals. The Legislature hereby requests the supreme court of
11 appeals to promptly adopt rules pursuant to its constitutional
12 authority to govern the practice of law that would include as

13 attorney misconduct for which an attorney may be disciplined,
14 situations in which a person licensed to practice law in West
15 Virginia has been determined to be in default under a support
16 order or has failed to comply with a subpoena or warrant in a
17 paternity or child support proceeding.

PART 4. MISCELLANEOUS PROVISIONS.

§48-15-401. Application of article.

1 The provisions of this article apply to all orders issued
2 before or after the enactment of this article. All child support,
3 medical support and health insurance provisions in existence on
4 or before the effective date of this article shall be included in
5 determining whether a case is eligible for enforcement. This
6 article applies to all child support obligations ordered by any
7 state, territory or district of the United States that are being
8 enforced by the bureau for child support enforcement, that are
9 payable directly to the obligee, or have been registered in this
10 state in accordance with the uniform interstate family support
11 act.

§48-15-402. Effect of determination as to authority of federal government to require denials, suspensions or restrictions of licenses.

1 The provisions of this article have been enacted to conform
2 to the mandates of the federal "Personal Responsibility and
3 Work Opportunity Reconciliation Act of 1996". If a court of
4 competent jurisdiction should determine, or if it is otherwise
5 determined that the federal government lacked authority to
6 mandate the license denials, nonrenewals, suspensions or
7 restrictions contemplated by this article, then the provisions of
8 this article shall be null and void and of no force and effect.

ARTICLE 16. UNIFORM INTERSTATE FAMILY SUPPORT ACT.

- §48-16-101. Definitions.
- §48-16-102. Tribunals of state.
- §48-16-103. Remedies cumulative.
- §48-16-201. Bases for jurisdiction over nonresident.
- §48-16-202. Procedure when exercising jurisdiction over nonresident.
- §48-16-203. Initiating and responding tribunal of state.
- §48-16-204. Simultaneous proceedings in another state.
- §48-16-205. Continuing, exclusive jurisdiction.
- §48-16-206. Enforcement and modification of support order by tribunal having continuing jurisdiction.
- §48-16-207. Recognition of controlling child support order.
- §48-16-208. Multiple child support orders for two or more obligees.
- §48-16-209. Credit for payments.
- §48-16-301. Proceedings under article.
- §48-16-302. Action by minor parent.
- §48-16-303. Application of law of state.
- §48-16-304. Duties of initiating tribunal.
- §48-16-305. Duties and powers of responding tribunal.
- §48-16-306. Inappropriate tribunal.
- §48-16-307. Duties of support enforcement agency.
- §48-16-308. Duty of West Virginia support enforcement commission.
- §48-16-309. Private counsel.
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- §48-16-311. Pleadings and accompanying documents.
- §48-16-312. Nondisclosure of information in exceptional circumstances.
- §48-16-313. Costs and fees.
- §48-16-314. Limited immunity of petitioner.
- §48-16-315. Nonparentage as defense.
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- §48-16-317. Communications between tribunals.
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- §48-16-319. Receipt and disbursement of payments.
- §48-16-401. Petition to establish support order.
- §48-16-501. Employer's receipt of income-withholding order of another state.
- §48-16-502. Employer's compliance with income-withholding order of another state.
- §48-16-503. Compliance with multiple income withholding orders.
- §48-16-504. Immunity from civil liability.
- §48-16-505. Penalties for noncompliance.
- §48-16-506. Contest by obligor.
- §48-16-507. Administrative enforcement of orders.
- §48-16-601. Registration of order for enforcement.
- §48-16-602. Procedure to register order for enforcement.

- §48-16-603. Effect of registration for enforcement.
- §48-16-604. Choice of law.
- §48-16-605. Notice of registration of order.
- §48-16-606. Procedure to contest validity or enforcement of registered order.
- §48-16-607. Contest of registration or enforcement.
- §48-16-608. Confirmed order.
- §48-16-609. Procedure to register child support order of another state for modification.
- §48-16-610. Effect of registration for modification.
- §48-16-611. Modification of child support order of another state.
- §48-16-612. Recognition of order modified in another state.
- §48-16-613. Jurisdiction to modify support order of another state when individual parties reside in this state.
- §48-16-614. Notice to issuing tribunal of modification.
- §48-16-701. Proceeding to determine parentage.
- §48-16-801. Grounds for rendition.
- §48-16-802. Conditions of rendition.
- §48-16-901. Uniformity of application and construction.
- §48-16-902. Short title.
- §48-16-903. Effective date.

PART 1. GENERAL PROVISIONS.

§48-16-101. Definitions.

1 As used in this article:

2 (1) “Child” means an individual, whether over or under the
3 age of majority, who is or is alleged to be owed a duty of
4 support by the individual’s parent or who is or is alleged to be
5 the beneficiary of a support order directed to the parent.

6 (2) “Child support order” means a support order for a child,
7 including a child who has attained the age of majority under the
8 law of the issuing state.

9 (3) “Duty of support” means an obligation imposed or
10 imposable by law to provide support for a child, spouse, or
11 former spouse, including an unsatisfied obligation to provide
12 support.

13 (4) “Home state” means the state in which a child lived
14 with a parent or a person acting as parent for at least six
15 consecutive months immediately preceding the time of filing of
16 a petition or comparable pleading for support and, if a child is
17 less than six months old, the state in which the child lived from
18 birth with any of them. A period of temporary absence of any
19 of them is counted as part of the six-month or other period.

20 (5) “Income” includes earnings or other periodic
21 entitlements to money from any source and any other property
22 subject to withholding for support under the law of this state.

23 (6) “Income-withholding order” means an order or other
24 legal process directed to an obligor’s source of income as
25 defined by section 1-240 of this chapter to withhold support
26 from the income of the obligor.

27 (7) “Initiating state” means a state from which a proceeding
28 is forwarded or in which a proceeding is filed for forwarding to
29 a responding state under this article or a law or procedure
30 substantially similar to this article, the uniform reciprocal
31 enforcement of support act, or the revised uniform reciprocal
32 enforcement of support act.

33 (8) “Initiating tribunal” means the authorized tribunal in an
34 initiating state.

35 (9) “Issuing state” means the state in which a tribunal issues
36 a support order or renders a judgment determining parentage.

37 (10) “Issuing tribunal” means the tribunal that issues a
38 support order or renders a judgment determining parentage.

39 (11) “Law” includes decisional and statutory law and rules
40 having the force of law.

41 (12) "Obligee" means: (i) An individual to whom a duty of
42 support is or is alleged to be owed or in whose favor a support
43 order has been issued or a judgment determining parentage has
44 been rendered; (ii) a state or political subdivision to which the
45 rights under a duty of support or support order have been
46 assigned or which has independent claims based on financial
47 assistance provided to an individual obligee; or (iii) an individ-
48 ual seeking a judgment determining parentage of the individ-
49 ual's child.

50 (13) "Obligor" means an individual, or the estate of a
51 decedent: (i) Who owes or is alleged to owe a duty of support;
52 (ii) who is alleged but has not been adjudicated to be a parent
53 of a child; or (iii) who is liable under a support order.

54 (14) "Register" means to record a support order or judg-
55 ment determining parentage in the registry of foreign support
56 orders.

57 (15) "Registering tribunal" means a tribunal in which a
58 support order is registered.

59 (16) "Responding state" means a state in which a proceed-
60 ing is filed or to which a proceeding is forwarded for filing
61 from an initiating state under this article or a law or procedure
62 substantially similar to this article, the uniform reciprocal
63 enforcement of support act, or the revised uniform reciprocal
64 enforcement of support act.

65 (17) "Responding tribunal" means the authorized tribunal
66 in a responding state.

67 (18) "Spousal-support order" means a support order for a
68 spouse or former spouse of the obligor.

69 (19) "State" means a state of the United States, the District
70 of Columbia, Puerto Rico, the United States Virgin Islands or

71 any territory or insular possession subject to the jurisdiction of
72 the United States. The term includes: (i) An Indian tribe; (ii) a
73 foreign jurisdiction that has enacted a law or established
74 procedures for issuance and enforcement of support orders
75 which are substantially similar to the procedures under this
76 article, the uniform reciprocal enforcement of support act, or
77 the revised uniform reciprocal enforcement of support act.

78 (20) "Support enforcement agency" means a public official
79 or agency authorized to seek: (i) Enforcement of support orders
80 or laws relating to the duty of support; (ii) establishment or
81 modification of child support; (iii) determination of parentage;
82 or (iv) to locate obligors or their assets.

83 (21) "Support order" means a judgment, decree or order,
84 whether temporary, final or subject to modification, for the
85 benefit of a child, a spouse or a former spouse, which provides
86 for monetary support, health care, arrearages, or reimbursement
87 and may include related costs and fees, interest, income
88 withholding, attorney's fees and other relief.

89 (22) "Tribunal" means a court, administrative agency,
90 family law master or quasi-judicial entity authorized to estab-
91 lish, enforce or modify support orders or to determine parent-
92 age.

§48-16-102. Tribunals of state.

1 The circuit court and the family law masters are the
2 tribunals of this state.

§48-16-103. Remedies cumulative.

1 Remedies provided by this article are cumulative and do not
2 affect the availability of remedies under other law.

PART 2. JURISDICTION.

§48-16-201. Bases for jurisdiction over nonresident.

1 In a proceeding to establish, enforce, or modify a support
2 order or to determine parentage, a tribunal of this state may
3 exercise personal jurisdiction over a nonresident individual or
4 the individual's guardian or conservator if: (1) The individual
5 is personally served with notice within this state; (2) the
6 individual submits to the jurisdiction of this state by consent, by
7 entering a general appearance, or by filing a responsive
8 document having the effect of waiving any contest to personal
9 jurisdiction; (3) the individual resided with the child in this
10 state; (4) the individual resided in this state and provided
11 prenatal expenses or support for the child; (5) the child resides
12 in this state as a result of the acts or directives of the individual;
13 (6) the individual engaged in sexual intercourse in this state and
14 the child may have been conceived by that act of intercourse;
15 (7) the individual has committed a tortious act by failing to
16 support a child resident in this state; or (8) there is any other
17 basis consistent with the constitutions of this state and the
18 United States for the exercise of personal jurisdiction.

§48-16-202. Procedure when exercising jurisdiction over nonresident.

1 A tribunal of this state exercising personal jurisdiction over
2 a nonresident under section 16-201 may apply section 16-316
3 (Special Rules of Evidence and Procedure) to receive evidence
4 from another state, and section 16-318 (Assistance with
5 Discovery) to obtain discovery through a tribunal of another
6 state. In all other respects, parts 3 through 7 do not apply and
7 the tribunal shall apply the procedural and substantive law of
8 this state, including the rules on choice of law other than those
9 established by this article.

§48-16-203. Initiating and responding tribunal of state.

1 Under this article, a tribunal of this state may serve as an
2 initiating tribunal to forward proceedings to another state and
3 as a responding tribunal for proceedings initiated in another
4 state.

§48-16-204. Simultaneous proceedings in another state.

1 (a) A tribunal of this state may exercise jurisdiction to
2 establish a support order if the petition or comparable pleading
3 is filed after a petition or comparable pleading is filed in
4 another state only if: (1) The petition or comparable pleading in
5 this state is filed before the expiration of the time allowed in the
6 other state for filing a responsive pleading challenging the
7 exercise of jurisdiction by the other state; (2) the contesting
8 party timely challenges the exercise of jurisdiction in the other
9 state; and (3) if relevant, this state is the home state of the child.

10 (b) A tribunal of this state may not exercise jurisdiction to
11 establish a support order if the petition or comparable pleading
12 is filed before a petition or comparable pleading is filed in
13 another state if: (1) The petition or comparable pleading in the
14 other state is filed before the expiration of the time allowed in
15 this state for filing a responsive pleading challenging the
16 exercise of jurisdiction by this state; (2) the contesting party
17 timely challenges the exercise of jurisdiction in this state; and
18 (3) if relevant, the other state is the home state of the child.

§48-16-205. Continuing, exclusive jurisdiction.

1 (a) A tribunal of this state issuing a support order consistent
2 with the law of this state has continuing, exclusive jurisdiction
3 over a child support order: (1) As long as this state remains the
4 residence of the obligor, the individual obligee, or the child for
5 whose benefit the support order is issued; or (2) until all of the
6 parties who are individuals have filed written consents with the
7 tribunal of this state for a tribunal of another state to modify the
8 order and assume continuing, exclusive jurisdiction.

9 (b) A tribunal of this state issuing a child support order
10 consistent with the law of this state may not exercise its
11 continuing jurisdiction to modify the order if the order has been
12 modified by a tribunal of another state pursuant to this article
13 or a law substantially similar to this article.

14 (c) If a child support order of this state is modified by a
15 tribunal of another state pursuant to this article or a law
16 substantially similar to this article, a tribunal of this state loses
17 its continuing, exclusive jurisdiction with regard to prospective
18 enforcement of the order issued in this state, and may only: (1)
19 Enforce the order that was modified as to amounts accruing
20 before the modification; (2) enforce nonmodifiable aspects of
21 that order; and (3) provide other appropriate relief for violations
22 of that order which occurred before the effective date of the
23 modification.

24 (d) A tribunal of this state shall recognize the continuing,
25 exclusive jurisdiction of a tribunal of another state which has
26 issued a child support order pursuant to a law substantially
27 similar to this article.

28 (e) A temporary support order issued ex parte or pending
29 resolution of a jurisdictional conflict does not create continuing,
30 exclusive jurisdiction in the issuing tribunal.

31 (f) A tribunal of this state issuing a support order consistent
32 with the law of this state has continuing, exclusive jurisdiction
33 over a spousal support order throughout the existence of the
34 support obligation. A tribunal of this state may not modify a
35 spousal support order issued by a tribunal of another state
36 having continuing, exclusive jurisdiction over that order under
37 the law of that state.

**§48-16-206. Enforcement and modification of support order by
tribunal having continuing jurisdiction.**

1 (a) A tribunal of this state may serve as an initiating
2 tribunal to request a tribunal of another state to enforce or
3 modify a support order issued in that state.

4 (b) A tribunal of this state having continuing, exclusive
5 jurisdiction over a support order may act as a responding
6 tribunal to enforce or modify the order. If a party subject to the
7 continuing, exclusive jurisdiction of the tribunal no longer
8 resides in the issuing state, in subsequent proceedings the
9 tribunal may apply section 16-316 (Special Rules of Evidence
10 and Procedure) to receive evidence from another state and
11 section 16-318 (Assistance with Discovery) to obtain discovery
12 through a tribunal of another state.

13 (c) A tribunal of this state which lacks continuing, exclu-
14 sive jurisdiction over a spousal support order may not serve as
15 a responding tribunal to modify a spousal support order of
16 another state.

§48-16-207. Recognition of controlling child support order.

1 (a) If a proceeding is brought under this article and only one
2 tribunal has issued a child support order, the order of that
3 tribunal is controlling and must be recognized.

4 (b) If a proceeding is brought under this article, and two or
5 more child support orders have been issued by tribunals of this
6 state or another state with regard to the same obligor and child,
7 a tribunal of this state shall apply the following rules in
8 determining which order to recognize for purposes of continu-
9 ing, exclusive jurisdiction:

10 (1) If only one of the tribunals would have continuing,
11 exclusive jurisdiction under this article, the order of that
12 tribunal is controlling and must be recognized.

13 (2) If more than one of the tribunals would have continuing,
14 exclusive jurisdiction under this article, an order issued by a
15 tribunal in the current home state of the child must be recog-
16 nized, but if an order has not been issued in the current home
17 state of the child, the order most recently issued is controlling
18 and must be recognized.

19 (3) If none of the tribunals would have continuing, exclu-
20 sive jurisdiction under this article, the tribunal of this state
21 having jurisdiction over the parties must issue a child support
22 order, which is controlling and must be recognized.

23 (c) If two or more child support orders have been issued for
24 the same obligor and child and if the obligor or the individual
25 obligee resides in this state, a party may request a tribunal of
26 this state to determine which order controls and must be
27 recognized under subsection (b). The request must be accompa-
28 nied by a certified copy of every support order in effect. Every
29 party whose rights may be affected by a determination of the
30 controlling order must be given notice of the request for that
31 determination.

32 (d) The tribunal that issued the order that must be recog-
33 nized as controlling under subsection (a), (b) or (c) is the
34 tribunal that has continuing, exclusive jurisdiction in accor-
35 dance with section 16-205.

36 (e) A tribunal of this state which determines by order the
37 identity of the controlling child support order under subsection
38 (b) (1) or (b) (2) or which issued a new controlling child
39 support order under subsection (b) (3) shall include in that order
40 the basis upon which the tribunal made its determination.

41 (f) Within thirty days after issuance of the order determin-
42 ing the identity of the controlling order, the party obtaining that
43 order shall file a certified copy of it with each tribunal that had
44 issued or registered an earlier order of child support. Failure of

45 the party obtaining the order to file a certified copy as required
46 subjects that party to appropriate sanctions by a tribunal in
47 which the issue of failure to file arises, but that failure has no
48 effect on the validity or enforceability of the controlling order.

§48-16-208. Multiple child support orders for two or more obligees.

1 In responding to multiple registrations or petitions for
2 enforcement of two or more child support orders in effect at the
3 same time with regard to the same obligor and different
4 individual obligees, at least one of which was issued by a
5 tribunal of another state, a tribunal of this state shall enforce
6 those orders in the same manner as if the multiple orders had
7 been issued by a tribunal of this state.

§48-16-209. Credit for payments.

1 Amounts collected and credited for a particular period
2 pursuant to a support order issued by a tribunal of another state
3 must be credited against the amounts accruing or accrued for
4 the same period under a support order issued by the tribunal of
5 this state.

PART 3. CIVIL PROCEDURES OF GENERAL APPLICATION.

§48-16-301. Proceedings under article.

1 (a) Except as otherwise provided in this article, this part 3
2 applies to all proceedings under this article.

3 (b) This article provides for the following proceedings: (1)
4 Establishment of an order for spousal support or child support;
5 (2) enforcement of a support order and income-withholding
6 order of another state without registration; (3) registration of an
7 order for spousal support or child support of another state for
8 enforcement; (4) modification of an order for child support or

9 spousal support issued by a tribunal of this state; (5) registration
10 of an order for child support of another state for modification;
11 (6) determination of parentage; and (7) assertion of jurisdiction
12 over nonresidents.

13 (c) An individual petitioner or a support enforcement
14 agency may commence a proceeding authorized under this
15 article by filing a petition in an initiating tribunal for forward-
16 ing to a responding tribunal or by filing a petition or a compara-
17 ble pleading directly in a tribunal of another state which has or
18 can obtain personal jurisdiction over the respondent.

§48-16-302. Action by minor parent.

1 A minor parent, or a guardian or other legal representative
2 of a minor parent, may maintain a proceeding on behalf of or
3 for the benefit of the minor's child.

§48-16-303. Application of law of state.

1 Except as otherwise provided by this article, a responding
2 tribunal of this state: (1) Shall apply the procedural and
3 substantive law, including the rules on choice of law, generally
4 applicable to similar proceedings originating in this state and
5 may exercise all powers and provide all remedies available in
6 those proceedings; and (2) shall determine the duty of support
7 and the amount payable in accordance with the law and support
8 guidelines of this state.

§48-16-304. Duties of initiating tribunal.

1 (a) Upon the filing of a petition authorized by this article,
2 an initiating tribunal of this state shall forward three copies of
3 the petition and its accompanying documents: (1) To the
4 responding tribunal or appropriate support enforcement agency
5 in the responding state; or (2) if the identity of the responding
6 tribunal is unknown, to the state information agency of the

7 responding state with a request that they be forwarded to the
8 appropriate tribunal and that receipt be acknowledged.

9 (b) If a responding state has not enacted this article or a law
10 or procedure substantially similar to this article, a tribunal of
11 this state may issue a certificate or other document and make
12 findings required by the law of the responding state. If the
13 responding state is a foreign jurisdiction, the tribunal may
14 specify the amount of support sought and provide other
15 documents necessary to satisfy the requirements of the respond-
16 ing state.

§48-16-305. Duties and powers of responding tribunal.

1 (a) When a responding tribunal of this state receives a
2 petition or comparable pleading from an initiating tribunal or
3 directly pursuant to subsection (c), section 16-301 (proceedings
4 under this article), the clerk of the court shall cause the petition
5 or pleading to be filed and notify the petitioner where and when
6 it was filed.

7 (b) A responding tribunal of this state, to the extent
8 otherwise authorized by law, may do one or more of the
9 following: (1) Issue or enforce a support order, modify a child
10 support order or render a judgment to determine parentage; (2)
11 order an obligor to comply with a support order, specifying the
12 amount and the manner of compliance; (3) order income
13 withholding; (4) determine the amount of any arrearages and
14 specify a method of payment; (5) enforce orders by civil or
15 criminal contempt, or both; (6) set aside property for satisfac-
16 tion of the support order; (7) place liens and order execution on
17 the obligor's property; (8) order an obligor to keep the tribunal
18 informed of the obligor's current residential address, telephone
19 number, employer, address of employment and telephone
20 number at the place of employment; (9) issue a *capias* for an
21 obligor who has failed after proper notice to appear at a hearing

22 ordered by the tribunal and enter the *capias* in any local and
23 state computer systems for criminal warrants; (10) order the
24 obligor to seek appropriate employment by specified methods;
25 (11) award reasonable attorney's fees and other fees and costs;
26 and (12) grant any other available remedy.

27 (c) A responding tribunal of this state shall include in a
28 support order issued under this article, or in the documents
29 accompanying the order, the calculations on which the support
30 order is based.

31 (d) A responding tribunal of this state may not condition the
32 payment of a support order issued under this article upon
33 compliance by a party with provisions for visitation.

34 (e) If a responding tribunal of this state issues an order
35 under this article, the tribunal shall send a copy of the order to
36 the petitioner and the respondent and to the initiating tribunal,
37 if any.

§48-16-306. Inappropriate tribunal.

1 If a petition or comparable pleading is received by an
2 inappropriate tribunal of this state, the clerk of the court shall
3 forward the pleading and accompanying documents to an
4 appropriate tribunal in this state or another state and notify the
5 petitioner where and when the pleading was sent.

§48-16-307. Duties of support enforcement agency.

1 (a) A support enforcement agency of this state, upon
2 request, shall provide services to a petitioner in a proceeding
3 under this article.

4 (b) A support enforcement agency that is providing services
5 to the petitioner as appropriate shall: (1) Take all steps neces-
6 sary to enable an appropriate tribunal in this state or another

7 state to obtain jurisdiction over the respondent; (2) request an
8 appropriate tribunal to set a date, time, and place for a hearing;
9 (3) make a reasonable effort to obtain all relevant information,
10 including information as to income and property of the parties;
11 (4) within two days, exclusive of Saturdays, Sundays and legal
12 holidays, after receipt of a written notice from an initiating,
13 responding, or registering tribunal, send a copy of the notice to
14 the petitioner; (5) within two days, exclusive of Saturdays,
15 Sundays and legal holidays, after receipt of a written communi-
16 cation from the respondent or the respondent's attorney, send
17 a copy of the communication to the petitioner; and (6) notify
18 the petitioner if jurisdiction over the respondent cannot be
19 obtained.

20 (c) This article does not create or negate a relationship of
21 attorney and client or other fiduciary relationship between a
22 support enforcement agency or the attorney for the agency and
23 the individual being assisted by the agency.

**§48-16-308. Duty of West Virginia support enforcement commis-
sion.**

1 If the West Virginia support enforcement commission
2 determines that the support enforcement agency is neglecting
3 or refusing to provide services to an individual, the commission
4 may order the agency to perform its duties under this article or
5 may provide those services directly to the individual.

§48-16-309. Private counsel.

1 An individual may employ private counsel to represent the
2 individual in proceedings authorized by this article.

§48-16-310. Duties of state information agency.

1 (a) The bureau for child support enforcement is the state
2 information agency under this article.

3 (b) The state information agency shall: (1) Compile and
4 maintain a current list, including addresses, of the tribunals in
5 this state which have jurisdiction under this article and any
6 support enforcement agencies in this state and transmit a copy
7 to the state information agency of every other state; (2) main-
8 tain a register of tribunals and support enforcement agencies
9 received from other states; (3) forward to the appropriate
10 tribunal in the place in this state in which the individual obligee
11 or the obligor resides, or in which the obligor's property is
12 believed to be located, all documents concerning a proceeding
13 under this article received from an initiating tribunal or the state
14 information agency of the initiating state; and (4) obtain
15 information concerning the location of the obligor and the
16 obligor's property within this state not exempt from execution,
17 by such means as postal verification and federal or state locator
18 services, examination of telephone directories, requests for the
19 obligor's address from employers, and examination of govern-
20 mental records, including, to the extent not prohibited by other
21 law, those relating to real property, vital statistics, law enforce-
22 ment, taxation, motor vehicles, driver's licenses and social
23 security.

§48-16-311. Pleadings and accompanying documents.

1 (a) A petitioner seeking to establish or modify a support
2 order or to determine parentage in a proceeding under this
3 article must verify the petition. Unless otherwise ordered under
4 section 16-312 (Nondisclosure of Information in Exceptional
5 Circumstances), the petition or accompanying documents must
6 provide, so far as known, the name, residential address and
7 social security numbers of the obligor and the obligee, and the
8 name, sex, residential address, social security number and date
9 of birth of each child for whom support is sought. The petition
10 must be accompanied by a certified copy of any support order
11 in effect. The petition may include any other information that
12 may assist in locating or identifying the respondent.

13 (b) The petition must specify the relief sought. The petition
14 and accompanying documents must conform substantially with
15 the requirements imposed by the forms mandated by federal
16 law for use in cases filed by a support enforcement agency.

§48-16-312. Nondisclosure of information in exceptional circumstances.

1 Upon a finding, which may be made ex parte, that the
2 health, safety or liberty of a party or child would be unreason-
3 ably put at risk by the disclosure of identifying information, or
4 if an existing order so provides, a tribunal shall order that the
5 address of the child or party or other identifying information
6 not be disclosed in a pleading or other document filed in a
7 proceeding under this article.

§48-16-313. Costs and fees.

1 (a) The petitioner may not be required to pay a filing fee or
2 other costs.

3 (b) If an obligee prevails, a responding tribunal may assess
4 against an obligor filing fees, reasonable attorney's fees, other
5 costs and necessary travel and other reasonable expenses
6 incurred by the obligee and the obligee's witnesses. The
7 tribunal may not assess fees, costs or expenses against the
8 obligee or the support enforcement agency of either the
9 initiating or the responding state, except as provided by other
10 law. Attorney's fees may be taxed as costs, and may be ordered
11 paid directly to the attorney, who may enforce the order in the
12 attorney's own name. Payment of support owed to the obligee
13 has priority over fees, costs and expenses.

14 (c) The tribunal shall order the payment of costs and
15 reasonable attorney's fees if it determines that a hearing was
16 requested primarily for delay. In a proceeding under part 16-
17 601, et seq.,(Enforcement and Modification of Support Order

18 After Registration), a hearing is presumed to have been
19 requested primarily for delay if a registered support order is
20 confirmed or enforced without change.

§48-16-314. Limited immunity of petitioner.

1 (a) Participation by a petitioner in a proceeding before a
2 responding tribunal, whether in person, by private attorney, or
3 through services provided by the support enforcement agency,
4 does not confer personal jurisdiction over the petitioner in
5 another proceeding.

6 (b) A petitioner is not amenable to service of civil process
7 while physically present in this state to participate in a proceed-
8 ing under this article.

9 (c) The immunity granted by this section does not extend to
10 civil litigation based on acts unrelated to a proceeding under
11 this article committed by a party while present in this state to
12 participate in the proceeding.

§48-16-315. Nonparentage as defense.

1 A party whose parentage of a child has been previously
2 determined by or pursuant to law may not plead nonparentage
3 as a defense to a proceeding under this article.

§48-16-316. Special rules of evidence and procedure.

1 (a) The physical presence of the petitioner in a responding
2 tribunal of this state is not required for the establishment,
3 enforcement or modification of a support order or the rendition
4 of a judgment determining parentage.

5 (b) A verified petition, affidavit, document substantially
6 complying with federally mandated forms and a document
7 incorporated by reference in any of them, not excluded under

8 the hearsay rule if given in person, is admissible in evidence if
9 given under oath by a party or witness residing in another state.

10 (c) A copy of the record of child support payments certified
11 as a true copy of the original by the custodian of the record may
12 be forwarded to a responding tribunal. The copy is evidence of
13 facts asserted in it, and is admissible to show whether payments
14 were made.

15 (d) Copies of bills for testing for parentage, and for prenatal
16 and postnatal health care of the mother and child, furnished to
17 the adverse party at least ten days before trial, are admissible in
18 evidence to prove the amount of the charges billed and that the
19 charges were reasonable, necessary and customary.

20 (e) Documentary evidence transmitted from another state
21 to a tribunal of this state by telephone, telecopier or other
22 means that do not provide an original writing may not be
23 excluded from evidence on an objection based on the means of
24 transmission.

25 (f) In a proceeding under this article, a tribunal of this state
26 may permit a party or witness residing in another state to be
27 deposed or to testify by telephone, audiovisual means or other
28 electronic means at a designated tribunal or other location in
29 that state. A tribunal of this state shall cooperate with tribunals
30 of other states in designating an appropriate location for the
31 deposition or testimony. The supreme court of appeals shall
32 promulgate new rules or amend the rules of practice and
33 procedure for family law to establish procedures pertaining to
34 the exercise of cross examination in those instances involving
35 the receipt of testimony by means other than direct or personal
36 testimony.

37 (g) If a party called to testify at a civil hearing refuses to
38 answer on the ground that the testimony may be self-incriminat-

39 ing, the trier of fact may draw an adverse inference from the
40 refusal.

41 (h) A privilege against disclosure of communications
42 between spouses does not apply in a proceeding under this
43 article.

44 (i) The defense of immunity based on the relationship of
45 husband and wife or parent and child does not apply in a
46 proceeding under this article.

§48-16-317. Communications between tribunals.

1 A tribunal of this state may communicate with a tribunal of
2 another state in writing, or by telephone or other means, to
3 obtain information concerning the laws of that state, the legal
4 effect of a judgment, decree, or order of that tribunal and the
5 status of a proceeding in the other state. A tribunal of this state
6 may furnish similar information by similar means to a tribunal
7 of another state.

§48-16-318. Assistance with discovery.

1 A tribunal of this state may: (1) Request a tribunal of
2 another state to assist in obtaining discovery; and (2) upon
3 request, compel a person over whom it has jurisdiction to
4 respond to a discovery order issued by a tribunal of another
5 state.

§48-16-319. Receipt and disbursement of payments.

1 A support enforcement agency or tribunal of this state shall
2 disburse promptly any amounts received pursuant to a support
3 order, as directed by the order. The agency or tribunal shall
4 furnish to a requesting party or tribunal of another state a
5 certified statement by the custodian of the record of the
6 amounts and dates of all payments received.

PART 4. ESTABLISHMENT OF SUPPORT ORDER.**§48-16-401. Petition to establish support order.**

1 (a) If a support order entitled to recognition under this
2 article has not been issued, a responding tribunal of this state
3 may issue a support order if: (1) The individual seeking the
4 order resides in another state; or (2) the support enforcement
5 agency seeking the order is located in another state.

6 (b) The tribunal may issue a temporary child support order
7 if: (1) The respondent has signed a verified statement acknowl-
8 edging parentage; (2) the respondent has been determined by or
9 pursuant to law to be the parent; or (3) there is other clear and
10 convincing evidence that the respondent is the child's parent.

11 (c) Upon finding, after notice and opportunity to be heard,
12 that an obligor owes a duty of support, the tribunal shall issue
13 a support order directed to the obligor and may issue other
14 orders pursuant to section 16-305 (Duties and Powers of
15 Responding Tribunal).

**PART 5. DIRECT ENFORCEMENT OF ORDER OF
ANOTHER STATE WITHOUT REGISTRATION.****§48-16-501. Employer's receipt of income-withholding order of
another state.**

1 An income-withholding order issued in another state may
2 be sent to the person or entity defined as the obligor's source of
3 income under section 1-241 of this chapter without first filing
4 a petition or comparable pleading or registering the order with
5 a tribunal of this state.

**§48-16-502. Employer's compliance with income-withholding
order of another state.**

1 (a) Upon receipt of the order, the obligor's employer shall
2 immediately provide a copy of the order to the obligor.

3 (b) The employer shall treat an income-withholding order
4 issued in another state which appears regular on its face as if it
5 had been issued by a tribunal of this state.

6 (c) Except as provided by subsection (d) and section 16-
7 503, the employer shall withhold and distribute the funds as
8 directed in the withholding order by complying with the terms
9 of the order, as applicable, that specify:

10 (1) The duration and the amount of periodic payments of
11 current child support, stated as a sum certain;

12 (2) The person or agency designated to receive payments
13 and the address to which the payments are to be forwarded;

14 (3) Medical support, whether in the form of periodic cash
15 payment, stated as a sum certain, or ordering the obligor to
16 provide health insurance coverage for the child under a policy
17 available through the obligor's employment;

18 (4) The amount of periodic payments of fees and costs for
19 a support enforcement agency, the issuing tribunal, and the
20 obligee's attorney, stated as sums certain; and

21 (5) The amount of periodic payments of arrears and interest
22 on arrears, stated as sums certain.

23 (d) The employer shall comply with the law of the state of
24 the obligor's principal place of employment for withholding
25 from income with respect to:

26 (1) The employer's fee for processing an income withhold-
27 ing order;

28 (2) The maximum amount permitted to be withheld from
29 the obligor's income;

30 (3) The time periods within which the employer must
31 implement the withholding order and forward the child support
32 payment.

§48-16-503. Compliance with multiple income withholding orders.

1 If the obligor's employer receives multiple orders to
2 withhold support from the earnings of the same obligor, the
3 employer shall be deemed to have satisfied the terms of the
4 multiple orders if the law of the state of the obligor's principal
5 place of employment to establish the priorities for withholding
6 and allocating income withheld for multiple child support
7 obligees is complied with.

§48-16-504. Immunity from civil liability.

1 An employer who complies with an income-withholding
2 order issued in another state in accordance with this article is
3 not subject to civil liability to any individual or agency with
4 regard to the employer's withholding child support from the
5 obligor's income.

§48-16-505. Penalties for noncompliance.

1 An employer who willfully fails to comply with an income-
2 withholding order issued by another state and received for
3 enforcement is subject to the same penalties that may be
4 imposed for noncompliance with an order issued by a tribunal
5 of this state.

§48-16-506. Contest by obligor.

1 (a) An obligor may contest the validity or enforcement of
2 an income-withholding order issued in another state and
3 received directly by an employer in this state in the same
4 manner as if the order had been issued by a tribunal of this
5 state. Section 604 (Choice of Law) applies to the contest.

6 (b) The obligor shall give notice of the contest to:

7 (1) A support enforcement agency providing services to the
8 obligee;

9 (2) Each employer which has directly received an income-
10 withholding order; and

11 (3) The person or agency designated to receive payments in
12 the income-withholding order; or if no person or agency is
13 designated, to the obligee.

§48-16-507. Administrative enforcement of orders.

1 (a) A party seeking to enforce a support order or an income-
2 withholding order, or both, issued by a tribunal of another state
3 may send the documents required for registering the order to a
4 support enforcement agency of this state.

5 (b) Upon receipt of the documents, the support enforcement
6 agency, without initially seeking to register the order, shall
7 consider and, if appropriate, use any administrative procedure
8 authorized by the law of this state to enforce a support order or
9 an income-withholding order, or both. If the obligor does not
10 contest administrative enforcement, the order need not be
11 registered. If the obligor contests the validity or administrative
12 enforcement of the order, the support enforcement agency shall
13 register the order pursuant to this article.

**PART 6. ENFORCEMENT AND MODIFICATION OF
SUPPORT ORDER AFTER REGISTRATION.**

§48-16-601. Registration of order for enforcement.

1 A support order or an income-withholding order issued by
2 a tribunal of another state may be registered in this state for
3 enforcement.

§48-16-602. Procedure to register order for enforcement.

1 (a) A support order or income-withholding order of another
2 state may be registered in this state by sending the following
3 documents and information to the state information agency who
4 shall forward the order to the appropriate tribunal: (1) A letter
5 of transmittal to the tribunal requesting registration and
6 enforcement; (2) two copies, including one certified copy, of all
7 orders to be registered, including any modification of an order;
8 (3) a sworn statement by the party seeking registration or a
9 certified statement by the custodian of the records showing the
10 amount of any arrearage; (4) the name of the obligor and, if
11 known: (i) The obligor's address and social security number;
12 (ii) the name and address of the obligor's employer and any
13 other source of income of the obligor; and (iii) a description and
14 the location of property of the obligor in this state not exempt
15 from execution; and (5) the name and address of the obligee
16 and, if applicable, the agency or person to whom support
17 payments are to be remitted.

18 (b) On receipt of a request for registration, the clerk of the
19 court shall cause the order to be filed as a foreign judgment,
20 together with one copy of the documents and information,
21 regardless of their form.

22 (c) A petition or comparable pleading seeking a remedy that
23 must be affirmatively sought under other law of this state may
24 be filed at the same time as the request for registration or later.
25 The pleading must specify the grounds for the remedy sought.

§48-16-603. Effect of registration for enforcement.

1 (a) A support order or income-withholding order issued in
2 another state is registered when the order is filed in the register-
3 ing tribunal of this state.

4 (b) A registered order issued in another state is enforceable
5 in the same manner and is subject to the same procedures as an
6 order issued by a tribunal of this state.

7 (c) Except as otherwise provided in this article, a tribunal
8 of this state shall recognize and enforce, but may not modify, a
9 registered order if the issuing tribunal had jurisdiction.

§48-16-604. Choice of law.

1 (a) The law of the issuing state governs the nature, extent,
2 amount, and duration of current payments and other obligations
3 of support and the payment of arrearages under the order.

4 (b) In a proceeding for arrearages, the statute of limitation
5 under the laws of this state or of the issuing state, whichever is
6 longer, applies.

§48-16-605. Notice of registration of order.

1 (a) When a support order or income-withholding order
2 issued in another state is registered, the clerk of the court shall
3 notify the nonregistering party. The notice must be accompa-
4 nied by a copy of the registered order and the documents and
5 relevant information accompanying the order.

6 (b) The notice must inform the nonregistering party: (1)
7 That a registered order is enforceable as of the date of registra-
8 tion in the same manner as an order issued by a tribunal of this
9 state; (2) that a hearing to contest the validity or enforcement of
10 the registered order must be requested within twenty days after

11 notice; (3) that failure to contest the validity or enforcement of
12 the registered order in a timely manner will result in confirma-
13 tion of the order and enforcement of the order and the alleged
14 arrearages and precludes further contest of that order with
15 respect to any matter that could have been asserted; and (4) of
16 the amount of any alleged arrearages.

17 (c) Upon registration of an income-withholding order for
18 enforcement, the registering tribunal shall notify the obligor's
19 source of income pursuant to part 14-401 et seq. of this chapter.

§48-16-606. Procedure to contest validity or enforcement of registered order.

1 (a) A nonregistering party seeking to contest the validity or
2 enforcement of a registered order in this state shall request a
3 hearing within twenty days after the date of mailing or personal
4 service of notice of the registration. The nonregistering party
5 may seek to vacate the registration, to assert any defense to an
6 allegation of noncompliance with the registered order, or to
7 contest the remedies being sought or the amount of any alleged
8 arrearages pursuant to section 16-607 (Contest of Registration
9 or Enforcement).

10 (b) If the nonregistering party fails to contest the validity or
11 enforcement of the registered order in a timely manner, the
12 order is confirmed by operation of law.

13 (c) If a nonregistering party requests a hearing to contest
14 the validity or enforcement of the registered order, the register-
15 ing tribunal shall schedule the matter for hearing and give
16 notice to the parties of the date, time and place of the hearing.

§48-16-607. Contest of registration or enforcement.

1 (a) A party contesting the validity or enforcement of a
2 registered order or seeking to vacate the registration has the

3 burden of proving one or more of the following defenses: (1)
4 The issuing tribunal lacked personal jurisdiction over the
5 contesting party; (2) the order was obtained by fraud; (3) the
6 order has been vacated, suspended or modified by a later order;
7 (4) the issuing tribunal has stayed the order pending appeal; (5)
8 there is a defense under the law of this state to the remedy
9 sought; (6) full or partial payment has been made; or (7) the
10 statute of limitation under section 16-604 (Choice of Law)
11 precludes enforcement of some or all of the arrearages.

12 (b) If a party presents evidence establishing a full or partial
13 defense under subsection (a), a tribunal may stay enforcement
14 of the registered order, continue the proceeding to permit
15 production of additional relevant evidence, and issue other
16 appropriate orders. An uncontested portion of the registered
17 order may be enforced by all remedies available under the law
18 of this state.

19 (c) If the contesting party does not establish a defense under
20 subsection (a) to the validity or enforcement of the order, the
21 registering tribunal shall issue an order confirming the order.

§48-16-608. Confirmed order.

1 Confirmation of a registered order, whether by operation of
2 law or after notice and hearing, precludes further contest of the
3 order with respect to any matter that could have been asserted
4 at the time of registration.

§48-16-609. Procedure to register child support order of another state for modification.

1 A party or support enforcement agency seeking to modify,
2 or to modify and enforce, a child support order issued in
3 another state shall register that order in this state in the same
4 manner provided in Part 1 if the order has not been registered.
5 A petition for modification may be filed at the same time as a

6 request for registration, or later. The pleading must specify the
7 grounds for modification.

§48-16-610. Effect of registration for modification.

1 A tribunal of this state may enforce a child support order of
2 another state registered for purposes of modification, in the
3 same manner as if the order had been issued by a tribunal of
4 this state, but the registered order may be modified only if the
5 requirements of section 16-611 (Modification of Child Support
6 Order of Another State) have been met.

§48-16-611. Modification of child support order of another state.

1 (a) After a child support order issued in another state has
2 been registered in this state, the responding tribunal of this state
3 may modify that order only if section 16-613 does not apply
4 and after notice and hearing it finds that: (1) The following
5 requirements are met: (i) The child, the individual obligee, and
6 the obligor do not reside in the issuing state; (ii) a petitioner
7 who is a nonresident of this state seeks modification; and (iii)
8 the respondent is subject to the personal jurisdiction of the
9 tribunal of this state; or (2) the child or a party who is an
10 individual, is subject to the personal jurisdiction of the tribunal
11 of this state and all of the parties who are individuals have filed
12 written consents in the issuing tribunal for a tribunal of this
13 state to modify the support order and assume continuing,
14 exclusive jurisdiction over the order. However, if the issuing
15 state is a foreign jurisdiction that has not enacted a law or
16 established procedures substantially similar to the procedures
17 under this article, the consent otherwise required of an individ-
18 ual residing in this state is not required for the tribunal to
19 assume jurisdiction to modify the child support order.

20 (b) Modification of a registered child support order is
21 subject to the same requirements, procedures, and defenses that
22 apply to the modification of an order issued by a tribunal of this

23 state and the order may be enforced and satisfied in the same
24 manner.

25 (c) A tribunal of this state may not modify any aspect of a
26 child support order that may not be modified under the law of
27 the issuing state. If two or more tribunals have issued child
28 support orders for the same obligor and child, the order that
29 controls and must be so recognized under section 16-207
30 establishes the aspects of the support order which are
31 nonmodifiable.

32 (d) On issuance of an order modifying a child support order
33 issued in another state, a tribunal of this state becomes the
34 tribunal of continuing, exclusive jurisdiction.

§48-16-612. Recognition of order modified in another state.

1 A tribunal of this state shall recognize a modification of its
2 earlier child support order by a tribunal of another state which
3 assumed jurisdiction pursuant to this article or a law substan-
4 tially similar to this article and, upon request, except as
5 otherwise provided in this article, shall: (1) Enforce the order
6 that was modified only as to amounts accruing before the
7 modification; (2) enforce only nonmodifiable aspects of that
8 order; (3) provide other appropriate relief only for violations of
9 that order which occurred before the effective date of the
10 modification; and (4) recognize the modifying order of the
11 other state, upon registration, for the purpose of enforcement.

**§48-16-613. Jurisdiction to modify support order of another state
when individual parties reside in this state.**

1 (a) If all of the individual parties reside in this state and the
2 child does not reside in the issuing state, a tribunal of this state
3 has jurisdiction to enforce and to modify the issuing state's
4 child support order in a proceeding to register that order.

5 (b) A tribunal of this state exercising jurisdiction as
6 provided in this section shall apply the provisions of parts 1 and
7 2 and this part 6 to the enforcement or modification proceeding.
8 Parts 3 through 5, and Parts 7 and 8 do not apply and the
9 tribunal shall apply the procedural and substantive law of this
10 state.

§48-16-614. Notice to issuing tribunal of modification.

1 Within thirty days after issuance of a modified child
2 support order, the party obtaining the modification shall file a
3 certified copy of the order with the issuing tribunal which had
4 continuing, exclusive jurisdiction over the earlier order, and in
5 each tribunal in which the party knows that earlier order has
6 been registered. Failure of the party obtaining the order to file
7 a certified copy as required subjects that party to appropriate
8 sanctions by a tribunal in which the issue of failure to file
9 arises, but that failure has no effect on the validity or
10 enforceability of the modified order of the new tribunal of
11 continuing, exclusive jurisdiction.

PART 7. DETERMINATION OF PARENTAGE.

§48-16-701. Proceeding to determine parentage.

1 (a) A tribunal of this state may serve as an initiating or
2 responding tribunal in a proceeding brought under this article
3 or a law substantially similar to this article, the uniform
4 reciprocal enforcement of support act, or the revised uniform
5 reciprocal enforcement of support act to determine that the
6 petitioner is a parent of a particular child or to determine that a
7 respondent is a parent of that child.

8 (b) In a proceeding to determine parentage, a responding
9 tribunal of this state shall apply article 24-101, et seq., of this
10 chapter and the rules of this state on choice of law.

PART 8. INTERSTATE RENDITION.**§48-16-801. Grounds for rendition.**

1 (a) For purposes of this article, “governor” includes an
2 individual performing the functions of governor or the execu-
3 tive authority of a state covered by this article.

4 (b) The governor of this state may: (1) Demand that the
5 governor of another state surrender an individual found in the
6 other state who is charged criminally in this state with having
7 failed to provide for the support of an obligee; or (2) on the
8 demand by the governor of another state, surrender an individ-
9 ual found in this state who is charged criminally in the other
10 state with having failed to provide for the support of an obligee.

11 (c) A provision for extradition of individuals not inconsis-
12 tent with this article applies to the demand even if the individ-
13 ual whose surrender is demanded was not in the demanding
14 state when the crime was allegedly committed and has not fled
15 therefrom.

§48-16-802. Conditions of rendition.

1 (a) Before making demand that the governor of another
2 state surrender an individual charged criminally in this state
3 with having failed to provide for the support of an obligee, the
4 governor of this state may require a prosecutor of this state to
5 demonstrate that at least sixty days previously the obligee had
6 initiated proceedings for support pursuant to this article or that
7 the proceeding would be of no avail.

8 (b) If, under this article or a law substantially similar to this
9 article, the uniform reciprocal enforcement of support act, or
10 the revised uniform reciprocal enforcement of support act, the
11 governor of another state makes a demand that the governor of
12 this state surrender an individual charged criminally in that state

13 with having failed to provide for the support of a child or other
14 individual to whom a duty of support is owed, the governor
15 may require a prosecutor to investigate the demand and report
16 whether a proceeding for support has been initiated or would be
17 effective. If it appears that a proceeding would be effective but
18 has not been initiated, the governor may delay honoring the
19 demand for a reasonable time to permit the initiation of a
20 proceeding.

21 (c) If a proceeding for support has been initiated and the
22 individual whose rendition is demanded prevails, the governor
23 may decline to honor the demand. If the petitioner prevails and
24 the individual whose rendition is demanded is subject to a
25 support order, the governor may decline to honor the demand
26 if the individual is complying with the support order.

PART 9. MISCELLANEOUS PROVISIONS.

§48-16-901. Uniformity of application and construction.

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

§48-16-902. Short title.

1 This article may be cited as the "Uniform Interstate Family
2 Support Act."

§48-16-903. Effective date.

1 The provisions of this article take effect on the first day of
2 January, one thousand nine hundred ninety-eight.

ARTICLE 17. WEST VIRGINIA SUPPORT ENFORCEMENT COMMIS- SION.

- §48-17-101. Creation of support enforcement commission; number of members.
- §48-17-102. Appointment of members or support enforcement commission; qualifications and eligibility.
- §48-17-103. Terms of commission members; conditions of membership.
- §48-17-104. Oath.
- §48-17-105. Commission chairman.
- §48-17-106. Compensation of members; reimbursement for expenses.
- §48-17-107. Meeting requirements.
- §48-17-108. Removal of commission members.
- §48-17-109. General duties of support enforcement commission.
- §48-17-110. General powers of support enforcement commission.
- §48-17-111. Required rule making.

§48-17-101. Creation of support enforcement commission; number of members.

1 The West Virginia support enforcement commission,
2 consisting of nine members, is hereby created in the department
3 of health and human resources and may use the administrative
4 support and services of that department. The commission is not
5 subject to control, supervision or direction by the department of
6 health and human resources, but is an independent, self-
7 sustaining commission that shall have the powers and duties
8 specified in this chapter and all other powers necessary and
9 proper to establish policies and procedures for fully and
10 effectively carrying out the purposes of administering, regulat-
11 ing, overseeing and enforcing the provisions of this chapter
12 which relate to the establishment and enforcement of support
13 obligations.

14 The commission is a part-time commission whose members
15 make policy and have such other powers and perform such
16 other duties as specified in this chapter or set forth in legislative
17 rules promulgated by the commission. The ministerial duties of
18 the commission shall be administered and carried out by the
19 commissioner of the bureau for child support enforcement, with
20 the assistance of such staff of the department of health and
21 human resources as the secretary may assign.

22 Each member of the commission shall devote the time
23 necessary to carry out the duties and obligations of the office
24 and the six members appointed by the governor may pursue and
25 engage in another business, occupation or gainful employment
26 that is not in conflict with the duties of the commission.

27 While the commission is self-sustaining and independent,
28 it, its members, its employees and the commissioner are subject
29 to article nine-a of chapter six, chapter six-b, chapter twenty-
30 nine-a and chapter twenty-nine-b of this code.

**§48-17-102. Appointment of members of support enforcement
commission; qualifications and eligibility.**

1 (a) Of the nine members of the commission, three shall be
2 members by virtue of the public offices which they hold, and
3 the remaining six members are to be appointed by the governor.
4 No more than five members of the commission may belong to
5 the same political party:

6 (1) One member is to be the secretary of the department of
7 health and human resources;

8 (2) One member is to be the secretary of the department of
9 tax and revenue;

10 (3) One member is to be the secretary of the department of
11 administration;

12 (4) One member is to be a lawyer licensed by, and in good
13 standing with, the West Virginia state bar, with at least five
14 years of professional experience in domestic relations law and
15 the establishment and enforcement of support obligations;

16 (5) One member is to be a person experienced as a public
17 administrator in the supervision and regulation of a governmen-
18 tal agency;

19 (6) One member is to be an employer experienced in
20 withholding support payments from the earnings of obligors;

21 (7) One member is to be a person selected from a list of
22 nominees submitted by the West Virginia judicial association:
23 *Provided*, That the list of nominees shall not include any person
24 currently exercising the powers of the judicial department; and

25 (8) Two members are to be representatives of the public at
26 large.

27 (b) Each member of the commission is to be a citizen of the
28 United States, a resident of the state of West Virginia and at
29 least twenty-one years of age.

§48-17-103. Terms of commission members; conditions of membership.

1 (a) The term of office for each member of the commission
2 who serves as a member by virtue of the public office held is
3 for a period concurrent with that person's tenure in the office.
4 The term of office for each member of the commission ap-
5 pointed by the governor is four years, except that for an initial
6 period, the terms of office of the initial six commission mem-
7 bers appointed by the governor commence from an initial date
8 of appointment not later than the first day of July, one thousand
9 nine hundred ninety-five, and run as follows:

10 (1) Two members shall be appointed for a term ending on
11 the thirtieth day of June, one thousand nine hundred ninety-
12 seven;

13 (2) Two members shall be appointed for terms ending on
14 the thirtieth day of June, one thousand nine hundred ninety-
15 eight; and

16 (3) Two members shall be appointed for terms ending on
17 the thirtieth day of June, one thousand nine hundred ninety-
18 nine.

19 (b) After the initial appointments made pursuant to the
20 provisions of subdivisions (1), (2) and (3), subsection (a) of this
21 section, members appointed by the governor shall thereafter be
22 appointed or reappointed for terms of office which end on the
23 thirtieth day of June in the fourth year following the expiration
24 date of the previous term or terms.

25 (c) Appointments to fill vacancies on the commission are
26 for the unexpired term of the member replaced.

27 (d) At the expiration of a member's term, the member shall
28 continue to serve until a successor is appointed and qualified.

§48-17-104. Oath.

1 Before entering upon the discharge of the duties as commis-
2 sioner, each commissioner shall take and subscribe to the oath
3 of office prescribed in section five, article IV of the constitution
4 of West Virginia.

§48-17-105. Commission chairman.

1 In making the initial appointments to the commission, the
2 governor shall designate a member to serve as chairman for a
3 term ending on the thirtieth day of June, one thousand nine
4 hundred ninety-six. The member so designated shall serve in
5 such capacity until his or her successor as chairman is elected
6 by the commission as hereinafter provided.

7 Following the term of the initial chairman, thereafter the
8 chairman shall be elected by the commission from among its
9 members, and the member so elected shall: (1) Serve as
10 chairman for a term of two years and until his or her successor

11 shall have been elected; or (2) shall serve in such capacity
12 throughout his or her service as a member of the commission,
13 whichever period is shorter. In the event that a successor
14 chairman is not elected by the commission members within
15 ninety calendar days after the expiration of a chairman's term,
16 a vacancy shall be deemed to exist, and the governor shall
17 designate a chairman from among the members of the commis-
18 sion. A member may not serve more than two consecutive
19 terms as chairman.

§48-17-106. Compensation of members; reimbursement for expenses.

1 (a) Each member of the commission shall receive one
2 hundred dollars for each day or portion thereof spent in the
3 discharge of his or her official duties.

4 (b) Each member of the commission shall be reimbursed for
5 all actual and necessary expenses and disbursements involved
6 in the execution of official duties.

§48-17-107. Meeting requirements.

1 (a) The commission shall meet within the state at least once
2 per calendar quarter and at such other times as the chairman
3 may decide. The commission shall also meet upon a call of five
4 or more members upon seventy-two hours written notice to
5 each member.

6 (b) Five members of the commission are a quorum for the
7 transaction of any business and for the performance of any
8 duty.

9 (c) A majority vote of the members present is required for
10 any final determination by the commission.

11 (d) The commission may elect to meet in executive session
12 after an affirmative vote of a majority of its members present
13 according to section four, article nine-a, chapter six of this
14 code.

15 (e) The commission shall keep a complete and accurate
16 record of all its meetings according to section five, article nine-
17 a, chapter six of this code.

§48-17-108. Removal of commission members.

1 Notwithstanding the provisions of section four, article six,
2 chapter six of this code, the governor may remove any commis-
3 sion member for incompetence, misconduct, gross immorality,
4 misfeasance, malfeasance or nonfeasance in office.

§48-17-109. General duties of support enforcement commission.

1 The support enforcement commission shall have general
2 responsibility for establishing policies and procedures for
3 obtaining and enforcing support orders and establishing
4 paternity according to this chapter, as hereinafter provided,
5 including, without limitation, the responsibility for the follow-
6 ing:

7 (a) To propose for promulgation, according to the provi-
8 sions of chapter twenty-nine-a of this code, such legislative
9 rules as in its judgment may be necessary to fulfill the policies
10 of this chapter;

11 (b) To undertake directly, or by contract, legal or policy
12 research related to obtaining and enforcing support orders and
13 establishing paternity;

14 (c) To serve as a clearinghouse for information;

15 (d) To keep a record of all commission proceedings
16 available for public inspection;

17 (e) To file a written annual report to the governor, the
18 president of the Senate and the speaker of the House of Dele-
19 gates on or before the thirtieth day of January of each year, and
20 such additional reports as the governor or Legislature may
21 request.

§48-17-110. General powers of support enforcement commission.

1 In establishing policies and procedures for enforcing the
2 provisions of this chapter, the commission shall have the
3 following power and authority:

4 (1) To establish and maintain procedures under which
5 expedited processes, administrative or judicial, are in effect for
6 obtaining and enforcing support orders and establishing
7 paternity according to this chapter;

8 (2) To monitor the child support enforcement system of this
9 state and from time to time to advise the bureau for child
10 support enforcement and other agencies of the state of West
11 Virginia regarding the establishment and enforcement of child
12 support orders;

13 (3) To promulgate all emergency and legislative rules
14 pursuant to chapter twenty-nine-a of this code as are required
15 by this chapter: *Provided*, That all rules which are in effect at
16 the time of the implementation of this section shall continue in
17 full force and effect until the commission promulgates a rule or
18 rules regarding the same subject matter;

19 (4) To promulgate legislative rules pursuant to chapter
20 twenty-nine-a of this code relating to the structure of the bureau
21 for child support enforcement, including, but not limited to, the
22 designation of administrative and legal tasks and the location of

23 offices for the bureau throughout the state. This rule shall
24 constitute an emergency rule within the meaning of section
25 fifteen, article three, chapter twenty-nine-a of this code;

26 (5) To adopt standards for staffing, recordkeeping, report-
27 ing, intergovernmental cooperation, training, physical structures
28 and time frames for case processing;

29 (6) To review the state plan for child and spousal support to
30 determine its conformance or nonconformance with the
31 provisions of 42 U.S.C. §654, and make recommendations or to
32 promulgate legislative rules based upon such review;

33 (7) To cooperate with judicial organizations and the private
34 bar to provide training to persons involved in the establishment
35 and enforcement of child support orders;

36 (8) To study the issues involving retroactive and reimburse-
37 ment child support payments which are ordered following the
38 establishment of paternity and to make a recommendation to the
39 Legislature on or before the first day of December, one thou-
40 sand nine hundred ninety-five, regarding any statutory or
41 regulatory action which should be implemented to ensure that
42 fathers are not ordered to pay retroactive or reimbursement
43 child support or medical expenses when such payments would
44 be unconscionable or inequitable given the totality of the
45 circumstances arising from the facts of a given case; and

46 (9) To promulgate such further legislative rules pursuant to
47 chapter twenty-nine-a of this code which may aid the bureau for
48 child support enforcement in the establishment and enforcement
49 of child support orders. In addition to the specific designation
50 of such rules that constitute emergency rules within the
51 meaning of section fifteen, article three, chapter twenty-nine-a
52 of this code, the commission may promulgate other rules as
53 emergency rules when such rule is necessary to ensure that the
54 state is awarded federal funds for the actions described in the

55 rule or when the promulgation of such rule is necessary to
56 prevent substantial harm to the public interest by ensuring that
57 child support is timely collected and disbursed.

§48-17-111. Required rule making.

1 The commission shall, without limitation on the powers
2 conferred in section 17-110 of this article, include within its
3 legislative rules the following specific provisions according to
4 the provisions of this chapter:

5 (1) Prescribing the methods and forms of proposal that a
6 prospective contractor shall follow and complete before
7 consideration of a proposal by the commission, which rules
8 shall require such plans as shall assure the commission that the
9 proposal conforms with the requirements of this chapter and all
10 applicable federal statutes and regulations;

11 (2) Prescribing standards and guidelines for contractors
12 providing professional services to ensure the maintenance of the
13 highest quality of service and professional standards, the
14 preservation of the attorney-client relationship, and the protec-
15 tion of the integrity of the adversarial process from any impair-
16 ment in furnishing legal representation;

17 (3) Requiring the bureau, and any contractors providing
18 professional services or collection services to the bureau, to
19 adopt procedures for the provision of such services which will
20 best advance the needs and interests of the obligees and
21 dependents who seek assistance in obtaining and enforcing
22 support orders and establishing paternity according to this
23 chapter, without regard to whether such procedures optimize or
24 maximize the profits derived by the contractor or result in the
25 payment of reimbursements or financial incentives to the
26 bureau;

27 (4) Prescribing standards and guidelines for contractors
28 providing professional services to ensure that appropriate
29 training and support services are provided to employees of the
30 contractor who are engaged in activities to obtain and enforce
31 support orders and establish paternity according to this chapter;

32 (5) Prescribing minimum procedures for the exercise of
33 effective control over the internal fiscal affairs of a contractor
34 providing collection services, including provisions for the
35 safeguarding of support payments, the recording of receipts and
36 evidence of nonpayment by obligors, and the maintenance of
37 reliable records, accounts and reports of transactions, operations
38 and events, including reports to the commission;

39 (6) Providing for a minimum uniform standard of account-
40 ing methods, procedures and forms; a uniform code of accounts
41 and accounting classifications; and other standard operating
42 procedures, as may be necessary to assure consistency, compa-
43 rability and effective disclosure of all financial information by
44 a contractor providing collection services; and

45 (7) Requiring periodic financial reports and the form
46 thereof, including an annual audit prepared by a certified public
47 accountant licensed to do business in this state, attesting to the
48 financial condition of a contractor providing collection services
49 and disclosing whether the accounts, records and control
50 procedures examined are maintained by the contractor as
51 required by this chapter.

ARTICLE 18. BUREAU FOR CHILD SUPPORT ENFORCEMENT.

- §48-18-101. Establishment of the bureau for child support enforcement; cooperation with the division of human services; continuation.
- §48-18-102. Appointment of commissioner; duties; compensation.
- §48-18-103. Organization and employees.
- §48-18-104. Supervisory responsibilities within the bureau for child support enforcement.

- §48-18-105. General duties and powers of the bureau for child support enforcement.
- §48-18-106. Notice to unemployed obligor.
- §48-18-107. Creation of child support enforcement fund; purpose; funding; disbursements.
- §48-18-108. Fees.
- §48-18-109. Contracts for services.
- §48-18-110. Attorneys representing state.
- §48-18-111. Establishment of parent locator service.
- §48-18-112. Cooperation with other states in the enforcement of child support.
- §48-18-113. Disbursements of amounts collected as support.
- §48-18-114. Amounts collected as support to be disbursed to person having custody; procedure for redirecting disbursement of payments where physical custody transferred to a person other than the custodial parent.
- §48-18-115. Payment of support to the bureau for child support enforcement.
- §48-18-116. Authorization for data processing and retrieval system.
- §48-18-117. Obtaining support from federal tax refunds.
- §48-18-118. Obtaining support from state income tax refunds.
- §48-18-119. Obtaining support from unemployment compensation benefits.
- §48-18-120. Statements of account.
- §48-18-121. Providing information to consumer reporting agencies; requesting consumer credit reports for child support purposes.
- §48-18-122. Central state case registry.
- §48-18-123. Subpoenas.
- §48-18-124. Liability for financial institutions providing financial records to the bureau for child support enforcement; agreements for data match system; encumbrance or surrender of assets.
- §48-18-125. Employment and income reporting.
- §48-18-126. Review and adjustment of child support orders.
- §48-18-127. Adoption of form to identify payments.
- §48-18-128. Billing for fees and costs.
- §48-18-129. Acceptance of federal purposes; compliance with federal requirements and standards.
- §48-18-130. Publicizing child support enforcement services.
- §48-18-131. Access to records, confidentiality.
- §48-18-132. Access to information.
- §48-18-133. Recording of social security numbers in certain family matters.

§48-18-101. Establishment of the bureau for child support enforcement; cooperation with the division of human services; continuation.

1 (a) Effective the first day of July, one thousand nine
2 hundred ninety-five, there is hereby established in the depart-
3 ment of health and human resources the bureau for child
4 support enforcement. The bureau is under the immediate
5 supervision of the commissioner, who is responsible for the
6 exercise of the duties and powers assigned to the bureau under
7 the provisions of this chapter. The bureau is designated as the
8 single and separate organizational unit within this state to
9 administer the state plan for child and spousal support accord-
10 ing to 42 U.S.C. §654(3).

11 (b) The division of human services shall cooperate with the
12 bureau for child support enforcement. At a minimum, such
13 cooperation shall require that the division of human services:

14 (1) Notify the bureau for child support enforcement when
15 the division of human services proposes to terminate or provide
16 public assistance payable to any obligee;

17 (2) Receive support payments made on behalf of a former
18 or current recipient to the extent permitted by Title IV-D, Part
19 D of the Social Security Act; and

20 (3) Accept the assignment of the right, title or interest in
21 support payments and forward a copy of the assignment to the
22 bureau for child support enforcement.

23 (c) Pursuant to the provisions of article ten, chapter four of
24 this code, the bureau for child support enforcement shall
25 continue to exist until the first day of July, two thousand two,
26 unless sooner terminated, continued or reestablished by act of
27 the Legislature.

§48-18-102. Appointment of commissioner; duties; compensation.

1 (a) There is hereby created the position of commissioner
2 whose duties include the ministerial management and adminis-
3 tration of the office of the support enforcement commission.
4 The commissioner shall:

5 (1) Be appointed by the secretary;

6 (2) Serve at the will and pleasure of the secretary;

7 (3) Serve on a full-time basis and shall not engage in any
8 other profession or occupation, including the holding of a
9 political office in the state either by election or appointment,
10 while serving as commissioner;

11 (4) Be a lawyer licensed by, and in good standing with, the
12 West Virginia state bar; and

13 (5) Have responsible administrative experience, possess
14 management skills, and have knowledge of the law as it relates
15 to domestic relations and the establishment and enforcement of
16 support obligations.

17 Before entering upon the discharge of the duties as commis-
18 sioner, the commissioner shall take and subscribe to the oath of
19 office prescribed in section five, article IV of the constitution
20 of West Virginia.

21 (b) The duties of the commissioner shall include the
22 following:

23 (1) To direct and administer the daily operations of the
24 commission;

25 (2) To administer the child support enforcement fund
26 created pursuant to section 18-107 of this article;

27 (3) To keep the records and papers of the commission,
28 including a record of each proceeding;

29 (4) To prepare, issue and submit reports of the commission;
30 and

31 (5) To perform any other duty that the commission directs.

32 (c) All payments to the commissioner as compensation
33 shall be made from the child support enforcement fund. The
34 commissioner is entitled to:

35 (1) A reasonable and competitive compensation package to
36 be established by the secretary; and

37 (2) Reimbursement for expenses under the standard state
38 travel regulations.

§48-18-103. Organization and employees.

1 (a) The commissioner shall organize the work of the bureau
2 in such offices or other organizational units as he or she may
3 determine to be necessary for effective and efficient operation.

4 (b) The secretary may transfer employees and resources of
5 the department to the bureau for child support enforcement as
6 may be necessary to fulfill the duties and responsibilities of the
7 bureau under this chapter: *Provided*, That the secretary may not
8 transfer employees of other divisions and agencies within the
9 department to the bureau for child support enforcement without
10 a prior finding that the office or position held by the employee
11 may be eliminated and until the office or position is, in fact,
12 eliminated.

13 (c) The commissioner, if he or she deems such action
14 necessary, may hire legal counsel for the division, notwith-

15 standing the provisions of 5-3-2 of this code or any other code
16 provision to the contrary, or may request the attorney general to
17 appoint assistant attorneys general who shall perform such
18 duties as may be required by the bureau. The attorney general,
19 in pursuance of such request, may select and appoint assistant
20 attorneys general, to serve during the will and pleasure of the
21 attorney general, and such assistants shall be paid out of any
22 funds allocated and appropriated to the child support enforce-
23 ment fund.

24 (d) The commissioner may employ such staff or employees
25 as may be necessary to administer and enforce this chapter.

**§48-18-104. Supervisory responsibilities within the bureau for
child support enforcement.**

1 The commissioner shall have control and supervision of the
2 bureau for child support enforcement and shall be responsible
3 for the work of each of its organizational units. Each organiza-
4 tional unit shall be headed by an employee of the bureau
5 appointed by the commissioner who shall be responsible to the
6 commissioner for the work of his or her organizational unit.

***§48-18-105. General duties and powers of the bureau for child
support enforcement.**

1 In carrying out the policies and procedures for enforcing the
2 provisions of this chapter, the bureau shall have the following
3 power and authority:

4 (1) To undertake directly, or by contract, activities to obtain
5 and enforce support orders and establish paternity;

6 (2) To undertake directly, or by contract, activities to
7 establish paternity for minors for whom paternity has not been
8 acknowledged by the father or otherwise established by law;

***Clerk's Note:** This section was also amended by S. B. 652 (Chapter 93), which
passed subsequent to this act.

9 (3) To undertake directly, or by contract, activities to
10 collect and disburse support payments;

11 (4) To contract for professional services with any person,
12 firm, partnership, professional corporation, association or other
13 legal entity to provide representation for the bureau and the
14 state in administrative or judicial proceedings brought to obtain
15 and enforce support orders and establish paternity;

16 (5) To ensure that activities of a contractor under a contract
17 for professional services are carried out in a manner consistent
18 with attorneys' professional responsibilities as established in
19 the rules of professional conduct as promulgated by the
20 supreme court of appeals;

21 (6) To contract for collection services with any person,
22 firm, partnership, corporation, association or other legal entity
23 to collect and disburse amounts payable as support;

24 (7) To ensure the compliance of contractors and their
25 employees with the provisions of this chapter and legislative
26 rules promulgated pursuant to this chapter, and to terminate,
27 after notice and hearing, the contractual relationship between
28 the bureau and a contractor who fails to comply;

29 (8) To require a contractor to take appropriate remedial or
30 disciplinary action against any employee who has violated or
31 caused the contractor to violate the provisions of this chapter,
32 in accordance with procedures prescribed in legislative rules
33 promulgated by the commission;

34 (9) To locate parents who owe a duty to pay child support;

35 (10) To cooperate with other agencies of this state and other
36 states to search their records to help locate absent parents;

37 (11) To cooperate with other states in establishing and
38 enforcing support obligations;

39 (12) To exercise such other powers as may be necessary to
40 effectuate the provisions of this chapter.

§48-18-106. 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 bureau for child support enforcement
4 shall 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 bureau.
7 The bureau 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.

**§48-18-107. Creation of child support enforcement fund; pur-
pose; funding; disbursements.**

1 (a) There is hereby created in the state treasury a separate
2 special revenue account, which shall be an interest bearing
3 account, to be known as the "child support enforcement fund".
4 The special revenue account shall consist of all incentive
5 payments paid by the federal government pursuant to 42 U.S.C
6 §658 as a percentage of the total amount of support collected
7 directly or by contract by the bureau for child support enforce-
8 ment, all amounts appropriated by the Legislature to maintain
9 and operate the bureau for child support enforcement according
10 to this chapter, and all interest or other earnings from moneys
11 in the fund. Any agency or entity receiving federal matching

12 funds for services of the bureau for child support enforcement
13 shall enter into an agreement with the secretary whereby all
14 federal matching funds paid to and received by that agency or
15 entity for the activities of the bureau for child support enforce-
16 ment shall be paid into the child support enforcement fund. Said
17 agreement shall provide for advance payments into the fund by
18 such agencies, from available federal funds, pursuant to Title
19 IV-D of the Social Security Act and in accordance with federal
20 regulations. No expenses incurred under this section shall be a
21 charge against the general funds of the state.

22 (b) Moneys in the special revenue account shall be appro-
23 priated to the department and used exclusively, in accordance
24 with appropriations by the Legislature, to pay costs, fees and
25 expenses incurred, or to be incurred for the following purpose:
26 The provision of child support services authorized pursuant to
27 Title IV, Part D of the Social Security Act and any further duty
28 as set forth in this chapter, including, but not limited to, the
29 duties assigned to the bureau by virtue of its being designated
30 as the single and separate organizational unit within this state
31 to administer the state plan for child and spousal support.

32 (c) Any balance remaining in the special revenue account
33 at the end of any state fiscal year shall not revert to the general
34 revenue fund but shall remain in the special revenue account
35 and shall be used solely in a manner consistent with this
36 section: *Provided*, That for the three succeeding fiscal years
37 after the effective date of this section, any appropriation made
38 to the special revenue account from general revenue shall be
39 repaid to the general revenue fund from moneys available in the
40 special revenue account.

41 (d) Disbursements from the special revenue account shall
42 be authorized by the commissioner.

§48-18-108. Fees.

1 (a) When the bureau for child support enforcement provides
2 child support collection services either to a public assistance
3 recipient or to a party who does not receive public assistance,
4 the bureau for child support enforcement shall, upon written
5 notice to the obligor, charge a monthly collection fee equivalent
6 to the full monthly cost of the services, in addition to the
7 amount of child support which was ordered by the court. The
8 fee shall be deposited in the child support enforcement fund.
9 The service fee assessed may not exceed ten percent of the
10 monthly court ordered child support and may not be assessed
11 against any obligor who is current in payment of the monthly
12 court ordered child support payments: *Provided*, That this fee
13 may not be assessed when the obligor is also a recipient of
14 public assistance.

15 (b) Except for those persons applying for services provided
16 by the bureau for child support enforcement who are applying
17 for or receiving public assistance from the division of human
18 services or persons for whom fees are waived pursuant to a
19 legislative rule promulgated pursuant to this section, all
20 applicants shall pay an application fee of twenty-five dollars.

21 (c) Fees imposed by state and federal tax agencies for
22 collection of overdue support shall be imposed on the person
23 for whom these services are provided. Upon written notice to
24 the obligee the bureau for child support enforcement shall
25 assess a fee of twenty-five dollars to any person not receiving
26 public assistance for each successful federal tax interception.
27 The fee shall be withheld prior to the assistance for each
28 successful federal tax interception. The fee shall be withheld
29 prior to the release of the funds received from each interception
30 and deposited in the child support enforcement fund established
31 pursuant to section 18-107.

32 (d) In any action brought by the bureau for child support
33 enforcement, the family law master shall order that the obligor
34 shall pay attorney fees for the services of the attorney represent-
35 ing the bureau for child support enforcement in an amount
36 calculated at a rate similar to the rate paid to court appointed
37 attorneys paid pursuant to section thirteen-a, article twenty-one,
38 chapter twenty-nine of this code, and all court costs associated
39 with the action: *Provided*, That no such award shall be made
40 when the family law master or circuit judge finds that the award
41 of attorney's fees would create a substantial financial hardship
42 on the obligor or when the obligor is a recipient of public
43 assistance. Further, the bureau for child support enforcement
44 may not collect such fees until the obligor is current in the
45 payment of child support. No court may order the bureau for
46 child support enforcement to pay attorney's fees to any party in
47 any action brought pursuant to this chapter.

48 (e) This section shall not apply to the extent it is inconsis-
49 tent with the requirements of federal law for receiving funds for
50 the program under Title IV-A and Title IV-D of the Social
51 Security Act, United States Code, article three, Title 42,
52 Sections 601 *et seq.* and United States Code, Title 42, Sections
53 651 *et seq.*

54 (f) The commission shall, by legislative rule promulgated
55 pursuant to chapter twenty-nine-a of this code, describe the
56 circumstances under which fees charged by the bureau for child
57 support enforcement may be modified or waived, and such rule
58 shall provide for the waiver of any fee, in whole or in part,
59 when such fee would otherwise be required to be paid under the
60 provisions of this chapter. Further, such rule shall initially be
61 promulgated as an emergency rule pursuant to section fifteen,
62 article three, chapter twenty-nine-a of this code.

§48-18-109. Contracts for services.

1 (a) Contracts with persons, firms, partnerships, corpora-
2 tions, associations or other legal entities to provide services to
3 the bureau for child support enforcement shall, at a minimum:

4 (1) Provide for the employment and training of personnel
5 necessary to perform the services;

6 (2) Provide that any federal incentive payment that is
7 payable shall be payable to the fund established pursuant to
8 section 18-107;

9 (3) Delegate responsibility that is consistent with the rules
10 promulgated pursuant to this article;

11 (4) Include any and all provisions required by state or
12 federal law and specifically include terms regarding cancella-
13 tion and renewal of the contract;

14 (5) Provide for the assessment of penalties for the failure to
15 fully or timely provide services included in the agreement;

16 (6) Prohibit the assignment of the contract or the subcon-
17 tracting of services to be provided under the contract without
18 first obtaining the express written approval of the commis-
19 sioner;

20 (7) Provide that the contractor consents to performance
21 audits of its operations by the performance evaluation and
22 research division, legislative auditor's office of the West
23 Virginia Legislature; and

24 (8) Establish reasonable administrative and fiscal require-
25 ments for providing and continuing services and reimburse-
26 ment.

27 (b) Prior to entering into such agreement, the commissioner
28 shall provide all proposals to the members of the commission
29 who may review and comment on those proposals.

30 (c) The commissioner shall enter into such agreement only
31 when the commissioner finds that based upon the information
32 provided to the commissioner and upon the comments made by
33 members of the commission, that the provider of services is
34 capable of carrying out the responsibilities of the agreement.

35 (d) All contracts entered into pursuant to this section shall
36 meet all requirements for such agreements as detailed in article
37 three, chapter five-a of this code: *Provided*, That when the
38 commission, after reviewing any contract, finds that the
39 contract meets all requirements as set forth in this section and
40 further that the bureau for child support enforcement should
41 enter into such contract, the contract shall not be subject to the
42 requirements as detailed in article three, chapter five-a of this
43 code.

44 (e) Any agreement entered into pursuant to this section may
45 include a provision relating to the loan of equipment in the
46 possession of the bureau for child support enforcement.

§48-18-110. Attorneys representing state.

1 (a) Attorneys employed by the bureau for child support
2 enforcement may represent this state or another state in an
3 action brought under the authority of federal law of this chapter.

4 (b) An attorney employed by the bureau for child support
5 enforcement or employed by a person or agency or entity
6 pursuant to a contract with the bureau for child support enforce-
7 ment represents the interest of the state or the bureau and not
8 the interest of any other party. The bureau for child support
9 enforcement shall, at the time an application for child support
10 services is made, inform the applicant that any attorney who

11 provides services for the bureau for child support enforcement
12 is the attorney for the state of West Virginia and that the
13 attorney providing those services does not provide legal
14 representation to the applicant.

15 (c) An attorney employed by the bureau for child support
16 enforcement or pursuant to a contract with the bureau for child
17 support enforcement may not be appointed or act as a guardian
18 ad litem or attorney ad litem for a child or another party.

§48-18-111. Establishment of parent locator service.

1 (a) The bureau for child support enforcement shall establish
2 a parent locator service to locate individuals for the purposes of
3 establishing parentage and of establishing, modifying or
4 enforcing child support obligations, utilizing all sources of
5 information and available records and the parent locator service
6 in the federal department of health and human services. For
7 purposes of obtaining information from the parent locator
8 service, any person, agency or entity providing services to the
9 bureau for child support enforcement pursuant to a contract that
10 includes a provision to ensure that the confidentiality of
11 information is maintained shall be deemed to be an agent of the
12 bureau for child support enforcement.

13 (b) Upon entering into an agreement with the secretary of
14 the federal department of health and human services for the use
15 of that department's parent locator service, the bureau for child
16 support enforcement shall accept and transmit to the secretary
17 of the federal department of health and human services requests
18 from authorized persons for information with regard to the
19 whereabouts of a noncustodial obligor to be furnished by such
20 federal parent locator service. For purposes of this subsection,
21 "authorized persons" means: (1) An attorney or agent of the
22 bureau for child support enforcement; (2) a family law master
23 or circuit judge or any agent thereof; or (3) a resident parent,

24 legal guardian, attorney or agent for a child. The bureau for
25 child support enforcement shall charge a reasonable fee
26 sufficient to cover the costs to the state and to the federal
27 department of health and human services incurred by reason of
28 such requests, and shall transfer to that department from time
29 to time, so much of the fees collected as are attributable to the
30 costs incurred by that department.

31 (c) The information obtained by the bureau for child
32 support enforcement from the federal parent locator service
33 shall be used for, but not limited to, the following purposes:

34 (1) Establishing parentage and establishing, setting the
35 amount of, modifying or enforcing child support obligations;

36 (2) Obtaining and transmitting information to any family
37 law master or circuit court or agent thereof or to an attorney or
38 employee of the United States or of any state responsible for
39 enforcing any federal or state law with respect to the unlawful
40 taking or restraint of a child or making or enforcing a child
41 custody or visitation determination.

42 (d) The bureau for child support enforcement may request
43 from the federal parent locator service information:

44 (1) About, or which will facilitate the discovery of informa-
45 tion about, the location of any individual: (A) Who is under an
46 obligation to pay child support; (B) against whom such an
47 obligation is sought; or (C) to whom such an obligation is
48 owed, including the individual's social security number, or
49 numbers, most recent address, and the name, address and
50 employer identification number of the individual's employer;

51 (2) Concerning the individual's wages or other income
52 from, and benefits of, employment, including rights to or
53 enrollment in group health care coverage; and

54 (3) Concerning the type, status, location and amount of any
55 assets of, or debts owed by or to, any such individual.

56 (e) A circuit court shall have jurisdiction to hear and
57 determine, upon a petition by an authorized person, as defined
58 in subsection (b) of this section, whether the release of informa-
59 tion from the federal parent locator service to that person could
60 be harmful to the custodial parent or the child.

**§48-18-112. Cooperation with other states in the enforcement of
child support.**

1 (a) The bureau for child support enforcement shall cooper-
2 ate with any other state in the following:

3 (1) In establishing paternity;

4 (2) In locating an obligor residing temporarily or perma-
5 nently in this state, against whom any action is being taken for
6 the establishment of paternity or the enforcement of child and
7 spousal support;

8 (3) In securing compliance by an obligor residing tempo-
9 rarily or permanently in this state, with an order issued by a
10 court of competent jurisdiction against such obligor for the
11 support and maintenance of a child or children or the parent of
12 such child or children; and

13 (4) In carrying out other functions necessary to a program
14 of child and spousal support enforcement.

15 (b) The commission shall, by legislative rule, establish
16 procedures necessary to extend the bureau for child support
17 enforcements' system of withholding under part 14-401, et seq.,
18 so that such system may include withholding from income

19 derived within this state in cases where the applicable support
20 orders were issued in other states, in order to assure that child
21 support owed by obligors in this state or any other state will be
22 collected without regard to the residence of the child for whom
23 the support is payable or the residence of such child's custodial
24 parent.

§48-18-113. Disbursements of amounts collected as support.

1 (a) Amounts collected as child or spousal support by the
2 bureau for child support enforcement shall be distributed within
3 two business days after receipt from the employer or other
4 source of periodic income. The amounts collected as child
5 support shall be distributed by the bureau for child support
6 enforcement in accordance with the provisions for distribution
7 set forth in 42 U.S.C. §657. The commission shall promulgate
8 a legislative rule to establish the appropriate distribution as may
9 be required by the federal law.

10 (b) Any payment required to be made under the provisions
11 of this section to a family shall be made to the resident parent,
12 legal guardian or caretaker relative having custody of or
13 responsibility for the child or children.

14 (c) The commission shall establish bonding requirements
15 for employees of the bureau for child support enforcement who
16 receive, disburse, handle or have access to cash.

17 (d) The commissioner shall maintain methods of adminis-
18 tration which are designed to assure that employees of the
19 bureau for child support enforcement or any persons employed
20 pursuant to a contract who are responsible for handling cash
21 receipts do not participate in accounting or operating functions
22 which would permit them to conceal in the accounting records

23 the misuse of cash receipts: *Provided*, That the commissioner
24 may provide for exceptions to this requirement in the case of
25 sparsely populated areas in this state where the hiring of
26 unreasonable additional staff in the local office would otherwise
27 be necessary.

28 (e) No penalty or fee may be collected by or distributed to
29 a recipient of bureau for child support enforcement services
30 from the state treasury or from the child support enforcement
31 fund when child support is not distributed to the recipient in
32 accordance with the time frames established herein.

33 (f) For purposes of this section, “business day” means a day
34 on which state offices are open for regular business.

**§48-18-114. Amounts collected as support to be disbursed to
person having custody; procedure for redirecting
disbursement of payments where physical custody
transferred to a person other than the custodial
parent.**

1 (a) Where physical custody of the child has been transferred
2 from the custodial parent to another person, the bureau for child
3 support enforcement may redirect disbursement of support
4 payments to such other person, on behalf of the child, in the
5 following circumstances:

6 (1) Where the noncustodial parent has physical custody of
7 the child, excluding visitation, upon filing with the bureau for
8 child support enforcement:

9 (A) An affidavit attesting that the noncustodial parent has
10 obtained physical custody of the child, describing the circum-
11 stances under which the transfer of physical custody took place,

12 and stating that he or she anticipates that his or her physical
13 custody of the child will continue for the foreseeable future; and

14 (B) Documentary proof that the noncustodial parent has
15 instituted proceedings in the circuit court for a modification of
16 legal custody or a certified copy of the custodial parent's death
17 certificate.

18 (2) Where a person other than the custodial or noncustodial
19 parent has physical custody of the child, excluding visitation,
20 filing with the bureau for child support enforcement:

21 (A) An affidavit attesting that the person has obtained
22 physical custody of the child, describing the circumstances
23 under which the transfer of physical custody took place, and
24 stating that he or she anticipates that his or her physical custody
25 of the child will continue for the foreseeable future; and

26 (B) Documentary proof that the person claiming physical
27 custody is currently the person responsible for the child by
28 producing at least one of the following:

29 (i) School records demonstrating that school authorities
30 consider the person claiming physical custody the adult
31 responsible for the child;

32 (ii) Medical records demonstrating that the person claiming
33 physical custody is empowered to make medical decisions on
34 behalf of the child;

35 (iii) Documents from another public assistance agency
36 showing that the person claiming physical custody is currently
37 receiving other public assistance on behalf of the child;

38 (iv) A notarized statement from the custodial parent
39 attesting to the fact that he or she has transferred physical
40 custody to the person;

41 (v) A verifiable order of a court of competent jurisdiction
42 transferring physical or legal custody to the person;

43 (vi) Documentation that the person claiming physical
44 custody has filed a petition in circuit court to be appointed the
45 child's guardian;

46 (vii) Documentation that the child, if over the age of
47 fourteen, has instituted proceedings in circuit court to have the
48 person claiming physical custody nominated as his or her
49 guardian; or

50 (viii) Any other official documents of a federal, state or
51 local agency or governing body demonstrating that the person
52 currently has physical custody of the child and has taken action
53 indicating that he or she anticipates such physical custody to
54 continue in the foreseeable future.

55 (b) The bureau for child support enforcement shall mail, by
56 first class mail, a copy of the affidavit and supporting documen-
57 tary evidence required under subsection (a) of this section, to
58 the circuit court which issued the support order being enforced
59 by bureau for child support enforcement and to the parties to
60 the order, at their last known addresses, together with a written
61 notice stating that any party has ten days to object to the
62 redirection of support payments by filing an affidavit and
63 evidence showing that the person seeking redirection of the
64 payments does not have physical custody of the child. If no
65 objection is received by the bureau for child support enforce-
66 ment by the end of the ten-day period, the bureau may order

67 payments redirected to the person claiming physical custody for
68 the benefit of the child. If a responsive affidavit and supporting
69 evidence is filed within the ten-day period and, in the opinion
70 of the bureau for child support enforcement, either disproves
71 the claim of the person seeking redirection of support payments
72 or raises a genuine issue of fact as to whether the person has
73 actual physical custody of the child, the bureau for child
74 support enforcement shall continue to forward support pay-
75 ments to the custodial parent. Any person who disagrees with
76 the determination of the bureau for child support enforcement
77 may petition the circuit court for modification of the child
78 support order.

79 (c) Any person who files a false affidavit pursuant to this
80 section shall be guilty of false swearing and, upon conviction
81 thereof, shall be punished as provided by law for such offense.

§48-18-115. Payment of support to the bureau for child support enforcement.

1 All support payments owed to an obligee who is an
2 applicant for or recipient of the services of the bureau for child
3 support enforcement shall be paid to the bureau for child
4 support enforcement. Any other obligee owed a duty of support
5 under the terms of a support order entered by a court of
6 competent jurisdiction may request that the support payments
7 be made to the bureau for child support enforcement. In such
8 case, the bureau for child support enforcement shall proceed to
9 receive and disburse such support payments to or on behalf of
10 the obligee as provided by law.

§48-18-116. Authorization for data processing and retrieval system.

1 In accordance with an initial and annually updated advance
2 data processing planning document approved by the secretary
3 of the federal department of health and human services, the
4 bureau for child support enforcement may establish an auto-
5 matic data processing and retrieval system designed effectively
6 and efficiently to assist the commissioner in carrying out the
7 provisions of this chapter.

§48-18-117. Obtaining support from federal tax refunds.

1 The commission shall, by legislative rule promulgated
2 pursuant to chapter twenty-nine-a of this code, place in effect
3 procedures necessary for the bureau for child support enforce-
4 ment to obtain payment of past due support from federal tax
5 refunds from overpayments made to the secretary of the
6 treasury of the United States. The bureau for child support
7 enforcement shall take all steps necessary to implement and
8 utilize such procedures.

§48-18-118. Obtaining support from state income tax refunds.

1 (a) The tax commissioner shall establish procedures
2 necessary for the bureau for child support enforcement to obtain
3 payment of past due support from state income tax refunds from
4 overpayment made to the tax commissioner pursuant to the
5 provisions of article twenty-one, chapter eleven of this code.

6 (b) The commission shall, by legislative rule promulgated
7 pursuant to chapter twenty-nine-a of this code, establish
8 procedures necessary for the bureau for child support enforce-
9 ment to enforce a support order through a notice to the tax
10 commissioner which will cause any refund of state income tax
11 which would otherwise be payable to an obligor to be reduced
12 by the amount of overdue support owed by such obligor.

13 (1) Such legislative rule shall, at a minimum, prescribe:

14 (A) The time or times at which the bureau for child support
15 enforcement shall serve on the obligor or submit to the tax
16 commissioner notices of past due support;

17 (B) The manner in which such notices shall be served on
18 the obligor or submitted to the tax commissioner;

19 (C) The necessary information which shall be contained in
20 or accompany the notices;

21 (D) The amount of the fee to be paid to the tax commis-
22 sioner for the full cost of applying the procedure whereby past
23 due support is obtained from state income tax refunds; and

24 (E) Circumstances when the bureau for child support
25 enforcement may deduct a twenty-five dollar fee from the
26 obligor's state income tax refund. Such rule may not require a
27 deduction from the state income tax refund of an applicant who
28 is a recipient of assistance from the bureau for children and
29 families in the form of temporary assistance for needy families.

30 (2) Withholding from state income tax refunds may not be
31 pursued unless the bureau for child support enforcement has
32 examined the obligor's pattern of payment of support and the
33 obligee's likelihood of successfully pursuing other enforcement
34 actions, and has determined that the amount of past due support
35 which will be owed, at the time the withholding is to be made,
36 will be one hundred dollars or more. In determining whether the
37 amount of past due support will be one hundred dollars or more,
38 the bureau for child support enforcement shall consider the
39 amount of all unpaid past due support, including that which
40 may have accrued prior to the time that the bureau for child
41 support enforcement first agreed to enforce the support order.

42 (c) The commissioner of the bureau for child support
43 enforcement shall enter into agreements with the secretary of
44 the treasury and the tax commissioner, and other appropriate
45 governmental agencies, to secure information relating to the
46 social security number or numbers and the address or addresses
47 of any obligor, in order to provide notice between such agencies
48 to aid the bureau for child support enforcement in requesting
49 state income tax deductions and to aid the tax commissioner in
50 enforcing such deductions. In each such case, the tax commis-
51 sioner, in processing the state income tax deduction, shall notify
52 the bureau for child support enforcement of the obligor's home
53 address and social security number or numbers. The bureau for
54 child support enforcement shall provide this information to any
55 other state involved in processing the support order.

56 (d) For the purposes of this section, "past due support"
57 means the amount of unpaid past due support owed under the
58 terms of a support order to or on behalf of a child, or to or on
59 behalf of a minor child and the parent with whom the child is
60 living, regardless of whether the amount has been reduced to a
61 judgment or not.

62 (e) The bureau for child support enforcement may, under
63 the provisions of this section, enforce the collection of past due
64 support on behalf of a child who has reached the age of
65 majority.

66 (f) The legislative rule promulgated by the commission
67 pursuant to the provisions of this section and pursuant to
68 chapter twenty-nine-a of this code, shall, at a minimum, provide
69 that prior to notifying the tax commissioner of past due support,
70 a notice to the obligor as prescribed under subsection (a) of this
71 section shall:

72 (1) Notify the obligor that a withholding will be made from
73 any refund otherwise payable to such obligor;

74 (2) Instruct the obligor of the steps which may be taken to
75 contest the determination of the bureau for child support
76 enforcement that past due support is owed or the amount of the
77 past due support; and

78 (3) Provide information with respect to the procedures to be
79 followed, in the case of a joint return, to protect the share of the
80 refund which may be payable to another person.

81 (g) If the bureau for child support enforcement is notified
82 by the tax commissioner that the refund from which withhold-
83 ing is proposed to be made is based upon a joint return, and if
84 the past due support which is involved has not been assigned to
85 the department of health and human resources, the bureau for
86 child support enforcement may delay distribution of the amount
87 withheld until such time as the tax commissioner notifies the
88 bureau for child support enforcement that the other person
89 filing the joint return has received his or her proper share of the
90 refund, but such delay shall not exceed six months.

91 (h) In any case in which an amount is withheld by the tax
92 commissioner under the provisions of this section and paid to
93 the bureau for child support enforcement, if the bureau for child
94 support enforcement subsequently determines that the amount
95 certified as past due was in excess of the amount actually owed
96 at the time the amount withheld is to be distributed, the agency
97 shall pay the excess amount withheld to the obligor thought to
98 have owed the past due support or, in the case of amounts
99 withheld on the basis of a joint return, jointly to the parties
100 filing such return.

101 (i) The amounts received by the bureau for child support
102 enforcement shall be distributed in accordance with the
103 provisions for distribution set forth in 42 U.S.C. §657. The
104 commission shall promulgate a legislative rule to establish the
105 appropriate distribution as may be required by the federal law.

§48-18-119. Obtaining support from unemployment compensation benefits.

1 (a) The commissioner shall determine on a periodic basis
2 whether individuals receiving unemployment compensation
3 owe child support obligations which are being enforced or have
4 been requested to be enforced by the bureau for child support
5 enforcement. If an individual is receiving such compensation
6 and owes any such child support obligation which is not being
7 met, the bureau for child support enforcement shall enter into
8 an agreement with such individual to have specified amounts
9 withheld otherwise payable to such individual, and shall submit
10 a copy of such agreement to the bureau of employment pro-
11 grams. In the absence of such agreement, the bureau for child
12 support enforcement shall bring legal process to require the
13 withholding of amounts from such compensation.

14 (b) The secretary shall enter into a written agreement with
15 the bureau of employment programs for the purpose of with-
16 holding unemployment compensation from individuals with
17 unmet support obligations being enforced by the bureau for
18 child support enforcement. The bureau for child support
19 enforcement shall agree only to a withholding program that it
20 expects to be cost effective, and, as to reimbursement, shall
21 agree only to reimburse the bureau of employment programs for
22 its actual, incremental costs of providing services to the bureau
23 for child support enforcement.

24 (c) The commission shall promulgate a procedural rule for
25 selecting cases to pursue through the withholding of unemploy-
26 ment compensation for support purposes. This rule shall be
27 designed to ensure maximum case selection and minimal
28 discretion in the selection process.

29 (d) The commissioner shall, not less than annually, provide
30 a receipt to an individual who requests a receipt for the support

31 paid through the withholding of unemployment compensation,
32 if receipts are not provided through other means.

33 (e) The commissioner shall, through direct contact with the
34 bureau of employment programs, process cases through the
35 bureau of employment programs in this state, and shall process
36 cases through support enforcement agencies in other states. The
37 commissioner shall receive all amounts withheld by the bureau
38 of employment programs in this state, forwarding any amounts
39 withheld on behalf of support enforcement agencies in other
40 states to those agencies.

41 (f) At least one time per year, the commission shall review
42 and document program operations, including case selection
43 criteria established under subsection (c) of this section, and the
44 costs of the withholding process versus the amounts collected
45 and, as necessary, modify procedures and renegotiate the
46 services provided by the bureau of employment programs to
47 improve program and cost effectiveness.

48 (g) For the purposes of this section:

49 (1) "Legal process" means a writ, order, summons or other
50 similar process in the nature of garnishment which is issued by
51 a court of competent jurisdiction or by an authorized official
52 pursuant to an order to such court or pursuant to state or local
53 law.

54 (2) "Unemployment compensation" means any compensa-
55 tion under state unemployment compensation law (including
56 amounts payable in accordance with agreements under any
57 federal unemployment compensation law). It includes extended
58 benefits, unemployment compensation for federal employees,
59 unemployment compensation for ex-servicemen, trade readjust-
60 ment allowances, disaster unemployment assistance, and
61 payments under the Federal Redwood National Park Expansion
62 Act.

§48-18-120. Statements of account.

1 The bureau for child support enforcement shall provide
2 annual statements of their account to each obligor and obligee
3 without charge. Additional statements of account shall be
4 provided at a fee of five dollars, unless such fee is waived
5 pursuant to a rule promulgated by the commission. Statements
6 provided under this subsection are in addition to statements
7 provided for judicial hearings. The commissioner shall establish
8 procedures whereby an obligor or obligee can contest or correct
9 a statement of account.

§48-18-121. Providing information to consumer reporting agencies; requesting consumer credit reports for child support purposes.

1 (a) For purposes of this section, the term “consumer
2 reporting agency” means any person who, for monetary fees,
3 dues, or on a cooperative nonprofit basis, regularly engages, in
4 whole or in part, in the practice of assembling or evaluating
5 consumer credit information or other information on consumers
6 for the purpose of furnishing consumer reports to third parties.

7 (b) The commission shall propose and adopt a procedural
8 rule in accordance with the provisions of sections four and
9 eight, article three, chapter twenty-nine-a of this code, estab-
10 lishing procedures whereby information regarding the amount
11 of overdue support owed by an obligor will be reported
12 periodically by the bureau for child support enforcement to any
13 consumer reporting agency, after a request by the consumer
14 reporting agency that it be provided with the periodic reports.

15 (1) The procedural rule adopted by the commission shall
16 provide that any information with respect to an obligor shall be
17 made available only after notice has been sent to the obligor of
18 the proposed action, and such obligor has been given a reason-
19 able opportunity to contest the accuracy of the information.

20 (2) The procedural rule adopted shall afford the obligor
21 with procedural due process prior to making information
22 available with respect to the obligor.

23 (c) The information made available to a consumer reporting
24 agency regarding overdue support may only be made available
25 to an entity that has furnished evidence satisfactory to the
26 bureau that the entity is a consumer reporting agency as defined
27 in subsection (a) of this section.

28 (d) The bureau for child support enforcement may impose
29 a fee for furnishing such information, not to exceed the actual
30 cost thereof.

31 (e) The commissioner of the bureau for child support
32 enforcement, or her or his designee, may request a consumer
33 reporting agency to prepare and furnish to the bureau for child
34 support enforcement a consumer report for purposes relating to
35 child support, by certifying to the consumer reporting agency
36 that:

37 (1) The consumer report is needed for the purpose of
38 establishing an individual's capacity to make child support
39 payments or determining the appropriate level of such payments
40 in order to set an initial or modified child support award;

41 (2) The paternity of the child of the individual has been
42 established or acknowledged by the individual in accordance
43 with state law;

44 (3) The individual whose report is being requested has been
45 given at least ten days' prior notice of such request by certified
46 mail to his or her last known address that such report is being
47 requested; and

48 (4) The consumer report will be kept confidential, will be
49 used solely for a purpose described in subdivision (1) of this

50 subsection and will not be used in connection with any other
51 civil, administrative or criminal proceeding or for any other
52 purpose.

§48-18-122. Central state case registry.

1 (a) The bureau for child support enforcement shall establish
2 and maintain a central state case registry of child support
3 orders. All orders in cases when any party receives any service
4 provided by the bureau for child support enforcement shall be
5 included in the registry. Any other support order entered or
6 modified in this state on or after the first day of October, one
7 thousand nine hundred ninety-eight, shall be included in the
8 registry. The bureau for child support enforcement, upon receipt
9 of any information regarding a new hire provided pursuant to
10 section 18-125 of this article shall compare information
11 received to determine if the new hire's income is subject to
12 wage withholding and notify the employer pursuant to that
13 section.

14 (b) Each party to a child support proceeding shall, upon
15 entry of an order awarding or modifying child support, com-
16 plete and file with the clerk of the circuit court issuing the order
17 a form, to be promulgated by the administrative office of the
18 supreme court of appeals, listing information concerning the
19 location and identity of a party including, but not limited to:
20 The party's social security number, residential and mailing
21 address, telephone number and driver's license number; the
22 child's name, birth date and social security number; and the
23 party's employer's name, address and telephone number. The
24 clerk shall promptly forward all such information to the state
25 case registry. The parties are required to notify the state case
26 registry of any change in the information contained on the form,
27 and every order for support shall so state. All information
28 provided to the state case registry shall be subject to the privacy
29 and confidentiality safeguards contained in section 18-131.

30 (c) In any subsequent child support enforcement action
31 between the parties, there shall be a presumption that the
32 requirements for notice and service of process have been met
33 upon a showing that the bureau for child support enforcement
34 has made a diligent effort to ascertain the location of a party by
35 delivery of written notice by certified mail, return receipt
36 requested, to the most recent employer or residential mailing
37 address filed with the state case registry pursuant to subsection
38 (b) of this section.

§48-18-123. Subpoenas.

1 In order to obtain financial and medical insurance or other
2 information pursuant to the establishment, enforcement and
3 modification provisions set forth in this chapter, the bureau for
4 child support enforcement or any out-of-state agency adminis-
5 tering a program under Title IV-D of the Social Security Act
6 may serve, by certified mail or personal service, an administra-
7 tive subpoena on any person, corporation, partnership, financial
8 institution, labor organization or state agency, for an appearance
9 or for production of financial or medical insurance or other
10 information. In case of disobedience to the subpoena, the
11 bureau for child support enforcement may invoke the aid of any
12 circuit court in requiring the appearance or production of
13 records and financial documents. The bureau for child support
14 enforcement may assess a civil penalty of no more than one
15 hundred dollars for the failure of any person, corporation,
16 financial institution, labor organization or state agency to
17 comply with requirements of this section.

§48-18-124. Liability for financial institutions providing financial records to the bureau for child support enforcement; agreements for data match system; encumbrance or surrender of assets.

1 (a) Notwithstanding any other provision of this code, a
2 financial institution shall not be liable under the law of this state
3 to any person for:

4 (1) Disclosing any financial record of an individual to the
5 bureau for child support enforcement in response to a subpoena
6 issued by the bureau pursuant to section 18-123 of this article;

7 (2) Disclosing any financial record of an individual to the
8 bureau for child support enforcement pursuant to the terms of
9 an agreement with such financial institution pursuant to
10 subsection (f) of this section;

11 (3) Encumbering or surrendering assets held by such
12 financial institution in response to a notice of lien or levy issued
13 by the bureau for child support enforcement as provided in
14 subsection (g) of this section; or

15 (4) For any other action taken in good faith to comply with
16 the requirements of this section.

17 (b) The bureau for child support enforcement, after obtain-
18 ing a financial record of an individual from a financial institu-
19 tion, may disclose such financial record only for the purpose of,
20 and to the extent necessary in, establishing, modifying or
21 enforcing a child support obligation of such individual.

22 (c) The civil liability of a person who knowingly, or by
23 reason of negligence, discloses a financial record of an individ-
24 ual in violation of subsection (b) of this section is governed by
25 the provisions of federal law as set forth in 42 U.S.C. §669A.

26 (d) For purposes of this section, the term “financial
27 institution” means:

28 (1) Any bank or savings association;

29 (2) A person who is an institution-affiliated party, as that
30 term is defined in the Federal Deposit Insurance Act, 12 U.S.C.
31 §1813(u);

32 (3) Any federal credit union or state-chartered credit union,
33 including an institution-affiliated party of a credit union; and

34 (4) Any benefit association, insurance company, safe
35 deposit company, money-market mutual fund, or similar entity
36 authorized to do business in this state.

37 (e) For purposes of this section, the term “financial record”
38 means an original of, a copy of, or information known to have
39 been derived from, any record held by a financial institution
40 pertaining to a customer’s relationship with the financial
41 institution.

42 (f) Notwithstanding any provision of this code to the
43 contrary, the bureau for child support enforcement shall enter
44 into agreements with financial institutions doing business in the
45 state to develop and operate, in coordination with such financial
46 institutions, a data match system, using automated data ex-
47 changes, to the maximum extent feasible, in which each
48 financial institution is required to provide for each calendar
49 quarter the name, record address, social security number or
50 other taxpayer identification number, and other identifying
51 information for each obligor, as defined in section 1-235 of this
52 chapter, who maintains an account at such institution and who
53 owes past due support. The bureau for child support enforce-
54 ment will identify to the financial institution an obligor who
55 owes past due support by his or her name and social security
56 number or other taxpayer identification number. The bureau for
57 child support enforcement, upon written request and proof of
58 actual costs incurred, shall pay a reasonable fee to a financial
59 institution for conducting the data matching services not to
60 exceed the actual costs incurred by such financial institution or

61 one hundred dollars per institution per quarter, whichever is
62 less.

63 (g) The financial institution, in response to a notice of a lien
64 or levy, shall encumber or surrender, as the case may be, assets
65 held by such institution on behalf of any noncustodial parent
66 who is subject to a lien for child support.

§48-18-125. Employment and income reporting.

1 (a) For purposes of this section:

2 (1) "Employee" means an individual who is an "employee"
3 for purposes of federal income tax withholding, as defined in 26
4 U.S.C. §3401;

5 (2) "Employer" means the person or entity for whom an
6 individual performs or performed any service of whatever
7 nature and who has control of the payment of the individual's
8 wages for performance of such service or services, as defined
9 in 26 U.S.C. §3401;

10 (3) An individual is considered a "new hire" on the first day
11 in which that individual performs services for remuneration and
12 on which an employer begins to withhold amounts for income
13 tax purposes.

14 (b) Except as provided in subsections (c) and (d) of this
15 section, all employers doing business in the state shall report to
16 the bureau for child support enforcement:

17 (1) The hiring of any person who resides or works in this
18 state to whom the employer anticipates paying earnings; and

19 (2) The rehiring or return to work of any employee who
20 resides or works in this state.

21 (c) Employers are not required to report the hiring, rehiring
22 or return to work of any person who is an employee of a federal
23 or state agency performing intelligence or counterintelligence
24 functions if the head of such agency has determined that
25 reporting could endanger the safety of the employee or compro-
26 mise an ongoing investigation or intelligence mission.

27 (d) An employer that has employees in states other than this
28 state and that transmits reports magnetically or electronically is
29 not required to report to the bureau for child support enforce-
30 ment the hiring, rehiring or return to work of any employee if
31 the employer has filed with the secretary of the federal depart-
32 ment of health and human services, as required by 42 U.S.C.
33 §653A, a written designation of another state in which it has
34 employees as the reporting state.

35 (e) Employers shall report by mailing to the bureau for
36 child support enforcement a copy of the employee's W-4 form;
37 however, an employer may transmit such information through
38 another means if approved in writing by the bureau for child
39 support enforcement prior to the transmittal. The report shall
40 include the employee's name, address and social security
41 number, the employer's name and address, any different
42 address of the payroll office and the employer's federal tax
43 identification number. The employer may report other informa-
44 tion, such as date of birth or income information, if desired.

45 (f) Employers shall submit a report within fourteen days of
46 the date of the hiring, rehiring or return to work of the em-
47 ployee. However, if the employer transmits the reports magneti-
48 cally or electronically by two monthly submissions, the reports
49 shall be submitted not less than twelve days nor more than
50 sixteen days apart.

51 (g) An employer shall provide to the bureau for child
52 support enforcement, upon its written request, information

53 regarding an obligor's employment, wages or salary, medical
54 insurance, and location of employment.

55 (h) Any employer who fails to report in accordance with the
56 provisions of this section shall be assessed a civil penalty of no
57 more than twenty-five dollars per failure. If the failure to report
58 is the result of a conspiracy between the employer and the
59 employee not to supply the required report or to supply a false
60 or incomplete report, the employer shall be assessed a civil
61 penalty of no more than five hundred dollars.

62 (i) Employers required to report under this section may
63 assess each employee so reported one dollar for the administra-
64 tive costs of reporting.

65 (j) Uses for the new hire information include, but are not
66 limited to, the following:

67 (1) The state directory of new hires shall furnish the
68 information to the national directory of new hires;

69 (2) The bureau for child support enforcement shall use
70 information received pursuant to this section to locate individu-
71 als for purposes of establishing paternity and of establishing,
72 modifying and enforcing child support obligations, and may
73 disclose such information to any agent of the agency that is
74 under contract with the bureau to carry out such purposes;

75 (3) State agencies responsible for administering a program
76 specified in 42 U.S.C. §1320b-7(b) shall have access to
77 information reported by employers for purposes of verifying
78 eligibility for the program; and

79 (4) The bureau of employment programs shall have access
80 to information reported by employers for purposes of adminis-
81 tering employment security and workers' compensation
82 programs.

§48-18-126. Review and adjustment of child support orders.

1 (a) Either parent or, if there has been an assignment of
2 support to the department of health and human resources, the
3 bureau for child support enforcement shall have the right to
4 request an administrative review of the child support award in
5 the following circumstances:

6 (1) Where the request for review is received thirty-six
7 months or more after the date of the entry of the order or from
8 the completion of the previous administrative review, which-
9 ever is later, the bureau for child support enforcement shall
10 conduct a review to determine whether the amount of the child
11 support award in such order varies from the amount of child
12 support that would be awarded at the time of the review
13 pursuant to the guidelines for child support awards contained in
14 article 13-101, *et seq.* If the amount of the child support award
15 under the existing order differs by ten percent or more from the
16 amount that would be awarded in accordance with the child
17 support guidelines, the bureau for child support enforcement
18 shall file with the circuit court a motion for modification of the
19 child support order. If the amount of the child support award
20 under the existing order differs by less than ten percent from the
21 amount that would be awarded in accordance with the child
22 support guidelines, the bureau for child support enforcement
23 may, if it determines that such action is in the best interest of
24 the child or otherwise appropriate, file with the circuit court a
25 motion for modification of the child support order.

26 (2) Where the request for review of a child support award
27 is received less than thirty-six months after the date of the entry
28 of the order or from the completion of the previous administra-
29 tive review, the bureau for child support enforcement shall
30 undertake a review of the case only where it is alleged that there
31 has been a substantial change in circumstances. If the bureau
32 for child support enforcement determines that there has been a

33 substantial change in circumstances and if it is in the best
34 interests of the child, the bureau shall file with the circuit court
35 a motion for modification of the child support order in accor-
36 dance with the guidelines for child support awards contained in
37 article 13-101, *et seq.*, of this chapter

38 (b) The bureau for child support enforcement shall notify
39 both parents at least once every three years of their right to
40 request a review of a child support order. The notice may be
41 included in any order granting or modifying a child support
42 award. The bureau for child support enforcement shall give
43 each parent at least thirty days' notice before commencing any
44 review, and shall further notify each parent, upon completion of
45 a review, of the results of the review, whether of a proposal to
46 move for modification or of a proposal that there should be no
47 change.

48 (c) When the result of the review is a proposal to move for
49 modification of the child support order, each parent shall be
50 given thirty days' notice of the hearing on the motion, the
51 notice to be directed to the last known address of each party by
52 first class mail. When the result of the review is a proposal that
53 there be no change, any parent disagreeing with that proposal
54 may, within thirty days of the notice of the results of the review,
55 file with the court a motion for modification setting forth in full
56 the grounds therefor.

57 (d) For the purposes of this section, a "substantial change
58 in circumstances" includes, but is not limited to, a changed
59 financial condition, a temporary or permanent change in
60 physical custody of the child which the court has not ordered,
61 increased need of the child, or other financial conditions.
62 "Changed financial conditions" means increases or decreases in
63 the resources available to either party from any source.
64 Changed financial conditions includes, but is not limited to, the
65 application for or receipt of any form of public assistance

66 payments, unemployment compensation and workers' compen-
67 sation, or a fifteen percent or more variance from the amount of
68 the existing order and the amount of child support that would be
69 awarded according to the child support guidelines.

§48-18-127. Adoption of form to identify payments.

1 The commission shall recommend to the secretary a form
2 for the purpose of identification of child support payments
3 which shall include, at a minimum, any amount of child support
4 obligation paid under an income withholding order, the name
5 and address of the payee, and the availability of health insur-
6 ance. The form may include other information needed to ensure
7 the proper credit and distribution of such payments. The
8 secretary shall adopt any revised form no later than the first day
9 of July, one thousand nine hundred ninety-six, which shall
10 include all information listed herein. Following the adoption of
11 such form, the commission shall promulgate such legislative
12 rules pursuant to chapter twenty-nine-a as may be necessary to
13 ensure that all information provided on the form is correct. This
14 rule shall constitute an emergency rule within the meaning of
15 section fifteen, article three, chapter twenty-nine-a of this code.

§48-18-128. Billing for fees and costs.

1 (a) When any filing, copying or other service is provided to
2 the bureau for child support enforcement, the state or county
3 official or the clerk of any court providing such fee for a
4 charge, shall bill the bureau for child support enforcement
5 monthly.

6 (b) When any filing, copying or other service is provided to
7 a person, agency or entity who is providing services for the
8 bureau for child support enforcement pursuant to a contract, the
9 state or county official or the clerk of any court providing such
10 fee for a charge, shall bill the entity, agency, person or bureau
11 for child support enforcement monthly, in accord with the terms

12 of the contract. The bureau for child support enforcement shall
13 provide the relevant terms of such agreement to those officials
14 upon implementation of any agreement.

15 (c) A state or county official and the clerk of any court who
16 charges a deposit, library fee, filing fee for filing and copying
17 documents or their service, if the filing, copying or services is
18 for the bureau for child support enforcement or for a person,
19 entity or agency providing services pursuant to a contract as
20 described in this article, shall bill the bureau for child support
21 enforcement monthly or the person, entity or agency providing
22 such services monthly, in accord with the terms of any contract.

**§48-18-129. 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 bureau for child
7 support enforcement for expenditure, disbursement and
8 distribution by the bureau 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 bureau and the commis-
13 sioner, the bureau shall comply with such requirements and
14 standards as the secretary of the federal department of health
15 and human services may have determined, as of the effective
16 date of this section, to be necessary for the establishment of an
17 effective program for locating obligors, establishing paternity,
18 obtaining support orders and collecting support payments.

19 (c) The commissioner shall propose for promulgation a
20 legislative rule in accordance with the provisions of chapter
21 twenty-nine-a of this code, to establish time-keeping require-
22 ments to assure the maximum funding of incentive payments,
23 grants and other funding sources available to the state for the
24 processing of cases filed for the location of absent parents, the
25 establishment of paternity, and the establishment, modification
26 or enforcement of orders of child support.

§48-18-130. Publicizing child support enforcement services.

1 The bureau for child support enforcement shall regularly
2 and frequently publicize, through public service announce-
3 ments, the availability of child support enforcement services
4 under the provisions of this chapter and otherwise, including
5 information as to any application fees for such services and a
6 toll-free telephone number and a postal address at which further
7 information may be obtained.

§48-18-131. Access to records, confidentiality.

1 (a) All records in the possession of the bureau for child
2 support enforcement, including records concerning an individ-
3 ual case of child or spousal support, shall be kept confidential
4 and shall not be released except as provided below:

5 (1) Records shall be disclosed or withheld as required by
6 federal law or regulations promulgated thereunder notwith-
7 standing other provisions of this section.

8 (2) Information as to the whereabouts of a party or the child
9 shall not be released to a person against whom a protective
10 order has been entered with respect to such party or child or
11 where the state has reason to believe that the release of the
12 information to the person making the request may result in
13 physical or emotional harm to the party or the child.

14 (3) The phone number, address, employer and other
15 information regarding the location of the obligor, the obligee
16 and the child shall only be disclosed: (A) Upon his or her
17 written consent, to the person whom the consent designates; or
18 (B) notwithstanding subdivision (4) of this subsection, to the
19 obligee, the obligor, the child or the caretaker or representative
20 of the child, upon order of a court if the court finds that the
21 disclosure is for a bona fide purpose, is not contrary to the best
22 interest of a child and does not compromise the safety of any
23 party: *Provided*, That the identity and location of the employer
24 may be disclosed on the letters, notices and pleadings of the
25 bureau as necessary and convenient for the determination of
26 support amounts and the establishment, investigation, modifica-
27 tion, enforcement, collection and distribution of support.

28 (4) Information and records other than the phone number,
29 address, employer and information regarding the location of the
30 obligor, the obligee and the child shall be disclosed to the
31 obligor, the obligee, the child or the caretaker of the child or his
32 or her duly authorized representative, upon his or her written
33 request: *Provided*, That when the obligor requests records other
34 than collection and distribution records, financial records
35 relevant to the determination of the amount of support pursuant
36 to the guidelines, or records the obligor has supplied, the bureau
37 shall mail a notice by first class mail to the last known address
38 of the obligee notifying him or her of the request. The notice
39 shall advise the obligee of his or her right to object to the
40 release of records on the grounds that the records are not
41 relevant to the determination of the amount of support, or the
42 establishment, modification, enforcement, collection or
43 distribution of support. The notice shall also advise the obligee
44 of his or her right to disclosure of records provided in this
45 section in order to determine what records the bureau for child
46 support enforcement may have. In the event of any objection,
47 the bureau shall determine whether or not the information shall
48 be released.

49 (5) Information in specific cases may be released as is
50 necessary or to determine the identity, location, employment,
51 income and assets of an obligor.

52 (6) Information and records may be disclosed to the bureau
53 of vital statistics, bureau of employment programs, the workers'
54 compensation division, state tax department and the internal
55 revenue service, or other state or federal agencies or depart-
56 ments as may be necessary or desirable in obtaining any
57 address, employment, wage or benefit information for the
58 purpose of determining the amount of support or establishing,
59 enforcing, collecting and distributing support.

60 (b) Any person who willfully violates this section shall be
61 guilty of a misdemeanor and, upon conviction thereof, shall be
62 fined not less than one hundred nor more than one thousand
63 dollars, or confined in the county or regional jail not more than
64 six months, or both fined and imprisoned.

§48-18-132. Access to information.

1 (a) All state, county and municipal agencies' offices and
2 employers, including profit, nonprofit and governmental
3 employers, receiving a request for information and assistance
4 from the bureau for child support enforcement or any out-of-
5 state agency administering a program under Title IV-D of the
6 Social Security Act, shall cooperate with the bureau or with the
7 out-of-state agency in the location of parents who have aban-
8 doned and deserted children and shall provide the bureau or the
9 out-of-state agency with all available pertinent information
10 concerning the location, income and property of those parents.

11 (b) Notwithstanding any other provision of law to the
12 contrary, any entity conducting business in this state or incorpo-
13 rated under the laws of this state shall, upon certification by the
14 bureau or any out-of-state agency administering a program
15 under Title IV-D of the Social Security Act that the information

16 is needed to locate a parent for the purpose of collecting or
17 distributing child support, provide the bureau or the out-of-state
18 agency with the following information about the parent: Full
19 name, social security number, date of birth, home address,
20 wages and number of dependents listed for income tax pur-
21 poses: *Provided*, That no entity may provide any information
22 obtained in the course of providing legal services, medical
23 treatment or medical services.

24 (c)(1) The bureau for child support enforcement shall have
25 access, subject to safeguards on privacy and information
26 security, and to the nonliability of entities that afford such
27 access under this subdivision, to information contained in the
28 following records, including automated access, in the case of
29 records maintained in automated data bases:

30 (A) Records of other state and local government agencies,
31 including, but not limited to:

32 (i) Vital statistics, including records of marriage, birth and
33 divorce;

34 (ii) State and local tax and revenue records, including
35 information on residence address, employer, income and assets;

36 (iii) Records concerning real and titled personal property;

37 (iv) Records of occupational and professional licenses, and
38 records concerning the ownership and control of corporations,
39 partnerships and other business entities;

40 (v) Employment security records;

41 (vi) Records of agencies administering public assistance
42 programs;

43 (vii) Records of the division of motor vehicles; and

44 (viii) Corrections records.

45 (B) Certain records held by private entities with respect to
46 individuals who owe or are owed support or certain individuals
47 against, or with respect to, whom a support obligation is sought,
48 consisting of:

49 (i) The names and addresses of such individuals and the
50 names and addresses of the employers of such individuals, as
51 appearing in the customer records of public utilities and cable
52 television companies, pursuant to an administrative subpoena
53 authorized by section thirty-three, article two of this chapter;
54 and

55 (ii) Information, including information on assets and
56 liabilities, on such individuals held by financial institutions.

57 (2) Out-of-state agencies administering programs under
58 Title IV-D of the Social Security Act shall, without the need for
59 any court order, have the authority to access records in this state
60 by making a request through the bureau for child support
61 enforcement.

62 (d) All federal and state agencies conducting activities
63 under Title IV-D of the Social Security Act shall have access to
64 any system used by this state to locate an individual for
65 purposes relating to motor vehicles or law enforcement.

66 (e) Out-of-state agencies administering programs under
67 Title IV-D of the Social Security Act shall have the authority
68 and right to access and use, for the purpose of establishing or
69 enforcing a support order, the state law-enforcement and motor
70 vehicle data bases.

71 (f) The bureau for child support enforcement and out-of-
72 state agencies administering programs under Title IV-D of the
73 Social Security Act shall have the authority and right to access

74 and use, for the purpose of establishing or enforcing a support
75 order, interstate networks that state law-enforcement agencies
76 and motor vehicle agencies subscribe to or participate in, such
77 as the national law-enforcement telecommunications system
78 (NLETS) and the American association of motor vehicle
79 administrators (AAMVA) networks.

80 (g) No state, county or municipal agency or licensing board
81 required to release information pursuant to the provisions of
82 this section to the bureau for child support enforcement or to
83 any out-of-state agency administering programs under Title IV-
84 D of the Social Security Act may require the bureau for child
85 support enforcement or any out-of-state agency to obtain a
86 court order prior to the release of the information.

87 (h) Any information received pursuant to the provisions of
88 this section is subject to the confidentiality provisions set forth
89 in section 18-131 of this chapter.

§48-18-133. Recording of social security numbers in certain family matters.

1 (a) The social security number, if any, of any applicant for
2 a professional license, driver's license, occupational license,
3 recreational license, or marriage license must be recorded on
4 the application for such license.

5 (b) The social security number of any individual who is
6 subject to a divorce decree, support order, or paternity determi-
7 nation or acknowledgment must be placed in the records
8 relating to the matter.

9 (c) For the purposes of subsection (a) of this section, if the
10 licensing authority allows the use of a number other than the
11 social security number on the face of the document while the
12 social security number is kept on file at the agency, the appli-
13 cant shall be so advised by such authority.

ARTICLE 19. BUREAU FOR CHILD SUPPORT ENFORCEMENT ATTORNEY.

§48-19-101. Purposes; how article to be construed.

§48-19-102. Placement of bureau for child support enforcement attorneys throughout the state, supervision; office procedures.

§48-19-103. Duties of the bureau for support enforcement attorneys.

§48-19-104. Vacancies; interim bureau for child support enforcement attorney.

§48-19-105. Compensation; expenses.

§48-19-101. Purposes; how article to be construed.

1 (a) The purposes of this article are:

2 (1) To enumerate and describe the functions and duties of
3 the bureau for child support enforcement attorney as an
4 employee of the bureau for child support enforcement;

5 (2) To ensure that procedures followed by the bureau for
6 child support enforcement attorney will protect the best
7 interests of children in domestic relations matters; and

8 (3) To compel the enforcement of support orders, thereby
9 ensuring that persons legally responsible for the care and
10 support of children assume their legal obligations and reduce
11 the financial cost to this state of providing public assistance
12 funds for the care of children.

13 (b) This article shall be construed to facilitate the resolution
14 of domestic relations matters.

§48-19-102. Placement of bureau for child support enforcement attorneys throughout the state; supervision; office procedures.

1 (a) The bureau for child support enforcement shall employ
2 twenty-one employees in the position of bureau for child
3 support enforcement attorney, and the offices of the bureau for
4 child support enforcement attorneys shall be distributed

5 geographically so as to provide an office for each of the
6 following areas of the state:

- 7 (1) The counties of Brooke, Hancock and Ohio;
- 8 (2) The counties of Marshall, Tyler and Wetzel;
- 9 (3) The counties of Pleasants, Ritchie, Wirt and Wood;
- 10 (4) The counties of Calhoun, Jackson and Roane;
- 11 (5) The counties of Mason and Putnam;
- 12 (6) The county of Cabell;
- 13 (7) The counties of McDowell and Wyoming;
- 14 (8) The counties of Logan and Mingo;
- 15 (9) The county of Kanawha;
- 16 (10) The county of Raleigh;
- 17 (11) The counties of Mercer, Monroe and Summers;
- 18 (12) The counties of Fayette and Nicholas;
- 19 (13) The counties of Greenbrier and Pocahontas;
- 20 (14) The counties of Braxton, Clay, Gilmer and Webster;
- 21 (15) The counties of Doddridge, Harrison, Lewis and
22 Upshur;
- 23 (16) The counties of Marion and Taylor;
- 24 (17) The counties of Monongalia and Preston;
- 25 (18) The counties of Barbour, Randolph and Tucker;

26 (19) The counties of Grant, Hampshire, Hardy, Mineral and
27 Pendleton;

28 (20) The counties of Berkeley, Jefferson and Morgan; and

29 (21) The counties of Boone, Lincoln and Wayne.

30 (b) Each bureau for child support enforcement attorney
31 shall be appointed by the commissioner of the bureau for child
32 support enforcement. The bureau for child support enforcement
33 attorneys shall be duly qualified attorneys licensed to practice
34 in the courts of this state. Bureau for child support enforcement
35 attorneys shall be exempted from the appointments in the
36 indigent cases which would otherwise be required pursuant to
37 article twenty-one, chapter twenty-nine of this code.

38 (c) Nothing contained herein shall prohibit the commis-
39 sioner from temporarily assigning, from time to time as
40 caseload may dictate, a bureau for child support enforcement
41 attorney from one geographical area to another geographical
42 area.

43 (d) The bureau for child support enforcement attorney is an
44 employee of the bureau for child support enforcement.

***§48-19-103. Duties of the bureau for support enforcement attor-
neys.**

1 Subject to the control and supervision of the commissioner:

2 (a) The bureau for child support enforcement attorney shall
3 supervise and direct the secretarial, clerical and other employ-
4 ees in his or her office in the performance of their duties as such
5 performance affects the delivery of legal services. The bureau
6 for child support enforcement attorney will provide appropriate
7 instruction and supervision to employees of his or her office
8 who are nonlawyers, concerning matters of legal ethics and

***Clerk's Note:** This section was also amended by S. B. 652 (Chapter 93), which passed subsequent to this act.

9 matters of law, in accordance with applicable state and federal
10 statutes, rules and regulations.

11 (b) In accordance with the requirements of rule 5.4(c) of the
12 rules of professional conduct as promulgated and adopted by
13 the supreme court of appeals, the bureau for child support
14 enforcement attorney shall not permit a nonlawyer who is
15 employed by the department of health and human resources in
16 a supervisory position over the bureau for child support
17 enforcement attorney to direct or regulate the attorney's
18 professional judgment in rendering legal services to recipients
19 of services in accordance with the provisions of this chapter;
20 nor shall any nonlawyer employee of the department attempt to
21 direct or regulate the attorney's professional judgment.

22 (c) The bureau for child support enforcement attorney shall
23 make available to the public an informational pamphlet,
24 designed in consultation with the commissioner. The informa-
25 tional pamphlet shall explain the procedures of the court and the
26 bureau for child support enforcement attorney; the duties of the
27 bureau for child support enforcement attorney; the rights and
28 responsibilities of the parties; and the availability of human
29 services in the community. The informational pamphlet shall be
30 provided as soon as possible after the filing of a complaint or
31 other initiating pleading. Upon request, a party to a domestic
32 relations proceeding shall receive an oral explanation of the
33 informational pamphlet from the office of the bureau for child
34 support enforcement attorney.

35 (d) The bureau for child support enforcement shall act to
36 establish the paternity of every child born out of wedlock for
37 whom paternity has not been established, when the child's
38 caretaker is an applicant for or recipient of temporary assistance
39 for needy families, and when the caretaker has assigned to the
40 division of human services any rights to support for the child
41 which might be forthcoming from the putative father: *Provided,*

42 That if the bureau for child support enforcement attorney is
43 informed by the secretary of the department of health and
44 human resources or his or her authorized employee that it has
45 been determined that it is against the best interest of the child
46 to establish paternity, the bureau for child support enforcement
47 attorney shall decline to so act. The bureau for child support
48 enforcement attorney, upon the request of the mother, alleged
49 father or the caretaker of a child born out of wedlock, regardless
50 of whether the mother, alleged father or the caretaker is an
51 applicant or recipient of temporary assistance for needy
52 families, shall undertake to establish the paternity of such child.

53 (e) The bureau for child support enforcement attorney shall
54 undertake to secure support for any individual who is receiving
55 temporary assistance for needy families when such individual
56 has assigned to the division of human services any rights to
57 support from any other person such individual may have:
58 *Provided,* That if the bureau for child support enforcement
59 attorney is informed by the secretary of the department of
60 health and human resources or his or her authorized employee
61 that it has been determined that it is against the best interests of
62 a child to secure support on the child's behalf, the bureau for
63 child support enforcement attorney shall decline to so act. The
64 bureau for child support enforcement attorney, upon the request
65 of any individual, regardless of whether such individual is an
66 applicant or recipient of temporary assistance for needy
67 families, shall undertake to secure support for the individual. If
68 circumstances require, the bureau for child support enforcement
69 attorney shall utilize the provisions of article 16-101, et seq. of
70 this code and any other reciprocal arrangements which may be
71 adopted with other states for the establishment and enforcement
72 of support obligations, and if such arrangements and other
73 means have proven ineffective, the bureau for child support
74 enforcement attorney may utilize the federal courts to obtain
75 and enforce court orders for support.

76 (f) The bureau for child support enforcement attorney shall
77 pursue the enforcement of support orders through the withhold-
78 ing from income of amounts payable as support:

79 (1) Without the necessity of an application from the obligee
80 in the case of a support obligation owed to an obligee to whom
81 services are already being provided under the provisions of this
82 chapter; and

83 (2) On the basis of an application for services in the case of
84 any other support obligation arising from a support order
85 entered by a court of competent jurisdiction.

86 (g) The bureau for child support enforcement attorney may
87 decline to commence an action to obtain an order of support
88 under the provisions of article 14-101, et seq., if an action for
89 divorce, annulment or separate maintenance is pending, or the
90 filing of such action is imminent, and such action will deter-
91 mine the issue of support for the child: *Provided*, That such
92 action shall be deemed to be imminent if it is proposed by the
93 obligee to be commenced within the twenty-eight days next
94 following a decision by the bureau for child support enforce-
95 ment attorney that an action should properly be brought to
96 obtain an order for support.

97 (h) If the bureau for child support enforcement office,
98 through the bureau for child support enforcement attorney, shall
99 undertake paternity determination services, child support
100 collection or support collection services for a spouse or former
101 spouse upon the written request of an individual who is not an
102 applicant or recipient of assistance from the division of human
103 services, the office may impose an application fee for furnish-
104 ing such services. Such application fee shall be in a reasonable
105 amount, not to exceed twenty-five dollars, as determined by the
106 commissioner: *Provided*, That the commissioner may fix such
107 amount at a higher or lower rate which is uniform for this state
108 and all other states if the secretary of the federal department of

109 health and human services determines that a uniform rate is
110 appropriate for any fiscal year to reflect increases or decreases
111 in administrative costs. Any cost in excess of the application fee
112 so imposed may be collected from the obligor who owes the
113 child or spousal support obligation involved.

§48-19-104. Vacancies; interim bureau for child support enforcement attorney.

1 (a) If the position of bureau for child support enforcement
2 attorney becomes vacant for any reason, the commissioner shall
3 appoint a person to the position of bureau for child support
4 enforcement attorney not later than six months after the
5 vacancy occurs.

6 (b) If necessary, the commissioner may appoint an interim
7 bureau for child support enforcement attorney to serve for not
8 longer than six months until a bureau for child support enforce-
9 ment attorney is appointed pursuant to this section.

§48-19-105. Compensation; expenses.

1 The salary of a bureau for child support enforcement
2 attorney shall be not less than thirty-five thousand dollars per
3 year, and shall be fixed by the commissioner, who shall take
4 into consideration ability, performance of duty and experience.
5 The compensation and expenses of the employees of the office
6 and all operating expenses incurred by the office shall be fixed
7 by the commissioner and paid by the bureau for child support
8 enforcement.

ARTICLE 20. UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT.

§48-20-101. Short title.

§48-20-102. Definitions.

§48-20-103. Proceedings governed by other law.

§48-20-104. Application to Indian tribes.

§48-20-105. International application of chapter.

§48-20-106. Effect of child custody determination.

- §48-20-107. Priority.
- §48-20-108. Notice to persons outside state.
- §48-20-109. Appearance and limited immunity.
- §48-20-110. Communication between courts.
- §48-20-111. Taking testimony in another state.
- §48-20-112. Cooperation between courts; preservation of records.
- §48-20-201. Initial child custody jurisdiction.
- §48-20-202. Exclusive, continuing jurisdiction.
- §48-20-203. Jurisdiction to modify determination.
- §48-20-204. Temporary emergency jurisdiction.
- §48-20-205. Notice; opportunity to be heard; joinder.
- §48-20-206. Simultaneous proceedings.
- §48-20-207. Inconvenient forum.
- §48-20-208. Jurisdiction declined by reason of conduct.
- §48-20-209. Information to be submitted to court.
- §48-20-210. Appearance of parties and child.
- §48-20-301. Definitions.
- §48-20-302. Enforcement under Hague convention.
- §48-20-303. Duty to enforce.
- §48-20-304. Temporary visitation.
- §48-20-305. Registration of child custody determination.
- §48-20-306. Enforcement of registered determination.
- §48-20-307. Simultaneous proceedings.
- §48-20-308. Expedited enforcement of child custody determination.
- §48-20-309. Service of petition and order.
- §48-20-310. Hearing and order.
- §48-20-311. Warrant to take physical custody of child.
- §48-20-312. Costs, fees and expenses.
- §48-20-313. Recognition and enforcement.
- §48-20-314. Appeals.
- §48-20-315. Role of prosecutor or public official.
- §48-20-316. Role of law enforcement.
- §48-20-317. Costs and expenses.
- §48-20-401. Application and construction.
- §48-20-402. Severability clause.
- §48-20-403. Effective date.
- §48-20-404. Transitional provision.

PART 1. GENERAL PROVISIONS.

§48-20-101. Short title.

- 1 This article may be cited as the “Uniform Child Custody
- 2 Jurisdiction and Enforcement Act”.

§48-20-102. Definitions.

1 (a) "Abandoned" means left without provision for reason-
2 able and necessary care or supervision.

3 (b) "Child" means an individual who has not attained
4 eighteen years of age.

5 (c) "Child custody determination" means a judgment,
6 decree or other order of a court providing for the legal custody,
7 physical custody or visitation with respect to a child. The term
8 includes a permanent, temporary, initial and modification order.
9 The term does not include an order relating to child support or
10 other monetary obligation of an individual.

11 (d) "Child custody proceeding" means a proceeding in
12 which legal custody, physical custody or visitation with respect
13 to a child is an issue. The term includes a proceeding for
14 divorce, separation, neglect, abuse, dependency, guardianship,
15 paternity, termination of parental rights and protection from
16 domestic violence, in which the issue may appear. The term
17 does not include a proceeding involving juvenile delinquency,
18 contractual emancipation or enforcement under part 20-301, et
19 seq.

20 (e) "Commencement" means the filing of the first pleading
21 in a proceeding.

22 (f) "Court" means an entity authorized under the law of a
23 state to establish, enforce or modify a child custody determina-
24 tion. Reference to a court of West Virginia means a court of
25 record.

26 (g) "Home state" means the state in which a child lived
27 with a parent or a person acting as a parent for at least six
28 consecutive months immediately before the commencement of
29 a child custody proceeding. In the case of a child less than six

30 months of age, the term means the state in which the child lived
31 from birth with any of the persons mentioned. A period of
32 temporary absence of any of the mentioned persons is part of
33 the period.

34 (h) "Initial determination" means the first child custody
35 determination concerning a particular child.

36 (i) "Issuing court" means the court that makes a child
37 custody determination for which enforcement is sought under
38 this chapter.

39 (j) "Issuing state" means the state in which a child custody
40 determination is made.

41 (k) "Modification" means a child custody determination
42 that changes, replaces, supersedes or is otherwise made after a
43 previous determination concerning the same child, whether or
44 not it is made by the court that made the previous determina-
45 tion.

46 (l) "Person" means an individual; corporation; business
47 trust; estate; trust; partnership; limited liability company;
48 association; joint venture; government, governmental subdivi-
49 sion, agency or instrumentality; public corporation; or any other
50 legal or commercial entity.

51 (m) "Person acting as a parent" means a person, other than
52 a parent, who:

53 (1) Has physical custody of the child or has had physical
54 custody for a period of six consecutive months, including any
55 temporary absence, within one year immediately before the
56 commencement of a child custody proceeding; and

57 (2) Has been awarded legal custody by a court or claims a
58 right to legal custody under the law of this state.

59 (n) "Physical custody" means the physical care and
60 supervision of a child.

61 (o) "State" means a state of the United States, the District
62 of Columbia, Puerto Rico, the United States Virgin Islands, or
63 any territory or insular possession subject to the jurisdiction of
64 the United States.

65 (p) "Tribe" means an Indian tribe or band, or Alaskan
66 Native village, which is recognized by federal law or formally
67 acknowledged by a state.

68 (q) "Warrant" means an order issued by a court authorizing
69 law-enforcement officers to take physical custody of a child.

§48-20-103. Proceedings governed by other law.

1 This chapter does not govern an adoption proceeding or a
2 proceeding pertaining to the authorization of emergency
3 medical care for a child.

§48-20-104. Application to Indian tribes.

1 (a) A child custody proceeding that pertains to an Indian
2 child as defined in the Indian Child Welfare Act, 25 U.S.C. §
3 1901 et seq., is not subject to this chapter to the extent that it is
4 governed by the Indian Child Welfare Act.

5 (b) A court of this state shall treat a tribe as if it were a state
6 of the United States for purposes of applying parts 1 and 2.

7 (c) A child custody determination made by a tribe under
8 factual circumstances in substantial conformity with the
9 jurisdictional standards of this chapter must be recognized and
10 enforced under part 3.

§48-20-105. International application of chapter.

1 (a) A court of this state shall treat a foreign country as if it
2 were a state of the United States for purpose of applying parts
3 1 and 2.

4 (b) Except as otherwise provided in subsection (c) of this
5 section, a child custody determination made in a foreign
6 country under factual circumstances in substantial conformity
7 with the jurisdictional standards of this chapter must be
8 recognized and enforced under article three of this chapter.

9 (c) A court of this state need not apply this chapter if the
10 child custody law of a foreign country violates fundamental
11 principles of human rights.

§48-20-106. Effect of child custody determination.

1 A child custody determination made by a court of this state
2 that had jurisdiction under this chapter binds all persons who
3 have been served in accordance with the laws of this state or
4 notified in accordance with section 20-108 or who have
5 submitted to the jurisdiction of the court, and who have been
6 given an opportunity to be heard. As to those persons the
7 determination is conclusive as to all decided issues of law and
8 fact except to the extent the determination is modified.

§48-20-107. Priority.

1 If a question of existence or exercise of jurisdiction under
2 this chapter is raised in a child custody proceeding, the ques-
3 tion, upon request of a party, must be given priority on the
4 calendar and handled expeditiously.

§48-20-108. Notice to persons outside state.

1 (a) Notice required for the exercise of jurisdiction when a
2 person is outside this state may be given in a manner prescribed
3 by the law of this state for service of process or by the law of

4 the state in which the service is made. Notice must be given in
5 a manner reasonably calculated to give actual notice but may be
6 by publication if other means are not effective.

7 (b) Proof of service may be made in the manner prescribed
8 by the law of this state or by the law of the state in which the
9 service is made.

10 (c) Notice is not required for the exercise of jurisdiction
11 with respect to a person who submits to the jurisdiction of the
12 court.

§48-20-109. Appearance and limited immunity.

1 (a) A party to a child custody proceeding, including a
2 modification proceeding, or a petitioner or respondent in a
3 proceeding to enforce or register a child custody determination
4 is not subject to personal jurisdiction in this state for another
5 proceeding or purpose solely by reason of having participated,
6 or having been physically present for the purpose of participat-
7 ing, in the proceeding.

8 (b) A person who is subject to personal jurisdiction in this
9 state on a basis other than physical presence is not immune
10 from service of process in this state. A party present in this state
11 who is subject to the jurisdiction of another state is not immune
12 from service of process allowable under the laws of that state.

13 (c) The immunity granted by subsection (a) of this section
14 does not extend to civil litigation based on acts unrelated to the
15 participation in a proceeding under this chapter committed by
16 an individual while present in this state.

§48-20-110. Communication between courts.

1 (a) A court of this state may communicate with a court in
2 another state concerning a proceeding arising under this
3 chapter.

4 (b) The court may allow the parties to participate in the
5 communication. If the parties are not able to participate in the
6 communication, they must be given the opportunity to present
7 facts and legal arguments before a decision on jurisdiction is
8 made.

9 (c) Communication between courts on schedules, calendars,
10 court records and similar matters may occur without informing
11 the parties. A record need not be made of the communication.

12 (d) Except as otherwise provided in subsection (c) of this
13 section, a record must be made of a communication under this
14 section. The parties must be informed promptly of the commu-
15 nication and granted access to the record.

16 (e) For the purposes of this section, “record” means
17 information that is inscribed on a tangible medium or that is
18 stored in an electronic or other medium and is retrievable in
19 perceivable form.

§48-20-111. Taking testimony in another state.

1 (a) In addition to other procedures available to a party, a
2 party to a child custody proceeding may offer testimony of
3 witnesses who are located in another state, including testimony
4 of the parties and the child, by deposition or other means
5 allowable in this state for testimony taken in another state. The
6 court on its own motion may order that the testimony of a
7 person be taken in another state and may prescribe the manner
8 in which and the terms upon which the testimony is taken.

9 (b) A court of this state may permit an individual residing
10 in another state to be deposed or to testify by telephone,
11 audiovisual means, or other electronic means before a desig-
12 nated court or at another location in that state. A court of this
13 state shall cooperate with courts of other states in designating
14 an appropriate location for the deposition or testimony.

15 (c) Documentary evidence transmitted from another state
16 to a court of this state by technological means that do not
17 produce an original writing may not be excluded from evidence
18 on an objection based on the means of transmission.

§48-20-112. Cooperation between courts; preservation of records.

1 (a) A court of this state may request the appropriate court
2 of another state to:

3 (1) Hold an evidentiary hearing;

4 (2) Order a person to produce or give evidence pursuant to
5 procedures of that state;

6 (3) Order that an evaluation be made with respect to the
7 custody of a child involved in a pending proceeding;

8 (4) Forward to the court of this state a certified copy of the
9 transcript of the record of the hearing, the evidence otherwise
10 presented and any evaluation prepared in compliance with the
11 request; and

12 (5) Order a party to a child custody proceeding or any
13 person having physical custody of the child to appear in the
14 proceeding with or without the child.

15 (b) Upon request of a court of another state, a court of this
16 state may hold a hearing or enter an order described in subsec-
17 tion (a) of this section .

18 (c) Travel and other necessary and reasonable expenses
19 incurred under subsections (a) and (b) of this section may be
20 assessed against the parties according to the law of this state.

21 (d) A court of this state shall preserve the pleadings, orders,
22 decrees, records of hearings, evaluations and other pertinent
23 records with respect to a child custody proceeding until the

24 child attains eighteen years of age. Upon appropriate request by
25 a court or law-enforcement official of another state, the court
26 shall forward a certified copy of those records.

PART 2. JURISDICTION.

§48-20-201. Initial child custody jurisdiction.

1 (a) Except as otherwise provided in section 20-204, a court
2 of this state has jurisdiction to make an initial child custody
3 determination only if:

4 (1) This state is the home state of the child on the date of
5 the commencement of the proceeding, or was the home state of
6 the child within six months before the commencement of the
7 proceeding, and the child is absent from this state but a parent
8 or person acting as a parent continues to live in this state;

9 (2) A court of another state does not have jurisdiction under
10 subdivision (1) of this subsection, or a court of the home state
11 of the child has declined to exercise jurisdiction on the ground
12 that this state is the more appropriate forum under section 20-
13 207 or 20-208, and:

14 (A) The child and the child's parents, or the child and at
15 least one parent or a person acting as a parent, have a signifi-
16 cant connection with this state other than mere physical
17 presence; and

18 (B) Substantial evidence is available in this state concern-
19 ing the child's care, protection, training and personal relation-
20 ships;

21 (3) All courts having jurisdiction under subdivision (1) or
22 (2) of this subdivision have declined to exercise jurisdiction on
23 the ground that a court of this state is the more appropriate

24 forum to determine the custody of the child under section 20-
25 207 or 20-208; or

26 (4) No court of any other state would have jurisdiction
27 under the criteria specified in subdivision (1), (2) or (3) of this
28 subsection.

29 (b) Subsection (a) of this section is the exclusive jurisdic-
30 tional basis for making a child custody determination by a court
31 of this state.

32 (c) Physical presence of, or personal jurisdiction over, a
33 party or a child is not necessary or sufficient to make a child
34 custody determination.

§48-20-202. Exclusive, continuing jurisdiction.

1 (a) Except as otherwise provided in section 20-204, a court
2 of this state which has made a child custody determination
3 consistent with section 20-201 or 20-203 has exclusive,
4 continuing jurisdiction over the determination until:

5 (1) A court of this state determines that neither the child,
6 the child and one parent, nor the child and a person acting as a
7 parent have a significant connection with this state and that
8 substantial evidence is no longer available in this state concern-
9 ing the child's care, protection, training and personal relation-
10 ships; or

11 (2) A court of this state or a court of another state deter-
12 mines that the child, the child's parents and any person acting
13 as a parent do not presently reside in this state.

14 (b) A court of this state which has made a child custody
15 determination and does not have exclusive, continuing jurisdic-
16 tion under this section may modify that determination only if it

17 has jurisdiction to make an initial determination under section
18 20-201.

§48-20-203. Jurisdiction to modify determination.

1 Except as otherwise provided in section 20-204, a court of
2 this state may not modify a child custody determination made
3 by a court of another state unless a court of this state has
4 jurisdiction to make an initial determination under subdivision
5 (1) or (2), subsection (a), section 20-201 and:

6 (1) The court of the other state determines it no longer has
7 exclusive, continuing jurisdiction under section 20-202 or that
8 a court of this state would be a more convenient forum under
9 section 20-207; or

10 (2) A court of this state or a court of the other state deter-
11 mines that the child, the child's parents and any person acting
12 as a parent do not presently reside in the other state.

§48-20-204. Temporary emergency jurisdiction.

1 (a) A court of this state has temporary emergency jurisdic-
2 tion if the child is present in this state and the child has been
3 abandoned or it is necessary in an emergency to protect the
4 child because the child, or a sibling or parent of the child, is
5 subjected to or threatened with mistreatment or abuse.

6 (b) If there is no previous child custody determination that
7 is entitled to be enforced under this chapter and a child custody
8 proceeding has not been commenced in a court of a state having
9 jurisdiction under sections 20-201 through 20-203, inclusive, of
10 this article, a child custody determination made under this
11 section remains in effect until an order is obtained from a court
12 of a state having jurisdiction under sections 20-201 through 20-
13 203, inclusive, of this article. If a child custody proceeding has
14 not been or is not commenced in a court of a state having

15 jurisdiction under sections 20-201 through 20-203, inclusive, of
16 this article, a child custody determination made under this
17 section becomes a final determination, if it so provides and this
18 state becomes the home state of the child.

19 (c) If there is a previous child custody determination that is
20 entitled to be enforced under this chapter, or a child custody
21 proceeding has been commenced in a court of a state having
22 jurisdiction under sections 20-201 through 20-203, inclusive, of
23 this article, any order issued by a court of this state under this
24 section must specify in the order a period that the court consid-
25 ers adequate to allow the person seeking an order to obtain an
26 order from the state having jurisdiction under sections 20-201
27 through 20-203, inclusive, of this article. The order issued in
28 this state remains in effect until an order is obtained from the
29 other state within the period specified or the period expires.

30 (d) A court of this state which has been asked to make a
31 child custody determination under this section, upon being
32 informed that a child custody proceeding has been commenced
33 in, or a child custody determination has been made by, a court
34 of a state having jurisdiction under sections 20-201 through 20-
35 203, shall immediately communicate with the other court. A
36 court of this state which is exercising jurisdiction pursuant to
37 sections 20-201 through 20-203, upon being informed that a
38 child custody proceeding has been commenced in, or a child
39 custody determination has been made by, a court of another
40 state under a statute similar to this section shall immediately
41 communicate with the court of that state to resolve the emer-
42 gency, protect the safety of the parties and the child, and
43 determine a period for the duration of the temporary order.

§48-20-205. Notice; opportunity to be heard; joinder.

1 (a) Before a child custody determination is made under this
2 chapter, notice and an opportunity to be heard in accordance

3 with the standards of section 20-108, must be given to all
4 persons entitled to notice under the law of this state as in child
5 custody proceedings between residents of this state, any parent
6 whose parental rights have not been previously terminated and
7 any person having physical custody of the child.

8 (b) This chapter does not govern the enforceability of a
9 child custody determination made without notice or an opportu-
10 nity to be heard.

11 (c) The obligation to join a party and the right to intervene
12 as a party in a child custody proceeding under this chapter are
13 governed by the law of this state as in child custody proceed-
14 ings between residents of this state.

§48-20-206. Simultaneous proceedings.

1 (a) Except as otherwise provided in section 20-204, a court
2 of this state may not exercise its jurisdiction under this article
3 if, at the time of the commencement of the proceeding, a
4 proceeding concerning the custody of the child has been
5 commenced in a court of another state having jurisdiction
6 substantially in conformity with this chapter, unless the
7 proceeding has been terminated or is stayed by the court of the
8 other state because a court of this state is a more convenient
9 forum under 20-207.

10 (b) Except as otherwise provided in section 20-204, a court
11 of this state, before hearing a child custody proceeding, shall
12 examine the court documents and other information supplied by
13 the parties pursuant to section 20-209. If the court determines
14 that a child custody proceeding has been commenced in a court
15 in another state having jurisdiction substantially in accordance
16 with this chapter, the court of this state shall stay its proceeding
17 and communicate with the court of the other state. If the court
18 of the state having jurisdiction substantially in accordance with
19 this chapter does not determine that the court of this state is a

20 more appropriate forum, the court of this state shall dismiss the
21 proceeding.

22 (c) In a proceeding to modify a child custody determina-
23 tion, a court of this state shall determine whether a proceeding
24 to enforce the determination has been commenced in another
25 state. If a proceeding to enforce a child custody determination
26 has been commenced in another state, the court may:

27 (1) Stay the proceeding for modification pending the entry
28 of an order of a court of the other state enforcing, staying,
29 denying, or dismissing the proceeding for enforcement;

30 (2) Enjoin the parties from continuing with the proceeding
31 for enforcement; or

32 (3) Proceed with the modification under conditions it
33 considers appropriate.

§48-20-207. Inconvenient forum.

1 (a) A court of this state which has jurisdiction under this
2 chapter to make a child custody determination may decline to
3 exercise its jurisdiction at any time if it determines that it is an
4 inconvenient forum under the circumstances and that a court of
5 another state is a more appropriate forum. The issue of inconve-
6 nient forum may be raised upon the motion of a party, the
7 court's own motion or request of another court.

8 (b) Before determining whether it is an inconvenient forum,
9 a court of this state shall consider whether it is appropriate for
10 a court of another state to exercise jurisdiction. For this
11 purpose, the court shall allow the parties to submit information
12 and shall consider all relevant factors, including:

13 (1) Whether domestic violence has occurred and is likely to
14 continue in the future and which state could best protect the
15 parties and the child;

16 (2) The length of time the child has resided outside this
17 state;

18 (3) The distance between the court in this state and the
19 court in the state that would assume jurisdiction;

20 (4) The relative financial circumstances of the parties;

21 (5) Any agreement of the parties as to which state should
22 assume jurisdiction;

23 (6) The nature and location of the evidence required to
24 resolve the pending litigation, including testimony of the child;

25 (7) The ability of the court of each state to decide the issue
26 expeditiously and the procedures necessary to present the
27 evidence; and

28 (8) The familiarity of the court of each state with the facts
29 and issues in the pending litigation.

30 (c) If a court of this state determines that it is an inconve-
31 nient forum and that a court of another state is a more appropri-
32 ate forum, it shall stay the proceedings upon condition that a
33 child custody proceeding be promptly commenced in another
34 designated state and may impose any other condition the court
35 considers just and proper.

36 (d) A court of this state may decline to exercise its jurisdic-
37 tion under this chapter if a child custody determination is
38 incidental to an action for divorce or another proceeding while
39 still retaining jurisdiction over the divorce or other proceeding.

§48-20-208. Jurisdiction declined by reason of conduct.

1 (a) Except as otherwise provided in section 20-204 or by
2 other law of this state, if a court of this state has jurisdiction
3 under this chapter because a person seeking to invoke its
4 jurisdiction has engaged in unjustifiable conduct, the court shall
5 decline to exercise its jurisdiction unless:

6 (1) The parents and all persons acting as parents have
7 acquiesced in the exercise of jurisdiction;

8 (2) A court of the state otherwise having jurisdiction under
9 sections 20-201 through 20-203, inclusive, of this article
10 determines that this state is a more appropriate forum under
11 section 20-207; or

12 (3) No court of any other state would have jurisdiction
13 under the criteria specified in sections 20-201 through 20-203,
14 inclusive, of this article.

15 (b) If a court of this state declines to exercise its jurisdiction
16 pursuant to subsection (a) of this section, it may fashion an
17 appropriate remedy to ensure the safety of the child and prevent
18 a repetition of the unjustifiable conduct, including staying the
19 proceeding until a child custody proceeding is commenced in
20 a court having jurisdiction under sections 20-201 through 20-
21 203, inclusive, of this article.

22 (c) If a court dismisses a petition or stays a proceeding
23 because it declines to exercise its jurisdiction pursuant to
24 subsection (a) of this section, it shall assess against the party
25 seeking to invoke its jurisdiction necessary and reasonable
26 expenses including costs, communication expenses, attorney's
27 fees, investigative fees, expenses for witnesses, travel expenses
28 and child care during the course of the proceedings, unless the
29 party from whom fees are sought establishes that the assess-
30 ment would be clearly inappropriate. The court may not assess
31 fees, costs or expenses against this state unless authorized by
32 law other than this chapter.

§48-20-209. Information to be submitted to court.

1 (a) Subject to local law providing for the confidentiality of
2 procedures, addresses and other identifying information in a
3 child custody proceeding, each party, in its first pleading or in
4 an attached affidavit, shall give information, if reasonably
5 ascertainable, under oath as to the child's present address or
6 whereabouts, the places where the child has lived during the
7 last five years and the names and present addresses of the
8 persons with whom the child has lived during that period. The
9 pleading or affidavit must state whether the party:

10 (1) Has participated, as a party or witness or in any other
11 capacity, in any other proceeding concerning the custody of or
12 visitation with the child and, if so, identify the court, the case
13 number and the date of the child custody determination, if any;

14 (2) Knows of any proceeding that could affect the current
15 proceeding, including proceedings for enforcement and
16 proceedings relating to domestic violence, protective orders,
17 termination of parental rights and adoptions, and, if so, identify
18 the court, the case number and the nature of the proceeding; and

19 (3) Knows the names and addresses of any person not a
20 party to the proceeding who has physical custody of the child
21 or claims rights of legal custody or physical custody of, or
22 visitation with, the child and, if so, the names and addresses of
23 those persons.

24 (b) If the information required by subsection (a) of this
25 section is not furnished, the court, upon motion of a party or its
26 own motion, may stay the proceeding until the information is
27 furnished.

28 (c) If the declaration as to any of the items described in
29 subdivisions (1) through (3), inclusive, subsection (a) of this
30 section is in the affirmative, the declarant shall give additional

31 information under oath as required by the court. The court may
32 examine the parties under oath as to details of the information
33 furnished and other matters pertinent to the court's jurisdiction
34 and the disposition of the case.

35 (d) Each party has a continuing duty to inform the court of
36 any proceeding in this or any other state that could affect the
37 current proceeding.

38 (e) If a party alleges in an affidavit or a pleading under oath
39 that the health, safety or liberty of a party or child would be
40 jeopardized by disclosure of identifying information, the
41 information must be sealed and may not be disclosed to the
42 other party or the public unless the court orders the disclosure
43 to be made after a hearing in which the court takes into consid-
44 eration the health, safety or liberty of the party or child and
45 determines that the disclosure is in the interest of justice.

§48-20-210. Appearance of parties and child.

1 (a) In a child custody proceeding in this state, the court may
2 order a party to the proceeding who is in this state to appear
3 before the court in person with or without the child. The court
4 may order any person who is in this state and who has physical
5 custody or control of the child to appear in person with the
6 child.

7 (b) If a party to a child custody proceeding whose presence
8 is desired by the court is outside this state, the court may order
9 that a notice given pursuant to section 20-108 include a
10 statement directing the party to appear in person with or without
11 the child and informing the party that failure to appear may
12 result in a decision adverse to the party.

13 (c) The court may enter any orders necessary to ensure the
14 safety of the child and of any person ordered to appear under
15 this section.

16 (d) If a party to a child custody proceeding who is outside
17 this state is directed to appear under subsection (b) of this
18 section or desires to appear personally before the court with or
19 without the child, the court may require another party to pay
20 reasonable and necessary travel and other expenses of the party
21 so appearing and of the child.

PART 3. ENFORCEMENT.

§48-20-301. Definitions.

1 (a) "Petitioner" means a person who seeks enforcement of
2 an order for return of a child under the Hague Convention on
3 the Civil Aspects of International Child Abduction or enforce-
4 ment of a child custody determination.

5 (b) "Respondent" means a person against whom a proceed-
6 ing has been commenced for enforcement of an order for return
7 of a child under the Hague Convention on the Civil Aspects of
8 International Child Abduction or enforcement of a child
9 custody determination.

§48-20-302. Enforcement under Hague convention.

1 Under this article a court of this state may enforce an order
2 for the return of the child made under the Hague Convention on
3 the Civil Aspects of International Child Abduction as if it were
4 a child custody determination.

§48-20-303. Duty to enforce.

1 (a) A court of this state shall recognize and enforce a child
2 custody determination of a court of another state if the latter
3 court exercised jurisdiction in substantial conformity with this
4 chapter or the determination was made under factual circum-
5 stances meeting the jurisdictional standards of this article and

6 the determination has not been modified in accordance with this
7 article.

8 (b) A court of this state may utilize any remedy available
9 under other law of this state to enforce a child custody determi-
10 nation made by a court of another state. The remedies provided
11 in this article are cumulative and do not affect the availability
12 of other remedies to enforce a child custody determination.

§48-20-304. Temporary visitation.

1 (a) A court of this state which does not have jurisdiction to
2 modify a child custody determination may issue a temporary
3 order enforcing:

4 (1) A visitation schedule made by a court of another state;
5 or

6 (2) The visitation provisions of a child custody determina-
7 tion of another state that does not provide for a specific
8 visitation schedule.

9 (b) If a court of this state makes an order under subdivision
10 (2), subsection (a) of this section, it shall specify in the order a
11 period that it considers adequate to allow the petitioner to
12 obtain an order from a court having jurisdiction under the
13 criteria specified in part 2 of this article. The order remains in
14 effect until an order is obtained from the other court or the
15 period expires.

§48-20-305. Registration of child custody determination.

1 (a) A child custody determination issued by a court of
2 another state may be registered in this state, with or without a
3 simultaneous request for enforcement, by sending to the
4 appropriate court in this state:

5 (1) A letter or other document requesting registration;

6 (2) Two copies, including one certified copy, of the
7 determination sought to be registered, and a statement under
8 penalty of perjury that to the best of the knowledge and belief
9 of the person seeking registration the order has not been
10 modified; and

11 (3) Except as otherwise provided in section 20-209, the
12 name and address of the person seeking registration and any
13 parent or person acting as a parent who has been awarded
14 custody or visitation in the child custody determination sought
15 to be registered.

16 (b) On receipt of the documents required by subsection (a)
17 of this section, the registering court shall:

18 (1) Cause the determination to be filed as a foreign judg-
19 ment, together with one copy of any accompanying documents
20 and information, regardless of their form; and

21 (2) Serve notice upon the persons named pursuant to
22 subdivision (3), subsection (a) of this section and provide them
23 with an opportunity to contest the registration in accordance
24 with this section.

25 (c) The notice required by subdivision (2), subsection (b) of
26 this section must state that:

27 (1) A registered determination is enforceable as of the date
28 of the registration in the same manner as a determination issued
29 by a court of this state;

30 (2) A hearing to contest the validity of the registered
31 determination must be requested in writing to the court within
32 twenty days after service of notice; and

33 (3) Failure to contest the registration will result in confir-
34 mation of the child custody determination and preclude further
35 contest of that determination with respect to any matter that
36 could have been asserted.

37 (d) A person seeking to contest the validity of a registered
38 order must request a hearing within twenty days after service of
39 the notice. At that hearing, the court shall confirm the registered
40 order unless the person contesting registration establishes that:

41 (1) The issuing court did not have jurisdiction under part 2
42 of this article;

43 (2) The child custody determination sought to be registered
44 has been vacated, stayed, or modified by a court having
45 jurisdiction to do so under 20-201, et seq.; or

46 (3) The person contesting registration was entitled to notice,
47 but notice was not given in accordance with the standards of
48 section 20-108 in the proceedings before the court that issued
49 the order for which registration is sought.

50 (e) If a timely request for a hearing to contest the validity
51 of the registration is not made, the registration is confirmed as
52 a matter of law and the person requesting registration and all
53 persons served must be notified of the confirmation.

54 (f) Confirmation of a registered order, whether by operation
55 of law or after notice and hearing, precludes further contest of
56 the order with respect to any matter that could have been
57 asserted at the time of registration.

§48-20-306. Enforcement of registered determination.

1 (a) A court of this state may grant any relief normally
2 available under the law of this state to enforce a registered child
3 custody determination made by a court of another state.

4 (b) A court of this state shall recognize and enforce, but
5 may not modify, except in accordance with article two of this
6 chapter, a registered child custody determination of a court of
7 another state.

§48-20-307. Simultaneous proceedings.

1 If a proceeding for enforcement under this article is
2 commenced in a court of this state and the court determines that
3 a proceeding to modify the determination is pending in a court
4 of another state having jurisdiction to modify the determination
5 under part 2 of this article, the enforcing court shall immedi-
6 ately communicate with the modifying court. The proceeding
7 for enforcement continues unless the enforcing court, after
8 consultation with the modifying court, stays or dismisses the
9 proceeding.

**§48-20-308. Expedited enforcement of child custody determina-
tion.**

1 (a) A petition under this article must be verified. Certified
2 copies of all orders sought to be enforced and of any order
3 confirming registration must be attached to the petition. A copy
4 of a certified copy of an order may be attached instead of the
5 original.

6 (b) A petition for enforcement of a child custody determina-
7 tion must state:

8 (1) Whether the court that issued the determination identi-
9 fied the jurisdictional basis it relied upon in exercising jurisdic-
10 tion and, if so, what the basis was;

11 (2) Whether the determination for which enforcement is
12 sought has been vacated, stayed or modified by a court whose
13 decision must be enforced under this chapter and, if so, identify
14 the court, the case number and the nature of the proceeding;

15 (3) Whether any proceeding has been commenced that
16 could affect the current proceeding, including proceedings
17 relating to domestic violence, protective orders, termination of
18 parental rights and adoptions and, if so, identify the court, the
19 case number and the nature of the proceeding;

20 (4) The present physical address of the child and the
21 respondent, if known;

22 (5) Whether relief in addition to the immediate physical
23 custody of the child and attorney's fees is sought, including a
24 request for assistance from law-enforcement officials and, if so,
25 the relief sought; and

26 (6) If the child custody determination has been registered
27 and confirmed under section 20-305 of this article, the date and
28 place of registration.

29 (c) Upon the filing of a petition, the court shall issue an
30 order directing the respondent to appear in person with or
31 without the child at a hearing and may enter any order neces-
32 sary to ensure the safety of the parties and the child. The
33 hearing must be held on the judicial day after service of the
34 order unless that date is impossible. In that event, the court shall
35 hold the hearing on the first judicial day possible. The court
36 may extend the date of hearing at the request of the petitioner.

37 (d) An order issued under subsection (c) of this section
38 must state the time and place of the hearing and advise the
39 respondent that at the hearing the court will order that the
40 petitioner may take immediate physical custody of the child and
41 the payment of fees, costs and expenses under section 20-312,
42 and may schedule a hearing to determine whether further relief
43 is appropriate, unless the respondent appears and establishes
44 that:

45 (1) The child custody determination has not been registered
46 and confirmed under section 20-305, and that:

47 (A) The issuing court did not have jurisdiction under part
48 20-201, et seq.;

49 (B) The child custody determination for which enforcement
50 is sought has been vacated, stayed or modified by a court
51 having jurisdiction to do so under part 20-201, et seq.;

52 (C) The respondent was entitled to notice, but notice was
53 not given in accordance with the standards of section 20-108,
54 in the proceedings before the court that issued the order for
55 which enforcement is sought; or

56 (2) The child custody determination for which enforcement
57 is sought was registered and confirmed under section 20-305,
58 but has been vacated, stayed or modified by a court of a state
59 having jurisdiction to do so under article two of this chapter; or

60 (3) There is credible evidence of abuse or neglect of the
61 child or children who are the subject of the petition and the
62 credible evidence has been reported to a child welfare agency,
63 a law-enforcement officer, a licensed physician, a licensed
64 social worker, or a licensed mental health professional and an
65 investigation or other proceeding has not been concluded:
66 *Provided*, That the court may continue the hearing to a day
67 certain to monitor the investigation or proceedings or take any
68 further action as the circumstances and the best interest of the
69 child may warrant.

§48-20-309. Service of petition and order.

1 Except as otherwise provided in section 20-311, the petition
2 and order must be served, by any method authorized by the law
3 of this state, upon respondent and any person who has physical
4 custody of the child.

§48-20-310. Hearing and order.

1 (a) Unless the court issues a temporary emergency order
2 pursuant to section 20-204, upon a finding that a petitioner is
3 entitled to immediate physical custody of the child, the court
4 shall order that the petitioner may take immediate physical
5 custody of the child unless the respondent establishes that:

6 (1) The child custody determination has not been registered
7 and confirmed under section 20-305 and that:

8 (A) The issuing court did not have jurisdiction under part
9 20-201 et seq., of this chapter;

10 (B) The child custody determination for which enforcement
11 is sought has been vacated, stayed or modified by a court of a
12 state having jurisdiction to do so under part 20-201, et seq.; or

13 (C) The respondent was entitled to notice, but notice was
14 not given in accordance with the standards of section 20-108,
15 in the proceedings before the court that issued the order for
16 which enforcement is sought; or

17 (2) The child custody determination for which enforcement
18 is sought was registered and confirmed under section 20-305,
19 but has been vacated, stayed or modified by a court of a state
20 having jurisdiction to do so under part 20-201, et seq.; or

21 (3) There is credible evidence of abuse or neglect of the
22 child or children who are the subject of the petition and the
23 credible evidence has been reported to a child welfare agency,
24 a law-enforcement officer, a licensed physician, a licensed
25 social worker, or a licensed mental health professional and an
26 investigation or other proceeding has not been concluded:
27 *Provided*, That the court may continue the hearing to a day
28 certain to monitor the investigation or proceedings or take any

29 further action as the circumstances and the best interest of the
30 child may warrant.

31 (b) The court shall award the fees, costs and expenses
32 authorized under section 20-312 and may grant additional
33 relief, including a request for the assistance of law-enforcement
34 officials, and set a further hearing to determine whether
35 additional relief is appropriate.

36 (c) If a party called to testify refuses to answer on the
37 ground that the testimony may be self-incriminating, the court
38 may draw an adverse inference from the refusal.

39 (d) A privilege against disclosure of communications
40 between spouses and a defense of immunity based on the
41 relationship of husband and wife or parent and child may not be
42 invoked in a proceeding under this article.

§48-20-311. Warrant to take physical custody of child.

1 (a) Upon the filing of a petition seeking enforcement of a
2 child custody determination, the petitioner may file a verified
3 application for the issuance of a warrant to take physical
4 custody of the child if the child is imminently likely to suffer
5 serious physical harm or be removed from this state.

6 (b) If the court, upon the testimony of the petitioner or other
7 witness, finds that the child is imminently likely to suffer
8 serious physical harm or be removed from this state, it may
9 issue a warrant to take physical custody of the child. The
10 petition must be heard on the next judicial day after the warrant
11 is executed unless that date is impossible. In that event, the
12 court shall hold the hearing on the first judicial day possible.
13 The application for the warrant must include the statements
14 required by subsection 20-308(b).

15 (c) A warrant to take physical custody of a child must:

16 (1) Recite the facts upon which a conclusion of imminent
17 serious physical harm or removal from the jurisdiction is based;

18 (2) Direct law-enforcement officers to take physical
19 custody of the child immediately; and

20 (3) Provide for the placement of the child pending final
21 relief.

22 (d) The respondent must be served with the petition,
23 warrant and order immediately after the child is taken into
24 physical custody.

25 (e) A warrant to take physical custody of a child is enforce-
26 able throughout this state. If the court finds on the basis of the
27 testimony of the petitioner or other witness that a less intrusive
28 remedy is not effective, it may authorize law-enforcement
29 officers to enter private property to take physical custody of the
30 child. If required by exigent circumstances of the case, the court
31 may authorize law-enforcement officers to make a forcible
32 entry at any hour.

33 (f) The court may impose conditions upon placement of a
34 child to ensure the appearance of the child and the child's
35 custodian.

§48-20-312. Costs, fees and expenses.

1 (a) The court shall award the prevailing party, including a
2 state, necessary and reasonable expenses incurred by or on
3 behalf of the party, including costs, communication expenses,
4 attorney's fees, investigative fees, expenses for witnesses,
5 travel expenses and child care during the course of the proceed-
6 ings, unless the party from whom fees or expenses are sought
7 establishes that the award would be clearly inappropriate.

8 (b) The court may not assess fees, costs or expenses against
9 a state unless authorized by law other than this chapter.

§48-20-313. Recognition and enforcement.

1 A court of this state shall accord full faith and credit to an
2 order issued by another state and consistent with this chapter
3 which enforces a child custody determination by a court of
4 another state unless the order has been vacated, stayed or
5 modified by a court having jurisdiction to do so under part 20-
6 201, et seq.

§48-20-314. Appeals.

1 An appeal may be taken from a final order in a proceeding
2 under this article in accordance with expedited appellate
3 procedures in other civil cases. Unless the court enters a
4 temporary emergency order under section 20-204, the enforcing
5 court may not stay an order enforcing a child custody determi-
6 nation pending appeal.

§48-20-315. Role of prosecutor or public official.

1 (a) In a case arising under this chapter or involving the
2 Hague Convention on the Civil Aspects of International Child
3 Abduction, the prosecutor or other appropriate public official
4 may take any lawful action, including resort to a proceeding
5 under this article or any other available civil proceeding, to
6 locate a child, obtain the return of a child or enforce a child
7 custody determination if there is:

8 (1) An existing child custody determination;

9 (2) A request to do so from a court in a pending child
10 custody proceeding;

11 (3) A reasonable belief that a criminal statute has been
12 violated; or

13 (4) A reasonable belief that the child has been wrongfully
14 removed or retained in violation of the Hague Convention on
15 the Civil Aspects of International Child Abduction.

16 (b) A prosecutor or appropriate public official acting under
17 this section acts on behalf of the court and may not represent
18 any party.

§48-20-316. Role of law enforcement.

1 At the request of a prosecutor or other appropriate public
2 official acting under section 20-315, a law-enforcement officer
3 may take any lawful action reasonably necessary to locate a
4 child or a party and assist a prosecutor or appropriate public
5 official with responsibilities under said section.

§48-20-317. Costs and expenses.

1 If the respondent is not the prevailing party, the court may
2 assess against the respondent all direct expenses and costs
3 incurred by the prosecutor or other appropriate public official
4 and law-enforcement officers under section 20-315 or 20-316.

PART 4. MISCELLANEOUS PROVISIONS.

§48-20-401. Application and construction.

1 In applying and construing this uniform act, consideration
2 must be given to the need to promote uniformity of the law with
3 respect to its subject matter among states that enact it.

§48-20-402. Severability clause.

1 If any provision of this article or its application to any
2 person or circumstance is held invalid, the invalidity does not

3 affect other provisions or applications of this article which can
4 be given effect without the invalid provision or application, and
5 to this end the provisions of this article are severable.

§48-20-403. Effective date.

1 This article takes effect on the first day of July, two
2 thousand.

§48-20-404. Transitional provision.

1 A motion or other request for relief made in a child custody
2 proceeding or to enforce a child custody determination which
3 was commenced before the first day of July, two thousand, is
4 governed by the law in effect at the time the motion or other
5 request was made.

ARTICLE 21. [Reserved.]

ARTICLE 22. ADOPTION.

§48-22-101. Applicability of definitions.

§48-22-102. Abandonment defined.

§48-22-103. Adoptive parents, adoptive mother or adoptive father defined.

§48-22-104. Agency defined.

§48-22-105. Birth father defined.

§48-22-106. Birth mother defined.

§48-22-107. Birth parents defined.

§48-22-108. Consent defined.

§48-22-109. Determined father defined.

§48-22-110. Legal father defined.

§48-22-111. Marital child defined.

§48-22-112. Nonmarital child defined.

§48-22-113. Outsider father defined.

§48-22-114. Putative father defined.

§48-22-115. Relinquishment defined.

§48-22-116. Stepparent adoption defined.

§48-22-117. Unknown father defined.

§48-22-201. Persons who may petition for decree of adoption.

§48-22-301. Persons whose consent or relinquishment is required; exceptions.

§48-22-302. Timing and execution of consent or relinquishment.

- §48-22-303. Content of consent or relinquishment.
- §48-22-304. Consent or relinquishment by infants.
- §48-22-305. Revocation of consent or relinquishment for adoption.
- §48-22-306. Conduct presumptively constituting abandonment.
- §48-22-401. Delivery of child for adoption; written recital of circumstances.
- §48-22-501. Filing of petition for adoption.
- §48-22-502. Petition and appendix.
- §48-22-601. Who shall receive notice.
- §48-22-602. How notice is to be served.
- §48-22-603. Notice to an unknown father.
- §48-22-701. Proceedings.
- §48-22-702. Recordation of order; fees; disposition or records; names of adopting parents and persons previously entitled to parental rights not to be disclosed; disclosure of identifying and nonidentifying information; certificate for state registrar of vital statistics; birth certificate.
- §48-22-703. Effect of order as to relations of parents and child and as to rights of inheritance; intestacy of adopted child.
- §48-22-704. Finality of order; challenges to order of adoption.
- §48-22-801. Adoption of adults.
- §48-22-802. Contracts limiting or restraining adoptions.
- §48-22-803. Prohibition of purchase or sale of child; penalty; definitions; exceptions.

PART 1. DEFINITIONS.

§48-22-101. Applicability of definitions.

- 1 For the purposes of this article the words or terms defined
- 2 in this article, and any variation of those words or terms
- 3 required by the context, have the meanings ascribed to them in
- 4 this article. These definitions are applicable unless a different
- 5 meaning clearly appears from the context.

§48-22-102. Abandonment defined.

- 1 “Abandonment” means any conduct by the birth mother,
- 2 legal father, determined father, outsider father, unknown father
- 3 or putative father that demonstrates a settled purpose to forego
- 4 all duties and relinquish all parental claims to the child.

§48-22-103. Adoptive parents, adoptive mother or adoptive father defined.

1 “Adoptive parents” or “adoptive mother” or “adoptive
2 father” means those persons who, after adoption, are the mother
3 and father of the child.

§48-22-104. Agency defined.

1 “Agency” means a public or private entity, including the
2 department of health and human resources, that is authorized by
3 law to place children for adoption.

§48-22-105. Birth father defined.

1 “Birth father” means the biological father of the child.

§48-22-106. Birth mother defined.

1 “Birth mother” means the biological mother of the child.

§48-22-107. Birth parents defined.

1 “Birth parents” mean both the biological father and the
2 biological mother of the child.

§48-22-108. Consent defined.

1 “Consent” means the voluntary surrender to an individual,
2 not an agency, by a minor child’s parent or guardian, for
3 purposes of the child’s adoption, of the rights of the parent or
4 guardian with respect to the child, including the legal and
5 physical custody of the child.

§48-22-109. Determined father defined.

1 “Determined father” means, before adoption, a person: (1)
2 In whom paternity has been established pursuant to the provi-

3 sions of article 24-101, et seq., and section 16-5-12, whether by
4 adjudication or acknowledgment as set forth therein; or (2) who
5 has been otherwise judicially determined to be the biological
6 father of the child entitled to parental rights; or (3) who has
7 asserted his paternity of the child in an action commenced
8 pursuant to the provisions of article 24-101, et seq., that is
9 pending at the time of the filing of the adoption petition.

§48-22-110. Legal father defined.

1 “Legal father” means, before adoption, the male person
2 having the legal relationship of parent to a child: (1) Who is
3 married to its mother at the time of conception; or (2) who is
4 married to its mother at the time of birth of the child; or (3) who
5 is the biological father of the child and who marries the mother
6 before an adoption of the child.

§48-22-111. Marital child defined.

1 “Marital child” means a child born or conceived during
2 marriage.

§48-22-112. Nonmarital child defined.

1 “Nonmarital child” means a child not born or conceived
2 during marriage.

§48-22-113. Outsider father defined.

1 “Outsider father” means the biological father of a child
2 born to or conceived by the mother while she is married to
3 another man who is not the biological father of the child.

§48-22-114. Putative father defined.

1 “Putative father” means, before adoption, any man named
2 by the mother as a possible biological father of the child

- 3 pursuant to the provisions of section 22-502, who is not a legal
- 4 or determined father.

§48-22-115. Relinquishment defined.

- 1 “Relinquishment” means the voluntary surrender to an
- 2 agency by a minor child’s parent or guardian, for purposes of
- 3 the child’s adoption, of the rights of the parent or guardian with
- 4 respect to the child, including the legal and physical custody of
- 5 the child.

§48-22-116. Stepparent adoption defined.

- 1 “Stepparent adoption” means an adoption in which the
- 2 petitioner for adoption is married to one of the birth parents of
- 3 the child or to an adoptive parent of the child.

§48-22-117. Unknown father defined.

- 1 “Unknown father” means a biological father whose identity
- 2 the biological mother swears is unknown to her before adop-
- 3 tion, pursuant to the provisions of section 22-502.

PART 2. PERSONS WHO MAY ADOPT.

§48-22-201. Persons who may petition for decree of adoption.

- 1 Any person not married or any person, with his or her
- 2 spouse’s consent, or any husband and wife jointly, may petition
- 3 a circuit court of the county wherein such person or persons
- 4 reside for a decree of adoption of any minor child or person
- 5 who may be adopted by the petitioner or petitioners.

PART 3. CONSENT OR RELINQUISHMENT; ABANDONMENT.

**§48-22-301. Persons whose consent or relinquishment is required;
exceptions.**

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

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

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

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

12 (4) The determined father.

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

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

18 (2) Whom the court finds has abandoned the child as set
19 forth in 22-306; or

20 (3) Who, in a stepparent adoption, is the birth parent or
21 adoptive parent of the child and is married to the petitioning
22 adoptive parent. In such stepparent adoption, the parent must
23 assent to the adoption by joining as a party to the petition for
24 adoption.

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

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

29 (2) The person is incurably insane; or

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

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

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

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

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

§48-22-302. Timing and execution of consent or relinquishment.

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

4 (b) A consent or relinquishment executed by a parent or
5 guardian as required by the provisions of section 22-301 must
6 be signed and acknowledged in the presence of one of the
7 following:

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

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

11 (3) A notary public;

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

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

§48-22-303. Content of consent or relinquishment.

1 (a) A consent or relinquishment as required by the provi-
2 sions of section 22-301 must be written in plain English or, if
3 the person executing the consent or relinquishment does not
4 understand English, in the person's primary language. The form
5 of the consent or relinquishment shall include the following, as
6 appropriate:

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

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

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

13 (4) The fact that the document is being executed more than
14 seventy-two hours after the birth of the child;

15 (5) If a consent, that the person executing the document is
16 voluntarily and unequivocally consenting to the transfer of legal
17 and physical custody to, and the adoption of the child by, an
18 adoptive parent or parents whose name or names may, but need
19 not be, specified;

20 (6) If a relinquishment, that the person executing the
21 relinquishment voluntarily consents to the permanent transfer
22 of legal and physical custody of the child to the agency for the
23 purposes of adoption;

24 (7) If a consent, that it authorizes the prospective adoptive
25 parents, or if a relinquishment, that it authorizes the agency, to
26 consent to medical treatment of the child pending any adoption
27 proceeding;

28 (8) That after the consent or relinquishment is signed and
29 acknowledged, it is final and, unless revoked in accordance
30 with the provisions of section 22-305, it may not be revoked or
31 set aside for any other reason;

32 (9) That the adoption will forever terminate all parental
33 rights, including any right to visit or communicate with the
34 child and any right of inheritance;

35 (10) That the adoption will forever terminate all parental
36 obligations of the person executing the consent or relinquish-
37 ment;

38 (11) That the termination of parental rights and obligations
39 is permanent whether or not any agreement for visitation or
40 communication with the child is subsequently performed;

41 (12) That the person executing the consent or relinquish-
42 ment does so of his or her own free will and the consent or
43 relinquishment has not been obtained by fraud or duress;

44 (13) That the person executing the consent or relinquish-
45 ment has:

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

47 (ii) Been provided the information and afforded the
48 opportunity to participate in the voluntary adoption registry,
49 pursuant to the provisions of article 23-101, et seq.;

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

51 (iv) Been advised of the consequences of misidentifying the
52 other birth parent; and

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

56 (14) That the person executing the consent or relinquish-
57 ment has not received or been promised any money or anything
58 of value for the consent or relinquishment, other than payments
59 authorized by the provisions of section 22-803;

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

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

64 (17) That the person who is consenting or relinquishing
65 expressly waives notice of any proceeding for adoption unless
66 the adoption is contested, appealed or denied.

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

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

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

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

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

77 (1) If a consent, the name, address, telephone and facsimile
78 numbers of the lawyer representing the prospective adoptive
79 parents; or

80 (2) If a relinquishment, the name, address, telephone and
81 facsimile numbers of the agency to which the child is being
82 relinquished; and

83 (3) Specific instructions on how to revoke the consent or
84 relinquishment.

§48-22-304. Consent or relinquishment by infants.

1 If a person who has executed a consent to or relinquishment
2 for adoption is under eighteen years of age at the time of the
3 filing of the petition, and such infant parent is a resident of the
4 state, the consent or relinquishment shall be specifically
5 reviewed and approved by the court and a guardian ad litem
6 may be appointed to represent the interests of the infant parent.
7 The guardian ad litem shall conduct a discreet inquiry regarding
8 the consent or relinquishment given, and may inquire of any
9 person having knowledge of the consent or relinquishment. If

10 the guardian ad litem finds reasonable cause to believe that the
11 consent or relinquishment was obtained by fraud or duress, the
12 court may request the infant parent to appear before the court or
13 at a deposition, so that inquiry may be made regarding the
14 circumstances surrounding the execution of the consent or
15 relinquishment. The failure of the court to appoint a guardian ad
16 litem is not grounds for setting aside a decree of adoption.

§48-22-305. Revocation of consent or relinquishment for adoption.

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

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

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

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

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

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

§48-22-306. Conduct presumptively constituting abandonment.

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

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

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

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

14 (1) Denounces the child's paternity any time after concep-
15 tion;

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

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

21 (4) Fails to visit the child when he knows where the child
22 resides: *Provided*, That such denunciations and failure to act
23 continue uninterrupted from the time that the birth father was
24 told of the conception of the child until the time the petition for
25 adoption was filed.

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

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

PART 4. DELIVERY OF CHILD FOR ADOPTION.

§48-22-401. Delivery of child for adoption; written recital of circumstances.

1 Whenever a person delivers a child for adoption the person
2 first receiving such child and the prospective adopting parent or
3 parents shall be entitled to receive from such person a written
4 recital of all known circumstances surrounding the birth,
5 medical and family medical history of the child, and an
6 itemization of any facts or circumstances unknown concerning
7 the child's parentage or that may require further development
8 in the form of an affidavit from the birth mother consistent with
9 the provisions of section 22-502.

PART 5. PETITION FOR ADOPTION.

§48-22-501. Filing of petition for adoption.

1 The petition for adoption may be filed at any time after the
2 child who is the subject of the adoption is born, the adoptive
3 placement determined and all consents or relinquishments that
4 can be obtained have been executed. The hearing on the petition
5 may be held no sooner than forty-five days after the filing of the
6 petition and only after the child has lived with the adoptive
7 parent or parents for a period of six months, proper notice of the
8 petition has been given and all necessary consents or relinquish-
9 ments have been executed and submitted or the rights of all
10 nonconsenting birth parents have otherwise been terminated.

§48-22-502. Petition and appendix.

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

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

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

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

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

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

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

19 (2) Whether the birth mother was cohabiting with a man at
20 the probable time of conception of the child, and if so, the
21 identity of such man, his last known address and why the
22 woman contends that such man is not the biological father of
23 the child;

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

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

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

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

44 (7) Whether any man has formally or informally acknowl-
45 edged or claimed paternity of the child in any jurisdiction at the
46 time of the inquiry, and if so, the identity of such man, his last

47 known address and why the birth mother contends such man is
48 not the biological father of the child;

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

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

57 (10) That the birth mother has been advised of the remedies
58 available to her for protection against domestic violence
59 pursuant to the provisions of article 27-101, et seq., of this
60 chapter.

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

64 (d) The affidavit of the birth mother in the case of an
65 unknown father shall be executed before any person authorized
66 to witness a consent or relinquishment pursuant to the provi-
67 sions of section 22-302. Any affidavit filed with the petition
68 pursuant to the provisions of this section shall be sealed in the
69 court file and may not be opened except by court order upon a
70 showing of good cause.

71 (e) If the person petitioning for adoption is less than fifteen
72 years older than the child sought to be adopted, such fact shall
73 be set forth specifically in the petition. In such case, the court
74 shall grant the adoption only upon a specific finding that
75 notwithstanding the differences in age of the petitioner and the
76 child, such adoption is in the best interest of the child: *Pro-*
77 *vided*, That in the case of a stepparent adoption, such specific

78 finding shall not be required and an adoption shall not be
79 denied on the sole basis of proximity in age.

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

87 (g) Either the petition, the various consents or relinquish-
88 ments attached thereto or filed in the cause, the affidavit of the
89 birth mother as set forth herein or in an appendix signed by
90 counsel or other credible persons shall fully disclose all that is
91 known about the parentage of the child.

PART 6. NOTICE OF PROCEEDING FOR ADOPTION.

§48-22-601. Who shall receive notice.

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

4 (1) Any person whose consent to the adoption is required
5 pursuant to the provisions of section 22-301, but notice need
6 not be served upon a person whose parental relationship to the
7 child or whose status as a guardian has been terminated;

8 (2) Any person whom the petitioner knows is claiming to
9 be the father of the child and whose paternity of the child has
10 been established pursuant to the provisions of 24-101, et seq.;

11 (3) Any person other than the petitioner who has legal or
12 physical custody of the child or who has visitation rights with

13 the child under an existing court order issued by a court in this
14 or another state;

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

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

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

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

27 (2) A person who has revoked consent or relinquishment
28 pursuant to the provisions of section 22-305; or

29 (3) A person who, on the basis of a previous relationship
30 with the child, a parent, an alleged parent or the petitioner, can
31 provide relevant information that the court, in its discretion,
32 wants to hear.

§48-22-602. How notice is to be served.

1 (a) Notice shall be served on each person as required under
2 the provisions of section 22-601, in accordance with rule 4 of
3 the West Virginia rules of civil procedure, except as otherwise
4 provided in this article.

5 (b) The notice shall inform the person, in plain language,
6 that his or her parental rights, if any, may be terminated in the
7 proceeding and that such person may appear and defend any

8 such rights within the required time after such service. The
9 notice shall also provide that if the person upon whom notice is
10 properly served fails to respond within the required time after
11 its service, said person may not appear in or receive further
12 notice of the adoption proceedings.

13 (c) In the case of any person who is a nonresident or whose
14 whereabouts are unknown, service shall be achieved: (1) By
15 personal service; (2) by registered or certified mail, return
16 receipt requested, postage prepaid, to the person's last known
17 address, with instructions to forward; or (3) by publication. If
18 personal service is not achieved and the person giving notice
19 has any knowledge of the whereabouts of the person to be
20 served, including a last known address, service by mail shall be
21 first attempted as provided herein. Any service achieved by
22 mail shall be complete upon mailing and shall be sufficient
23 service without the need for notice by publication. In the event
24 that no return receipt is received giving adequate evidence of
25 receipt of the notice by the addressee or of receipt of the notice
26 at the address to which the notice was mailed or forwarded, or
27 if the whereabouts of the person is unknown, then the person
28 required to give notice shall cause service of notice by publica-
29 tion as a Class II publication in compliance with the provisions
30 of article three, chapter fifty-nine of this code, and the publica-
31 tion area shall be the county where the proceedings are had, and
32 in the county where the person to be served was last known to
33 reside, except in cases of foreign adoptions where the child is
34 admitted to this country for purposes of adoptive placement and
35 the United States immigration and naturalization service has
36 issued the foreign-born child a visa or unless good cause is
37 shown for not publishing in the county where the person was
38 last known to reside. The notice shall state the court and its
39 address but not the names of the adopting parents or birth
40 mother, unless the court so orders.

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

44 (e) In the case of service by publication or mail or service
45 on a personal representative or a guardian ad litem, the person
46 shall be allowed thirty days from the date of the first publica-
47 tion or mailing or of such service on a personal representative
48 or guardian ad litem in which to appear and defend his or her
49 parental rights.

§48-22-603. Notice to an unknown father.

1 (a) In the case of an unknown father, the court shall inspect
2 the affidavit submitted pursuant to the provisions of section 22-
3 502, consider any additional evidence that the court, in its
4 discretion, determines should be produced, and determine
5 whether said father can be identified. The inspection and
6 consideration of any additional evidence by the court shall be
7 accomplished as soon as practicable after the filing of the
8 petition, but no later than sixty days before the final hearing on
9 the adoption petition.

10 (b) If the court identifies a father pursuant to the provisions
11 of subsection (a) of this section, then notice of the proceeding
12 for adoption shall be served on the father so identified in
13 accordance with the provisions of section 22-602.

14 (c) If after consideration of the affidavit and/or the consid-
15 eration of further evidence, the court finds that proper service
16 cannot be made upon the father because his identity is un-
17 known, the court shall order publication of the notice only if, on
18 the basis of all information available, the court determines that
19 publication is likely to lead to receipt of notice by the father. If
20 the court determines that publication or posting is not likely to
21 lead to receipt of notice, the court may dispense with the
22 publication or posting of a notice.

PART 7. PROCEDURES FOR ADOPTION.**§48-22-701. Proceedings.**

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

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

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

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

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

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

29 and become a part thereof. The report shall include, but not be
30 limited to, the following:

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

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

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

35 (4) Personal references; and

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

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

52 (d) Upon the day so assigned, the court or judge thereof
53 shall proceed to a final hearing of the petition and examination
54 of the parties in interest, under oath, and of such other witnesses
55 as the court or judge thereof may deem necessary to develop
56 fully the standing of the petitioners and their responsibility, and
57 the status of the child sought to be adopted; and if the court or
58 judge thereof shall be of the opinion from the testimony that the

59 facts stated in the petition are true, and if upon examination the
60 court or judge thereof is satisfied that the petitioner is, or the
61 petitioners are, of good moral character, and of respectable
62 standing in the community, and are able properly to maintain
63 and educate the child sought to be adopted, and that the best
64 interests of the child would be promoted by such adoption, then
65 and in such case the court or judge thereof shall make an order
66 reciting the facts proved and the name by which the child shall
67 thereafter be known, and declaring and adjudging that from the
68 date of such order, the rights, duties, privileges and relations,
69 theretofore existing between the child and those persons
70 previously entitled to parental rights, shall be in all respects at
71 an end, and that the rights, duties, privileges and relations
72 between the child and his or her parent or parents by adoption
73 shall thenceforth in all respects be the same, including the rights
74 of inheritance, as if the child had been born to such adopting
75 parent or parents in lawful wedlock, except only as otherwise
76 provided in this article: *Provided*, That no such order shall
77 disclose the names or addresses of those persons previously
78 entitled to parental rights.

**§48-22-702. Recordation of order; fees; disposition of records;
names of adopting parents and persons previously
entitled to parental rights not to be disclosed;
disclosure of identifying and nonidentifying
information; certificate for state registrar of vital
statistics; birth certificate.**

1 (a) The order of adoption shall be recorded in a book kept
2 for that purpose, and the clerk shall receive the same fees as in
3 other cases. All records of proceedings in adoption cases and all
4 papers and records relating to such proceedings shall be kept in
5 the office of the clerk of the circuit court in a sealed file, which
6 file shall be kept in a locked or sealed cabinet, vault or other
7 container and shall not be open to inspection or copy by
8 anyone, except as otherwise provided in this article, or upon

9 court order for good cause shown. No person in charge of
10 adoption records shall disclose the names of the adopting parent
11 or parents, the names of persons previously entitled to parental
12 rights, or the name of the adopted child, except as otherwise
13 provided in this article, or upon court order for good cause
14 shown. The clerk of the court keeping and maintaining the
15 records in adoption cases shall keep and maintain an index of
16 such cases separate and distinct from all other indices kept or
17 maintained by him or her, and the index of adoption cases shall
18 be kept in a locked or sealed cabinet, vault or other container
19 and shall not be open to inspection or copy by anyone, except
20 as otherwise provided in this article, or upon court order for
21 good cause shown. Nonidentifying information, the collection
22 of which is provided for in article 23-101, et seq., of this
23 chapter, shall be provided to the adoptive parents as guardians
24 of the adopted child, or to the adult adoptee, by their submitting
25 a duly acknowledged request to the clerk of the court. The clerk
26 may charge the requesting party for copies of any documents,
27 as provided in section eleven, article one, chapter fifty-nine of
28 this code. Either birth parent may from time to time submit
29 additional social, medical or genetic history for the adoptee,
30 which information shall be placed in the court file by the clerk,
31 who shall bring the existence of this medical information to the
32 attention of the court. The court shall immediately transmit all
33 such nonidentifying medical, social or genetic information to
34 the adoptive parents or the adult adoptee.

35 (b) If an adoptee, or parent of a minor adoptee, is unsuccess-
36 ful in obtaining identifying information by use of the
37 mutual consent voluntary adoption registry provided for in 23-
38 101, et seq., identifying information may be sought through the
39 following process:

40 (1) Upon verified petition of an adoptee at least eighteen
41 years of age, or, if less than eighteen, his or her adoptive parent
42 or legal guardian, the court may also attempt, either itself, or

43 through its designated agent, to contact the birth parents, if
44 known, to obtain their consent to release identifying informa-
45 tion to the adoptee. The petition shall state the reasons why the
46 adoptee desires to contact his or her birth parents, which
47 reasons shall be disclosed to the birth parents if contacted. The
48 court and its agent shall take any and all care possible to assure
49 that none but the birth parents themselves are informed of the
50 adoptee's existence in relationship to them. The court may
51 appoint the bureau of children and families, or a private agency
52 which provides adoption services in accordance with standards
53 established by law, to contact birth parents as its designated
54 agent, the said agent shall report to the court the results of said
55 contact.

56 (2) Upon the filing of a verified petition as provided in
57 subdivision (1) of this subsection, should the court be unable to
58 obtain consent from either of the birth parents to release
59 identifying information, the court may release such identifying
60 information to the adoptee, or if a minor, the adoptee's parents
61 or guardian, after notice to the birth parents and a hearing
62 thereon, at which hearing the court must specifically find that
63 there exists evidence of compelling medical or other good cause
64 for release of such identifying information.

65 (c) Identifying information may only be obtained with the
66 duly acknowledged consent of the mother or the legal or
67 determined father who consented to the adoption or whose
68 rights were otherwise relinquished or terminated, together with
69 the duly acknowledged consent of the adopted child upon
70 reaching majority, or upon court order for good cause shown.
71 Any person previously entitled to parental rights may from time
72 to time submit additional social or medical information which,
73 notwithstanding other provisions of this article, shall be inserted
74 into the record by the clerk of the court.

75 (d) Immediately upon the entry of such order of adoption,
76 the court shall direct the clerk thereof forthwith to make and
77 deliver to the state registrar of vital statistics a certificate under
78 the seal of said court, showing:

79 (1) The date and place of birth of the child, if known;

80 (2) The name of the mother of the child, if known, and the
81 name of the legal or determined father of the child, if known;

82 (3) The name by which said child has previously been
83 known;

84 (4) The names and addresses of the adopting parents;

85 (5) The name by which the child is to be thereafter known;
86 and

87 (6) Such other information from the record of the adoption
88 proceedings as may be required by the law governing vital
89 statistics and as may enable the state registrar of vital statistics
90 to carry out the duties imposed upon him or her by this section.

91 (e) Upon receipt of the certificate, the registrar of vital
92 statistics shall forthwith issue and deliver by mail to the
93 adopting parents at their last-known address and to the clerk of
94 the county commission of the county wherein such order of
95 adoption was entered a birth certificate in the form prescribed
96 by law, except that the name of the child shown in said certifi-
97 cate shall be the name given him or her by the order of adop-
98 tion. The clerk shall record such birth certificate in the manner
99 set forth in section twelve, article five, chapter sixteen of this
100 code.

**§48-22-703. Effect of order as to relations of parents and child
and as to rights of inheritance; intestacy of
adopted child.**

1 (a) Upon the entry of such order of adoption, any person
2 previously entitled to parental rights, any parent or parents by
3 any previous legal adoption, and the lineal or collateral kindred
4 of any such person, parent or parents, except any such person
5 or parent who is the husband or wife of the petitioner for
6 adoption, shall be divested of all legal rights, including the right
7 of inheritance from or through the adopted child under the
8 statutes of descent and distribution of this state, and shall be
9 divested of all obligations in respect to the said adopted child,
10 and the said adopted child shall be free from all legal obliga-
11 tions, including obedience and maintenance, in respect to any
12 such person, parent or parents. From and after the entry of such
13 order of adoption, the adopted child shall be, to all intents and
14 for all purposes, the legitimate issue of the person or persons so
15 adopting him or her and shall be entitled to all the rights and
16 privileges and subject to all the obligations of a natural child of
17 such adopting parent or parents.

18 (b) For the purpose of descent and distribution, from and
19 after the entry of such order of adoption, a legally adopted child
20 shall inherit from and through the parent or parents of such
21 child by adoption and from or through the lineal or collateral
22 kindred of such adopting parent or parents in the same manner
23 and to the same extent as though said adopted child were a
24 natural child of such adopting parent or parents, but such child
25 shall not inherit from any person entitled to parental rights prior
26 to the adoption nor their lineal or collateral kindred, except that
27 a child legally adopted by a husband or wife of a person entitled
28 to parental rights prior to the adoption shall inherit from such
29 person as well as from the adopting parent. If a legally adopted
30 child shall die intestate, all property, including real and per-
31 sonal, of such adopted child shall pass, according to the statutes
32 of descent and distribution of this state, to those persons who
33 would have taken had the decedent been the natural child of the
34 adopting parent or parents.

§48-22-704. Finality of order; challenges to order of adoption.

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

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

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

17 (d) A decree or order entered under this article may not be
18 vacated or set aside upon application of a person who waived
19 notice, or who was properly served with notice pursuant to this
20 article and failed to respond or appear, file an answer or file a
21 claim of paternity within the time allowed.

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

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

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

PART 8. MISCELLANEOUS PROVISIONS.

§48-22-801. Adoption of adults.

1 Any adult person who is a resident of West Virginia may
2 petition the circuit court or any other court of record having
3 jurisdiction of adoption proceedings for permission to adopt one
4 who has reached the age of eighteen years or over, and, if
5 desired, to change the name of such person. The consent of the
6 person to be adopted shall be the only consent necessary. The
7 order of adoption shall create the same relationship between the
8 adopting parent or parents and the person adopted and the same
9 rights of inheritance as in the case of an adopted minor child. If
10 a change in name is desired, the adoption order shall so state.

§48-22-802. Contracts limiting or restraining adoptions.

1 Any contract, agreement or stipulation which endeavors to
2 deny to any person or persons the right to petition for adoption
3 of any person, or which endeavors to alter the time or manner
4 of adoption as provided in this article, is contrary to the public
5 policy of the state and such portion of any contract, agreement
6 or stipulation is null and void and of no effect.

**§48-22-803. Prohibition of purchase or sale of child; penalty;
definitions; exceptions.**

1 (a) Any person or agency who knowingly offers, gives or
2 agrees to give to another person money, property, service or
3 other thing of value in consideration for the recipient's locating,
4 providing or procuring a minor child for any purpose which
5 entails a transfer of the legal or physical custody of said child,
6 including, but not limited to, adoption or placement, is guilty of
7 a felony and subject to fine and imprisonment as provided
8 herein.

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

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

22 (d) A child whose parent, guardian or custodian has sold or
23 attempted to sell said child in violation of the provisions of this
24 article may be deemed an abused child as defined by section

25 three, article one, chapter forty-nine of this code. The court may
26 place such a child in the custody of the department of health
27 and human resources or with such other responsible person as
28 the best interests of the child dictate.

29 (e) This section does not prohibit the payment or receipt of
30 the following:

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

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

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

40 (4) Any fees or charges authorized by law or approved by
41 a court in a proceeding relating to the placement plan, prospec-
42 tive placement or placement of a minor child for adoption.

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

ARTICLE 23. VOLUNTARY ADOPTION REGISTRY.

§48-23-101. Policy regarding persons obtaining identifying information after adoption.

§48-23-102. Legislative purpose.

§48-23-201. Applicability of definitions.

§48-23-202. Adoptee defined.

§48-23-203. Adoption defined.

§48-23-204. Adult defined.

§48-23-205. Agency defined.

§48-23-206. Genetic and social history defined.

- §48-23-207. Health history defined.
- §48-23-208. Mutual consent voluntary adoption registry or registry defined.
- §48-23-209. Putative father defined.
- §48-23-301. Division of human services to establish and maintain mutual consent voluntary adoption registry.
- §48-23-401. Persons to whom use of the mutual consent voluntary adoption registry is available.
- §48-23-402. Age limitations on use of the mutual consent voluntary adoption registry.
- §48-23-403. Registration by a birth father.
- §48-23-404. Registration by a birth parent who use an alias in terminating parental rights.
- §48-23-501. Prerequisites to disclosure of identifying information.
- §48-23-502. Counseling of registrants.
- §48-23-503. Cases where disclosure of identifying information cannot occur.
- §48-23-504. Matching and disclosure procedures.
- §48-23-505. Retention of data by the registry.
- §48-23-506. Scope of information obtained by the mutual consent voluntary adoption registry.
- §48-23-507. Fees for operations of the mutual consent voluntary adoption registry.
- §48-23-601. Compilation of nonidentifying information on health history and social and genetic history.
- §48-23-701. Prohibited conduct.
- §48-23-801. Nondisclosure.

PART 1. GENERAL PROVISIONS.

§48-23-101. Policy regarding persons obtaining identifying information after adoption.

- 1 (a) Adoption is based upon the legal termination of parental
- 2 rights and responsibilities of birth parents and the creation of
- 3 the legal relationship of parent and child between an adoptee
- 4 and his or her adoptive parents. These legal and social premises
- 5 underlying adoption must be maintained. The Legislature
- 6 recognizes that some adults who were adopted as children have
- 7 a strong desire to obtain identifying information about their
- 8 birth parents while other such adult adoptees have no such
- 9 desire. The Legislature further recognizes that some birth
- 10 parents have a strong desire to obtain identifying information

11 about their biological children who were surrendered for
12 adoption, while other birth parents have no such desire.

13 (b) The Legislature fully recognizes the right to privacy and
14 confidentiality of:

15 (1) Birth parents whose children were adopted;

16 (2) The adoptees; and

17 (3) The adoptive parents.

§48-23-102. Legislative purpose.

1 The purpose of this article is to:

2 (1) Set up a mutual consent voluntary adoption registry
3 where birth parents and adult adoptees may register their
4 willingness to the release of identifying information to each
5 other;

6 (2) To provide for the disclosure of such identifying
7 information to birth parents or adoptees, or both, through a
8 social worker employed by a licensed adoption agency,
9 provided each birth parent and the adult adoptee voluntarily
10 registers on his or her own; and

11 (3) To provide for the transmission of nonidentifying health
12 and social and genetic history to the adult adoptees, birth
13 parents and other specified persons; and

14 (4) to provide for disclosure of identifying information for
15 cause shown.

PART 2. DEFINITIONS.

§48-23-201. Applicability of definitions.

1 For the purposes of this article the words or terms defined
2 in this article, and any variation of those words or terms
3 required by the context, have the meanings ascribed to them in
4 this article. These definitions are applicable unless a different
5 meaning clearly appears from the context.

§48-23-202. Adoptee defined.

1 “Adoptee” means a person who has been legally adopted in
2 the state of West Virginia.

§48-23-203. Adoption defined.

1 “Adoption” means the judicial act of creating the relation-
2 ship of parent and child where it did not exist previously.

§48-23-204. Adult defined.

1 “Adult” means a person who is eighteen years of age or
2 more.

§48-23-205. Agency defined.

1 “Agency” means any public or voluntary organization
2 licensed or approved pursuant to the laws of any jurisdiction
3 within the United States to place children for adoption.

§48-23-206. Genetic and social history defined.

1 “Genetic and social history” means a comprehensive report,
2 when obtainable, on the birth parents, siblings to the birth
3 parents, if any, other children of either birth parent, if any, and
4 parents of the birth parents, which shall contain the following
5 information:

6 (1) Medical history;

7 (2) Health status;

- 8 (3) Cause of and age at death;
- 9 (4) Height, weight, eye and hair color;
- 10 (5) Ethnic origins;
- 11 (6) Where appropriate, levels of educational and profes-
12 sional achievement; and
- 13 (7) Religion, if any.

§48-23-207. Health history defined.

1 “Health history” means a comprehensive report of the
2 child’s health status at the time of placement for adoption and
3 medical history, including neonatal, psychological, physiologi-
4 cal and medical care history.

**§48-23-208. Mutual consent voluntary adoption registry or
registry defined.**

1 “Mutual consent voluntary adoption registry” or “registry”
2 means a place provided for herein where eligible persons as
3 described in section 23-501 may indicate their willingness to
4 have their identity and whereabouts disclosed to each other
5 under conditions specified in this article.

§48-23-209. Putative father defined.

1 “Putative father” means any man not deemed or adjudicated
2 under the laws of a jurisdiction of the United States to be the
3 father of genetic origin of a child and who claims or is alleged
4 to be the father of genetic origin of such child.

**PART 3. ESTABLISHMENT AND MAINTENANCE
OF VOLUNTARY ADOPTION REGISTRY.**

§48-23-301. Division of human services to establish and maintain mutual consent voluntary adoption registry.

1 The division of human services, as provided for in §9-2-1,
2 et seq. of this code, shall establish and maintain the mutual
3 consent voluntary adoption registry, except that the division
4 may contract out the function of establishing and maintaining
5 the registry to a licensed voluntary agency with expertise in
6 providing post-legal adoption services, in which case the
7 agency shall establish and maintain the registry that would
8 otherwise be operated by the division.

9 The secretary of the department of health and human
10 resources shall promulgate and adopt such rules as are neces-
11 sary for implementing this article.

PART 4. USE OF THE VOLUNTARY ADOPTION REGISTRY.

§48-23-401. Persons to whom use of the mutual consent voluntary adoption registry is available.

1 Use of the mutual consent voluntary adoption registry for
2 obtaining identifying information about birth parents and adult
3 adoptees is available to birth parents and adult adoptees, except
4 as otherwise limited by section 23-402.

§48-23-402. Age limitations on use of the mutual consent voluntary adoption registry.

1 (a) A birth parent is not eligible to use the registry until his
2 or her child who was adopted is eighteen years of age or older.

3 (b) An adult adoptee is not eligible to use the registry if he
4 or she has a sibling in his or her adoptive family who is under
5 the age of eighteen years.

§48-23-403. Registration by a birth father.

1 A birth father may register if:

2 (1) He was named as the father in the original sealed birth
3 certificate;

4 (2) He legitimated or formally acknowledged the child as
5 provided by law; or

6 (3) He signed a voluntary abandonment and release for the
7 child's adoption as provided by law.

§48-23-404. Registration by a birth parent who used an alias in terminating parental rights.

1 If a birth parent used an alias name in terminating his or her
2 parental rights, and the alias is listed in the original sealed birth
3 record, that birth parent may register if the agency, organiza-
4 tion, entity or person that placed the child for adoption, certifies
5 to the court that the individual seeking to register used the alias
6 name set forth in the original sealed birth certificate.

PART 5. OPERATION OF THE VOLUNTARY ADOPTION REGISTRY.

§48-23-501. Prerequisites to disclosure of identifying information.

1 The adult adoptee and each birth parent may voluntarily,
2 without having been contacted by any employee or agent of the
3 entity operating the registry, place his or her name in the
4 appropriate registry before any disclosure or identifying
5 information can be made. A qualified person may register by
6 submitting a notarized affidavit to the appropriate registry
7 stating his or her name, address and telephone number and his
8 or her willingness to be identified solely to the other relevant
9 persons who register. No registration may be accepted until the
10 prospective registrant submits satisfactory proof of his or her
11 identity in accord with the provisions specified in section 23-
12 601 of this article. The failure of any of the three above

13 described persons to file a notarized affidavit with the registry
14 for any reason, including death or disability, precludes the
15 disclosure of identifying information to those relevant persons
16 who do register.

§48-23-502. Counseling of registrants.

1 Upon registering, the registrant shall participate in not less
2 than one hour of counseling with a social worker employed by
3 the entity that operates the registry, except if a birth parent or
4 adult adoptee is domiciled outside the state, he or she shall
5 obtain counseling from a social worker employed by a licensed
6 agency in that other state selected by the entity that operates the
7 registry. When an eligible person registers concerning an
8 adoption that was arranged through an agency which has not
9 merged or otherwise ceased operations, and that same agency
10 is not operating the registry, the entity operating the registry
11 shall notify by certified mail the agency which handled the
12 adoption within ten business days after the date of registration.

§48-23-503. Cases where disclosure of identifying information cannot occur.

1 In any case where the identity of the birth father was
2 unknown to the birth mother, or where the administrator learns
3 that one or both of the birth parents are deceased, this informa-
4 tion shall be shared with the adult adoptee. In these kinds of
5 cases, the adoptee will not be able to obtain identifying infor-
6 mation through the registry, and he or she would be told of his
7 or her right to pursue whatever right otherwise exists by law to
8 petition a court to release the identifying information.

§48-23-504. Matching and disclosure procedures.

1 (a) Each mutual consent voluntary adoption registry must
2 be operated under the direction of an administrator.

3 (b) A person eligible to register may request the administra-
4 tor to disclose identifying information by filing an affidavit
5 which sets forth the following:

6 (1) The current name and address of the affiant;

7 (2) Any previous name by which the affiant was known;

8 (3) The original and adopted names, if known, of the
9 adopted child;

10 (4) The place and date of birth of the adopted child; or

11 (5) The name and address of the adoption agency or other
12 entity, organization or person placing the adopted child, if
13 known.

14 (c) The affiant shall notify the registry of any change in
15 name or location which occurs subsequent to his or her filing
16 the affidavit. The registry has no duty to search for an affiant
17 who fails to register his or her most recent address.

18 (d) The administrator of the mutual consent voluntary
19 adoption registry shall process each affidavit in an attempt to
20 match the adult adoptee and the birth parents. Such processing
21 shall include research from agency records, when available, and
22 when agency records are not available, research from court
23 records to determine conclusively whether the affiants match.

24 (e) The administrator shall determine that there is a match
25 when the adult adoptee and the birth mother or the adult
26 adoptee and the birth father have each filed affidavits with the
27 mutual consent voluntary adoption registry and have each
28 received the counseling required in section 23-502.

29 (f) When a match has taken place, the department shall
30 directly notify all parties through a direct and confidential

31 contact. The contact shall be made by an employee or agent of
32 the agency receiving the assignment and shall be made face to
33 face, rather than by mail, telephone or other indirect means. The
34 employee or agent shall be a trained social worker who has
35 expertise in post-legal adoption services.

§48-23-505. Retention of data by the registry.

1 Any affidavits filed and other information collected shall be
2 retained for ten years following the date of registration by any
3 qualified person to which the information pertains. Any
4 qualified person who registers may renew his or her registration
5 for ten additional years within one hundred eighty days prior to
6 the last day of ten years from the date of initial registration.

**§48-23-506. Scope of information obtained by the mutual consent
voluntary adoption registry.**

1 A mutual consent voluntary adoption registry shall obtain
2 only information necessary for identifying a birth parent or
3 adult adoptee and in no event shall obtain information of any
4 kind pertaining to the adoptive parents, any siblings to the adult
5 adoptee who are children of the adoptive parents, the income of
6 anyone and reasons for adoptive placement.

**§48-23-507. Fees for operations of the mutual consent voluntary
adoption registry.**

1 All costs for establishing and maintaining a mutual consent
2 voluntary adoption registry shall be obtained through user's
3 fees charged to all persons who register.

PART 6. HEALTH HISTORY; SOCIAL AND GENETIC HISTORY.

**§48-23-601. Compilation of nonidentifying information on health
history and social and genetic history.**

1 (a) Prior to placement for adoption, the court shall require
2 that the licensed adoption agency or, where an agency is not
3 involved, the person, entity or organization handling the
4 adoption, shall compile and provide to the prospective adoptive
5 parents a detailed written health history and genetic and social
6 history of the child. These histories must exclude information
7 that would identify birth parents or members of a birth parent's
8 family. The histories must be set forth in a document that is
9 separate from any document containing such identifying
10 information.

11 (b) The court, or an agency designated by the court, or
12 judge thereof, shall provide to an agency, person, or organiza-
13 tion handling the adoption the forms which must be utilized in
14 the acquisition of the above-described detailed nonidentifying
15 written health history and genetic and social history of the
16 child. If the records cannot be obtained, the court shall make
17 specific findings as to why the records are unobtainable.

18 (c) Records containing such nonidentifying information and
19 which are set forth on a document described in subsection (a)
20 above, separate from any document containing identifying data:

21 (1) Shall be retained by the clerk of the court for ninety-
22 nine years; and

23 (2) Shall be available upon request, throughout the time
24 specified in subdivision (1) of this subsection together with any
25 additional nonidentifying information which may have been
26 added on health or on genetic and social history, but which
27 excludes information identifying any birth parent or member of
28 a birth parent's family, or the adoptee or any adoptive parent of
29 the adoptee, to the following persons only:

30 (A) The adoptive parents of the child or, in the event of
31 death of the adoptive parents, the child's guardian;

32 (B) The adoptee upon reaching the age of eighteen;

33 (C) In the event of the death of the adoptee, the adoptee's
34 spouse if he or she is the legal parent of the adoptee's child or
35 the guardian of any child of the adoptee;

36 (D) In the event of the death of the adoptee, any progeny of
37 the adoptee who is age eighteen or older; and

38 (E) The birth parent of the adoptee.

39 (d) The person requesting nonidentifying health history and
40 genetic and social history shall pay the actual and reasonable
41 costs of providing that information. This provision requiring
42 payment of costs is subject to sections of this article that
43 provide for the adoptee to obtain information by petitioning the
44 court.

PART 7. PROHIBITED CONDUCT.

§48-23-701. Prohibited conduct.

1 (a) No person, agency, entity or organization of any kind,
2 including, but not limited to, any officer or employee of this
3 state and any employee, officer or judge of any court of this
4 state, may disclose any confidential information relating to an
5 adoption except as provided in this article or pursuant to a court
6 order. Any employer who knowingly or negligently allows any
7 employee to disclose information in violation of this article is
8 subject to the penalties provided in subsection (b) of this
9 section, together with the employee who made any disclosure
10 prohibited by this law.

11 (b) Any person, agency, entity or organization of any kind
12 who discloses information in violation of this law is liable to
13 the parties so injured in an action to recover damages in respect
14 thereto.

PART 8. NONDISCLOSURE OF REGISTRY INFORMATION.

§48-23-801. Nondisclosure.

1 (a) Notwithstanding any other provision of law, the
2 information acquired by any registry may not be disclosed
3 under any sunshine or freedom of information legislation, rules
4 or practice.

5 (b) Notwithstanding any other provision of law, no person,
6 group of persons, or entity, including an agency, may file a
7 class action to force the registry to disclose identifying informa-
8 tion.

ARTICLE 24. ESTABLISHMENT OF PATERNITY.

§48-24-101. Paternity proceedings.

§48-24-102. Statute of limitations; prior statute of limitations not a bar to action
under this article; effect of prior adjudication between husband and
wife.

§48-24-103. Medical testing procedures to aid in the determination of paternity.

§48-24-104. Establishment of paternity and duty of support.

§48-24-105. Representation of parties.

§48-24-106. Establishing paternity by acknowledgment of natural father.

***§48-24-101. Paternity proceedings.**

1 (a) A civil action to establish the paternity of a child and to
2 obtain an order of support for the child may be instituted, by
3 verified complaint, in the circuit court of the county where the
4 child resides: *Provided*, That if such venue creates a hardship
5 for the parties, or either of them, or if judicial economy
6 requires, the court may transfer the action to the county where
7 either of the parties resides.

8 (b) A “paternity proceeding” is a summary proceeding,
9 equitable in nature and within the domestic relations jurisdic-
10 tion of the courts, wherein a circuit court upon the petition of
11 the state or another proper party may intervene to determine and

***Clerk’s Note:** This section was also amended by S. B. 652 (Chapter 93), which
passed subsequent to this act.

12 protect the respective personal rights of a child for whom
13 paternity has not been lawfully established, of the mother of the
14 child and of the putative father of the child. The parties to a
15 paternity proceeding are not entitled to a trial by jury.

16 (c) The sufficiency of the statement of the material allega-
17 tions in the complaint set forth as grounds for relief and the
18 grant or denial of the relief prayed for in a particular case shall
19 rest in the sound discretion of the court, to be exercised by the
20 court according to the circumstances and exigencies of the case,
21 having due regard for precedent and the provisions of the
22 statutory law of this state.

23 (d) A decree or order made and entered by a court in a
24 paternity proceeding shall include a determination of the filial
25 relationship, if any, which exists between a child and his or her
26 putative father, and, if such relationship is established, shall
27 resolve dependent claims arising from family rights and
28 obligations attendant to such filial relationship.

29 (e) A paternity proceeding may be brought by any of the
30 following persons:

31 (1) An unmarried woman with physical or legal custody of
32 a child to whom she gave birth;

33 (2) A married woman with physical or legal custody of a
34 child to whom she gave birth, if the complaint alleges that:

35 (A) The married woman lived separate and apart from her
36 husband preceding the birth of the child;

37 (B) The married woman did not cohabit with her husband
38 at any time during such separation and that such separation has
39 continued without interruption; and

40 (C) The respondent, rather than her husband, is the father
41 of the child;

42 (3) The state of West Virginia, including the bureau for
43 child support enforcement;

44 (4) Any person who is not the mother of the child, but who
45 has physical or legal custody of the child;

46 (5) The guardian or committee of the child;

47 (6) The next friend of the child when the child is a minor;

48 (7) By the child in his or her own right at any time after the
49 child's eighteenth birthday but prior to the child's twenty-first
50 birthday; or

51 (8) A man who believes he is the father of a child born out
52 of wedlock, when there has been no prior judicial determination
53 of paternity.

54 (f) Blood or tissue samples taken pursuant to the provisions
55 of this article may be ordered to be taken in such locations as
56 may be convenient for the parties so long as the integrity of the
57 chain of custody of the samples can be preserved.

58 (g) A person who has sexual intercourse in this state
59 submits to the jurisdiction of the courts of this state for a
60 proceeding brought under this article with respect to a child
61 who may have been conceived by that act of intercourse.
62 Service of process may be perfected according to the rules of
63 civil procedure.

64 (h) When the person against whom the proceeding is
65 brought has failed to plead or otherwise defend the action after
66 proper service has been obtained, judgment by default shall be
67 issued by the court as provided by the rules of civil procedure.

29 (1) Blood or tissue test results which exclude the man as the
30 father of the child are admissible and shall be clear and con-
31 vincing evidence of nonpaternity and, if a complaint has been
32 filed, the court shall, upon considering such evidence, dismiss
33 the action.

34 (2) Blood or tissue test results which show a statistical
35 probability of paternity of less than ninety-eight percent are
36 admissible and shall be weighed along with other evidence of
37 the respondent's paternity.

38 (3) Undisputed blood or tissue test results which show a
39 statistical probability of paternity of more than ninety-eight
40 percent shall, when filed, legally establish the man as the father
41 of the child for all purposes and child support may be estab-
42 lished pursuant to the provisions of this chapter.

43 (4) When a party desires to challenge the results of the
44 blood or tissue tests or the expert's analysis of inherited
45 characteristics, he or she shall file a written protest with the
46 family law master or circuit court or with the bureau for child
47 support enforcement, if appropriate, within thirty days of the
48 filing of such test results, and serve a copy of such protest upon
49 the other party. The written protest shall be filed at least thirty
50 days prior to any hearing involving the test results. The court or
51 the bureau for child support enforcement, upon reasonable
52 request of a party, shall order that additional tests be made by
53 the same laboratory or another laboratory within thirty days of
54 the entry of the order, at the expense of the party requesting
55 additional testing. Costs shall be paid in advance of the testing.
56 When the results of the blood or tissue tests or the expert's
57 analysis which show a statistical probability of paternity of
58 more than ninety-eight percent are confirmed by the additional
59 testing, then the results are admissible evidence which is clear
60 and convincing evidence of paternity. The admission of the
61 evidence creates a presumption that the man tested is the father.

62 (b) Documentation of the chain of custody of the blood or
63 tissue specimens is competent evidence to establish the chain of
64 custody. A verified expert's report shall be admitted at trial
65 unless a challenge to the testing procedures or a challenge to the
66 results of test analysis has been made before trial. The costs and
67 expenses of making the tests shall be paid by the parties in
68 proportions and at times determined by the court.

69 (c) Except as provided in subsection (d) of this section,
70 when a blood test is ordered pursuant to this section, the
71 moving party shall initially bear all costs associated with the
72 blood test unless that party is determined by the court to be
73 financially unable to pay those costs. This determination shall
74 be made following the filing of an affidavit pursuant to section
75 one, article two, chapter fifty-nine of this code. When the court
76 finds that the moving party is unable to bear that cost, the cost
77 shall be borne by the state of West Virginia. Following the
78 finding that a person is the father based on the results of a blood
79 test ordered pursuant to this section, the court shall order that
80 the father be ordered to reimburse the moving party for the
81 costs of the blood tests unless the court determines, based upon
82 the factors set forth in this section, that the father is financially
83 unable to pay those costs.

84 (d) When a blood test is ordered by the bureau for child
85 support enforcement, the bureau shall initially bear all costs
86 subject to recoupment from the alleged father if paternity is
87 established.

§48-24-104. Establishment of paternity and duty of support.

1 (a) When the respondent, by verified responsive pleading,
2 admits that the man is the father of the child and owes a duty of
3 support, or if after a hearing on the merits, the court shall find,
4 by clear and convincing evidence that the man is the father of
5 the child, the court shall, subject to the provisions of subsection

6 (c) of this section, order support in accordance with the support
7 guidelines set forth in article 13-101, et seq., and the payment
8 of incurred expenses as provided in subsection (e) of this
9 section.

10 (b) Upon motion by a party, the court shall issue a tempo-
11 rary order for child support pending a judicial determination of
12 parentage if there is clear and convincing evidence of paternity
13 on the basis of genetic tests or other scientifically recognized
14 evidence.

15 (c) Reimbursement support ordered pursuant to this section
16 shall be limited to a period not to exceed thirty-six months prior
17 to the service of notice of the commencement of paternity or
18 support establishment, unless the court finds, by clear and
19 convincing evidence:

20 (1) That the respondent had actual knowledge that he was
21 believed to be the father of the child;

22 (2) That the respondent deliberately concealed his where-
23 abouts or deliberately evaded attempts to serve process upon
24 himself or herself; or

25 (3) That the respondent deliberately misrepresented
26 relevant information which would have enabled the petitioner
27 to proceed with the cause of action.

28 If the court finds by clear and convincing evidence that the
29 circumstances in subsection (1), (2) or (3) exist, then the court
30 shall order reimbursement support to the date of birth of the
31 child, subject to the equitable defense of laches.

32 (d) The court shall give full faith and credit to a determina-
33 tion of paternity made by any other state, based on the laws of
34 that state, whether established through voluntary acknowledg-
35 ment or through administrative or judicial process.

36 (e) Bills for pregnancy, childbirth and genetic testing are
37 admissible and constitute prima facie evidence of medical
38 expenses incurred.

39 (f) The thirty-six month limitation on reimbursement
40 support does not apply to the award of medical expenses
41 incurred.

42 (g) For purposes of this section, "reimbursement support"
43 means the amount of money awarded as child support for a
44 period of time prior to the entry of the order which establishes
45 the support obligation.

§48-24-105. Representation of parties.

1 Notwithstanding any provision of this code to the contrary,
2 no parent in any proceeding brought pursuant to this article may
3 have counsel appointed for them according to section one,
4 article twenty-one, chapter twenty-nine of this code or other-
5 wise receive legal services provided solely by the state in such
6 action. The bureau for child support enforcement providing
7 representation to the state of West Virginia shall solely repre-
8 sent the state of West Virginia and does not provide any
9 representation to any party.

**§48-24-106. Establishing paternity by acknowledgment of natural
father.**

1 A written, notarized acknowledgment executed pursuant to
2 the provisions of section twelve, article five, chapter sixteen of
3 this code legally establishes the man as the father of the child
4 for all purposes and child support may be established in
5 accordance with the support guidelines set forth in article 13-
6 101, et seq.

ARTICLE 25. CHANGE OF NAME.

- §48-25-101. Petition to circuit court for change of name; contents thereof; notice of application.
- §48-25-102. Objections to change of name.
- §48-25-103. When court may order change of name.
- §48-25-104. Recordation of order changing name.
- §48-25-105. When new name to be used.
- §48-25-106. Unlawful change of name.
- §48-25-107. Unlawful change of name by certain felons and registrants.

§48-25-101. Petition to circuit court for change of name; contents thereof; notice of application.

1 Any person desiring a change of his or her own name, or
2 that of his or her child or ward, may apply therefor to the circuit
3 court or any other court of record having jurisdiction of the
4 county in which he or she resides, or the judge thereof in
5 vacation, by petition setting forth that he or she has been a bona
6 fide resident of such county for at least one year prior to the
7 filing of the petition, the cause for which the change of name is
8 sought, and the new name desired; and previous to the filing of
9 such petition such person shall cause to be published a notice of
10 the time and place that such application will be made, which
11 notice shall be published as a Class I legal advertisement in
12 compliance with the provisions of article three, chapter fifty-
13 nine of this code, and the publication area for such publication
14 shall be the county.

§48-25-102. Objections to change of name.

1 Any person who is likely to be injured by the change of
2 name of any person so petitioning, or who knows of any reason
3 why the name of any such petitioner should not be changed,
4 may appear at the time and place named in the notice, and shall
5 be heard in opposition to such change.

§48-25-103. When court may order change of name.

1 Upon the filing of such petition, and upon proof of the
2 publication of such notice and of the matters set forth in the
3 petition, and being satisfied that no injury will be done to any
4 person by reason of such change, that reasonable and proper
5 cause exists for changing the name of petitioner, and that such
6 change is not desired because of any fraudulent or evil intent on
7 the part of the petitioner, the court or judge thereof in vacation
8 may order a change of name as applied for except as provided
9 by the provisions of this section. The court may not grant any
10 change of name for any person convicted of any felony during
11 the time that the person is incarcerated. The court may not grant
12 any change of name for any person required to register with the
13 state police pursuant to the provisions of article eight-f, chapter
14 sixty-one of this code during the period that such person is
15 required to register. The court may not grant a change of name
16 for persons convicted of first degree murder in violation of
17 section one, article two, chapter sixty-one of this code for a
18 period of ten years after the person is discharged from impris-
19 onment or is discharged from parole, whichever occurs later.
20 The court may not grant a change of name of any person
21 convicted of violating any provision of section fourteen-a,
22 article two, chapter sixty-one of this code for a period of ten
23 years after the person is discharged from imprisonment or is
24 discharged from parole, whichever occurs later.

§48-25-104. Recordation of order changing name.

1 When such order is made the petitioner shall forthwith
2 cause a certified copy thereof to be filed in the office of the
3 clerk of the county commission of the county where petitioner
4 resides, and such clerk shall record the same in a book to be
5 kept for the purpose and index the same under both the old and
6 the new names. For such recording and indexing the clerk shall
7 be allowed the same fee as for a deed.

§48-25-105. When new name to be used.

1 When such change has been ordered and a certified copy of
2 the order filed in the office of the county clerk, the new name
3 shall thenceforth be used in place of the former name.

§48-25-106. Unlawful change of name.

1 Any person residing in this state who shall change his or
2 her name, or assume another name, unlawfully, shall be guilty
3 of a misdemeanor and, upon conviction thereof, shall be fined
4 not exceeding one hundred dollars, and upon a repetition
5 thereof shall be confined in the county or regional jail not
6 exceeding sixty days.

§48-25-107. 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 subsection (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.

ARTICLE 26. DOMESTIC VIOLENCE ACT.

- §48-26-101. Title.
- §48-26-201. Applicability of definitions.
- §48-26-202. Board defined.
- §48-26-203. Department defined.
- §48-26-204. Shelter defined.
- §48-26-205. Secretary defined.
- §48-26-206. Family protection program defined.
- §48-26-301. Family protection services board continued; terms.
- §48-26-401. Duties of board generally.
- §48-26-402. Duties regarding licenses for shelters and programs.
- §48-26-403. Duties regarding rules.
- §48-26-404. Regulation of intervention programs for perpetrators; required provisions; duties of providers.
- §48-26-405. Licensing providers of intervention programs for perpetrators.
- §48-26-406. Closure of shelters; provisional licensee waivers.
- §48-26-501. Development of state public health plan for reducing domestic violence.
- §48-26-502. Notice of victims' rights, remedies and available services; required information.
- §48-26-503. Standards, procedures and curricula.
- §48-26-601. Funding application requirements.
- §48-26-602. Award provisions.
- §48-26-603. Domestic violence legal services fund.
- §48-26-604. Annual reports of shelters and programs receiving funds.
- §48-26-701. Confidentiality.
- §48-26-801. Continuing education for certain state employees.
- §48-26-802. Continuing education for law-enforcement officers concerning domestic violence.
- §48-26-803. Judicial education on domestic violence.
- §48-26-804. Required curricula for public education system.
- §48-26-805. Continuing education for school personnel who are required to report child abuse and neglect.
- §48-26-901. Establishment of local advisory councils authorized.
- §48-26-902. Purpose of local advisory councils.
- §48-26-1101. Referral to shelters.
- §48-26-1102. Continuation of board.

PART 1. GENERAL PROVISIONS.**§48-26-101. Title.**

- 1 This article shall be known as the “West Virginia Domestic
- 2 Violence Act”.

PART 2. DEFINITIONS.**§48-26-201. Applicability of definitions.**

- 1 For purposes of this article, the words or terms defined in
- 2 this article, and any variation of those words or terms required
- 3 by the context, have the meanings ascribed to them. These
- 4 definitions are applicable unless a different meaning clearly
- 5 appears from the context.

§48-26-202. Board defined.

- 1 “Board” means the family protection services board
- 2 created pursuant to section 26-301 of this article.

§48-26-203. Department defined.

- 1 “Department” means the department of health and human
- 2 resources.

§48-26-204. Shelter defined.

- 1 “Shelter” or “family protection shelter” means a licensed
- 2 domestic violence shelter created for the purpose of receiving,
- 3 on a temporary basis, persons who are victims of domestic
- 4 violence, abuse or rape as well as the children of such victims.

§48-26-205. Secretary defined.

- 1 “Secretary” means the secretary of the department of
- 2 health and human resources.

§48-26-206. Family protection program defined.

1 “Family protection program” or “program” means a
2 licensed domestic violence program offered by a locally
3 controlled organization primarily for the purpose of providing
4 services to victims of domestic violence or abuse and their
5 children.

PART 3. FAMILY PROTECTION SERVICES BOARD.**§48-26-301. Family protection services board continued; terms.**

1 (a) The family protection services board, previously
2 created, is continued. Membership of the board is comprised of
3 five persons. The governor, with the advice and consent of the
4 Senate, shall appoint three members of the board. One ap-
5 pointed member must be a commissioner of a shelter. One
6 appointed member must be a member of a major trade associa-
7 tion that represents shelters across the state. The final gubernatorial
8 appointee must be a member of the public. The other two
9 members are the secretary of the department of health and
10 human resources, or his or her designee, and the chairperson of
11 the governor’s committee on crime, delinquency and correction,
12 or his or her designee.

13 (b) The terms of the three members appointed by the
14 governor are staggered terms of three years. The initial term of
15 the commissioner of the shelter is a one-year term, the initial
16 term of the representative of the trade association is a two-year
17 term and the initial term of the appointed member of the public
18 is a three-year term.

19 (c) In the event that a member of the board ceases to be
20 qualified for appointment, then his or her appointment termi-
21 nates.

PART 4. DUTIES OF FAMILY PROTECTION SERVICES BOARD.

§48-26-401. Duties of board generally.

1 It is the duty of the board to:

2 (1) Regulate its procedural practice;

3 (2) Receive and consider applications for the development
4 of shelters;

5 (3) Facilitate the formation and operation of shelters;

6 (4) Promulgate rules to implement the provisions of this
7 article and any applicable federal guidelines;

8 (5) Advise the secretary on matters of concern relative to
9 his or her responsibilities under this article;

10 (6) Study issues pertinent to family protection shelters,
11 programs for domestic violence victims, and report the results
12 to the governor and the Legislature;

13 (7) Conduct hearings as necessary under this article;

14 (8) Delegate to the secretary such powers and duties of the
15 board as the board may deem appropriate to delegate, including,
16 but not limited to, the authority to approve, disapprove, revoke
17 or suspend licenses;

18 (9) Deliver funds to shelters within forty-five days of the
19 approval of a proposal for such shelters;

20 (10) Establish a system of peer review which will ensure
21 the safety, well-being and health of the clients of all shelters
22 operating in the state;

23 (11) Evaluate annually each funded shelter to determine its
24 compliance with the goals and objectives set out in its original
25 application for funding or subsequent revisions;

26 (12) To award to shelters, for each fiscal year, ninety-five
27 percent of the total funds collected and paid over during the
28 fiscal year to the special revenue account established pursuant
29 to section 2-604 of this chapter and to expend, during said
30 period a sum not in excess of five percent of said funds for cost
31 of administering provisions of this article;

32 (13) Establish and enforce system of standards for annual
33 licensure for all shelters and programs in the state;

34 (14) Enforce standards; and

35 (15) Review its rules biannually.

§48-26-402. Duties regarding licenses for shelters and programs.

1 (a) The board shall establish an application for licensing all
2 shelters and programs.

3 (b) Licenses may be renewed on an annual basis with all
4 such licenses having a term of one year commencing on the
5 first day of July and terminating on the thirtieth day of June of
6 the next year.

7 (c) The board shall grant or deny any license within forty-
8 five days of the receipt of the application.

9 (d) The license granted by the board shall be conspicuously
10 displayed by the licensees.

11 (e) The board may grant a provisional license or grant a
12 waiver of licensure if the board deems such waiver or provi-
13 sional license necessary for the shelter or program. All such
14 waivers or provisional licenses shall be reviewed semi-annu-
15 ally.

§48-26-403. Duties regarding rules.

1 The board shall propose rules for legislative approval in
2 accordance with the provisions of article three, chapter twenty-
3 nine-a of this code to effectuate the provisions of this article.

§48-26-404. Regulation of intervention programs for perpetrators; required provisions; duties of providers.

1 (a) The family protection services board shall propose rules
2 for legislative approval in accordance with the provisions of
3 article three, chapter twenty-nine-a of this code governing the
4 minimum level of responsibility, service and accountability
5 expected from providers of programs of intervention for
6 perpetrators of domestic violence. These rules shall be devel-
7 oped in consultation with public and private agencies that
8 provide programs for victims of domestic violence and pro-
9 grams of intervention for perpetrators, with advocates for
10 victims, with organizations that represent the interests of
11 shelters, and with persons who have demonstrated expertise and
12 experience in providing services to victims and perpetrators of
13 domestic violence and their children. If a program of interven-
14 tion for perpetrators receives funds from the state or is licensed
15 by the state, the board shall review the program's compliance
16 with the rules promulgated pursuant to this subsection.

17 (b) The rules for programs for intervention for perpetrators
18 of domestic violence shall include:

19 (1) Criteria concerning a perpetrator's appropriateness for
20 the program;

21 (2) Systems for communication and evaluation among the
22 referring court, the public and private agencies that provide
23 programs for victims of domestic violence and the programs of
24 intervention for perpetrators; and

25 (3) Required qualifications concerning education, training
26 and experience for providers of intervention programs.

27 (c) The standards shall be based upon and incorporate the
28 following principles:

29 (1) The focus of a program is to end the acts of violence
30 and ensure the safety of the victim and any children or other
31 family or household members;

32 (2) Domestic violence constitutes behavior for which the
33 perpetrator is accountable; and

34 (3) Although alcohol and substance abuse often exacerbate
35 domestic violence, it is a separate problem which requires
36 specialized intervention or treatment.

37 (d) Providers of perpetrator intervention programs:

38 (1) Shall require participants to sign the following releases:

39 (A) Allowing the provider to inform the victim and the
40 victim's advocates that the perpetrator is participating in a
41 batterers' intervention prevention program with the provider
42 and to provide information to the victim and the victim's
43 advocates, if necessary, for the victim's safety;

44 (B) Allowing prior and current treating agencies to provide
45 information about the perpetrator to the provider; and

46 (C) Allowing the provider, for good cause, to provide
47 information about the perpetrator to relevant legal entities,
48 including courts, parole officers, probation officers and child
49 protective services;

50 (2) Shall report to the court, if the participation was court
51 ordered, and to the victim, if the victim requests and provides
52 a method of notification, any assault, failure to comply with
53 program requirements, failure to attend the program and threat
54 of harm by the perpetrator;

55 (3) Shall report to the victim, without the participant's
56 authorization, all threats of harm;

57 (4) May report to the victim, without the participant's
58 authorization, the participant's failure to attend.

§48-26-405. Licensing providers of intervention programs for perpetrators.

1 (a) The board shall establish an application for licensure for
2 all providers of programs of intervention for perpetrators in
3 accordance with section 26-404 of this article.

4 (b) Licenses may be renewed on an annual basis with all
5 such licenses having a term of one year commencing on the
6 first day of July and terminating on the thirtieth day of June on
7 the next year.

8 (c) The board shall grant or deny any license within forty-
9 five days of the receipt of the application.

10 (d) The license granted by the board shall be conspicuously
11 displayed by the licensees.

12 (e) The board may grant a provisional license or grant a
13 waiver of licensure if the board deems such waiver or provi-
14 sional license necessary for the operation of a program. All
15 such waivers or provisional licenses shall be reviewed semian-
16 nually.

§48-26-406. Closure of shelters; provisional licensee waivers.

1 (a) The board may close any shelter which violates the
2 standards established under this article and which threatens the
3 health, well being and safety of its clients: *Provided*, That the
4 board shall establish a plan to place such clients in other

5 shelters and to develop a method to continue serving the areas
6 served by the shelter to be closed.

7 (b) The board may place a shelter, which violates standards
8 established under this article and which threatens the health,
9 well being and safety of its clients, under receivership and
10 operate said shelter. The board shall have access and may use
11 all assets of the shelter.

12 (c) In order to close or place a shelter in receivership, the
13 board shall hold a public hearing within the confines of
14 municipality or county in which the shelter is located. The
15 board, by the first day of September, one thousand nine hundred
16 eighty-nine, shall establish rules and regulations to govern the
17 conduct of such hearings: *Provided*, That four members of the
18 board must vote in the affirmative before a shelter is closed or
19 placed in receivership.

20 (d) If a shelter disagrees with the findings of the board, the
21 shelter may appeal such ruling to the circuit court of Kanawha
22 County or the circuit court of the county where the shelter is
23 located pursuant to the provisions of section four, article five,
24 chapter twenty-nine-a of this code.

PART 5. DUTIES OF THE BUREAU FOR PUBLIC HEALTH.

§48-26-501. Development of state public health plan for reducing domestic violence.

1 (a) The bureau for public health of the department of health
2 and human resources, in consultation with the family protection
3 services board, shall:

4 (1) Assess the impact of domestic violence on public
5 health; and

6 (2) Develop a state public health plan for reducing the
7 incidence of domestic violence in this state.

8 (b) The state public health plan shall:

9 (1) Include, but not be limited to, public education, includ-
10 ing the use of the various communication media to set forth the
11 public health perspective on domestic violence;

12 (2) Be developed in consultation with public and private
13 agencies that provide programs for victims of domestic vio-
14 lence, advocates for victims, organizations representing the
15 interests of shelters, and persons who have demonstrated
16 expertise and experience in providing health care to victims of
17 domestic violence and their children; and

18 (3) Be completed on or before the first day of January, two
19 thousand.

20 (c) The bureau for public health of the department of health
21 and human resources shall:

22 (1) Transmit a copy of the state public health plan to the
23 governor and the Legislature; and

24 (2) Review and update the state public health plan annually.

**§48-26-502. Notice of victims' rights, remedies and available
services; required information.**

1 (a) The bureau for public health of the department of health
2 and human resources shall make available to health care
3 facilities and practitioners a written form notice of the rights of
4 victims and the remedies and services available to victims of
5 domestic violence.

6 (b) A health care practitioner whose patient has injuries or
7 conditions consistent with domestic violence shall provide to

8 the patient, and every health care facility shall make available
9 to all patients, a written form notice of the rights of victims and
10 the remedies and services available to victims of domestic
11 violence.

§48-26-503. Standards, procedures and curricula.

1 (a) The bureau for public health of the department of health
2 and human resources shall publish model standards, including
3 specialized procedures and curricula, concerning domestic
4 violence for health care facilities, practitioners and personnel.

5 (b) The procedures and curricula shall be developed in
6 consultation with public and private agencies that provide
7 programs for victims of domestic violence, advocates for
8 victims, organizations representing the interests of shelters and
9 personnel who have demonstrated expertise and experience in
10 providing health care to victims of domestic violence and their
11 children.

PART 6. FUNDING.

§48-26-601. Funding application requirements.

1 (a) A shelter or program may apply to the board for a grant
2 of funds as provided by this article. The application shall
3 include, but not be limited to, the following:

4 (1) Evidence that the organization submitting the applica-
5 tion is incorporated in this state as a nonprofit corporation;

6 (2) A list of the incorporators of the corporation and a list
7 of the officers and the board of directors;

8 (3) The proposed budget of the shelter or program for the
9 following fiscal year;

10 (4) A summary of the services proposed to be offered in the
11 following fiscal year by the shelter or program;

12 (5) An evaluation of local needs for a shelter or program;

13 (6) An estimate of the number of people to be served by the
14 shelter or program during the following fiscal year; and

15 (7) Any other information the board may feel is necessary.

16 (b) In order to qualify for a grant of funds under this article,
17 each family protection shelter or program shall:

18 (1) Provide or propose to provide a facility which will serve
19 as temporary shelter to receive, care and provide services for
20 persons who are victims of domestic violence or abuse and their
21 children;

22 (2) Be incorporated in this state as a nonprofit corporation;

23 (3) Have a board of directors which represents a broad
24 spectrum of the community to be served, including at least one
25 person who is or has been a victim of domestic violence or
26 abuse;

27 (4) Receive at least fifty-five percent of its funds from
28 sources other than funds distributed under this article. These
29 sources may be public or private and may include contributions
30 of goods or services; and

31 (5) Require persons employed by or volunteering services
32 to the shelter or program to maintain the confidentiality of any
33 information which may identify individuals served by it.

34 (c) A family protection shelter or program may not be
35 funded initially if it is shown that it discriminates in its services
36 on the basis of race, religion, age, sex, marital status, national
37 origin or ancestry. If such discrimination occurs after initial

38 funding, the shelter or program may not be refunded until the
39 discrimination ceases.

40 (d) A family protection shelter program may not be
41 refunded if its original application projected the provision of
42 residential services and such services were not provided in the
43 first six months following disbursement of the original funds
44 under this article: *Provided*, That upon a subsequent showing
45 that the funds were used in the manner proposed in the original
46 application, the shelter or program is not barred from subse-
47 quent funding. A revision of the original application may be
48 filed with the board.

§48-26-602. Award provisions.

1 Grants made pursuant to this article shall be awarded on the
2 basis of the following criteria:

3 (1) Demonstration of local need for proposed services;

4 (2) Merit of project as proposed;

5 (3) Demonstration of local control of the shelter or pro-
6 gram;

7 (4) Administrative design and efficiency of the project; and

8 (5) The board shall develop a formula for equal distribution
9 of fifty percent of any money it awards.

§48-26-603. 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 from
6 the fund shall be limited to attorneys employed by domestic

7 violence shelters, or employed by nonprofit agencies which
8 establish a collaborative relationship with a domestic violence
9 shelter, that provide civil legal services to victims of domestic
10 violence.

§48-26-604. Annual reports of shelters and programs receiving funds.

1 A shelter or program receiving funds pursuant to this article
2 shall file an annual report with the board by the thirty-first day
3 of each October for the prior fiscal year. The report shall
4 include statistics on the number of persons served, the relation-
5 ship of the victim to the abuser, services provided to the abuser,
6 the number of referrals made for medical, psychological,
7 financial, educational, vocational, child care or legal services
8 and the results of an independent audit. No information
9 contained in the report may identify any person served by the
10 shelter or enable any person to determine the identity of any
11 such person.

PART 7. CONFIDENTIALITY.

§48-26-701. Confidentiality.

1 (a) No program or shelter receiving funds pursuant to this
2 article shall disclose or be compelled to disclose, release or be
3 compelled to release any written records created or maintained
4 in providing services pursuant to this article except:

5 (1) Upon written consent of the person seeking or who has
6 sought services from the program or the shelter;

7 (2) In any proceeding brought under sections four and five,
8 article six, chapter nine of this code or article six, chapter forty-
9 nine of this code;

10 (3) As mandated by article six-a, chapter forty-nine and
11 article six, chapter nine of this code;

12 (4) Pursuant to an order of any court based upon a finding
13 that said information is sufficiently relevant to a proceeding
14 before the court to outweigh the importance of maintaining the
15 confidentiality established by this section;

16 (5) To protect against a clear and substantial danger of
17 imminent injury by a client to himself or herself or another;

18 (6) For treatment or internal review purposes to the staff of
19 any program or shelter if the client is also being cared for by
20 other health professionals in the program or shelter.

21 (b) No consent or authorization for the transmission or
22 disclosure of confidential information shall be effective unless
23 it is in writing and signed by the client. Every person signing an
24 authorization shall be given a copy.

PART 8. EDUCATION CONCERNING DOMESTIC VIOLENCE.

§48-26-801. Continuing education for certain state employees.

1 (a) (1) Subject to the provisions of subdivision (2) of this
2 subsection, the department of health and human resources shall
3 provide or require continuing education concerning domestic
4 violence for child protective services workers, adult protective
5 services workers, social services workers, family support
6 workers and workers in the bureau for child support enforce-
7 ment.

8 (2) Funding for the continuing education provided or
9 required under subdivision (1) of this section may not exceed
10 the amounts allocated for that purpose by the spending unit
11 from existing appropriations. No provision of this section may

12 be construed to require the Legislature to make any appropriation.

13 (b) The courses or requirements shall be prepared and
14 presented in consultation with public and private agencies that
15 provide programs for victims of domestic violence or programs
16 of intervention for perpetrators, advocates for victims, organiza-
17 tions representing the interests of shelters and the family
18 protection services board.

**§48-26-802. Continuing education for law-enforcement officers
concerning domestic violence.**

1 (a)(1) Subject to the provisions of subdivision (2) of this
2 subsection, as a part of the initial law-enforcement officer
3 training required before a person may be employed as a law-
4 enforcement officer pursuant to article twenty-nine, chapter
5 thirty of this code, all law-enforcement officers shall receive
6 training concerning domestic violence.

7 (2) Funding for the training required under subdivision (1)
8 of this section may not exceed the amounts allocated by the
9 spending unit for that purpose from existing appropriations. No
10 provision of this section may be construed to require the
11 Legislature to make any appropriation.

12 (b) The course of instruction and the objectives in learning
13 and performance for the education of law-enforcement officers
14 required pursuant to this section shall be developed and
15 presented in consultation with public and private providers of
16 programs for victims of domestic violence and programs of
17 intervention for perpetrators, persons who have demonstrated
18 expertise in training and education concerning domestic
19 violence and organizations representing the interests of shelters.

§48-26-803. Judicial education on domestic violence.

1 (a) (1) Subject to the provisions of subdivision (2) of this
2 subsection, as a part of existing training for court personnel, the
3 supreme court of appeals shall develop and present courses of
4 continuing education concerning domestic violence for magis-
5 trates assistants, and juvenile and adult probation officers.

6 (2) Funding for the continuing education required under
7 subdivision (1) of this section may not exceed the amounts
8 allocated for that purpose by the supreme court of appeals from
9 existing appropriations. No provision of this section may be
10 construed to require the Legislature to make any appropriation.

11 (b) The course of instruction shall be prepared and may be
12 presented in consultation with public and private agencies that
13 provide programs for victims of domestic violence and pro-
14 grams of intervention for perpetrators, advocates for victims,
15 persons who have demonstrated expertise in training and
16 education concerning domestic violence, organizations repre-
17 senting the interests of shelters and the family protection
18 services board.

§48-26-804. Required curricula for public education system.

1 (a)(1) Subject to the provisions of subdivision (2) of this
2 subsection, the state board of education shall select or develop:

3 (A) Curricula that are appropriate for various ages for
4 pupils concerning the dynamics of violence, prevention of
5 violence, including domestic violence; and

6 (B) Curricula for school counselors, health care personnel,
7 administrators and teachers concerning domestic violence.

8 (2) Funding for selecting or developing the curricula
9 required under subdivision (1) of this section may not exceed
10 the amounts allocated for that purpose by the spending unit
11 from existing appropriations. No provision of this section may

12 be construed to require the Legislature to make any appropria-
13 tion.

14 (b) The curricula shall be selected or developed by the state
15 board of education in consultation with public and private
16 agencies that provide programs for conflict resolution, violence
17 prevention, victims of domestic violence and programs of
18 intervention for perpetrators of domestic violence, advocates
19 for victims, organizations representing the interests of shelters,
20 persons who have demonstrated expertise and experience in
21 education and domestic violence and the family protection
22 services board.

**§48-26-805. Continuing education for school personnel who are
required to report child abuse and neglect.**

1 (a) (1) Subject to the provisions of subdivision (2) of this
2 subsection, the state department of education shall provide or
3 require courses of continuing education concerning domestic
4 violence for employees who are required by law to report child
5 abuse or neglect.

6 (2) Funding for the continuing education provided or
7 required under subdivision (1) of this section may not exceed
8 the amounts allocated for that purpose by the spending unit
9 from existing appropriations. No provision of this section may
10 be construed to require the Legislature to make any appropria-
11 tion.

12 (b) The courses or requirements shall be prepared and
13 presented in consultation with public and private agencies that
14 provide programs for victims of domestic violence, persons
15 who have demonstrated expertise in education and domestic
16 violence, advocates for victims, organizations representing the
17 interests of shelters and the family protection services board.

PART 9. LOCAL ADVISORY COUNCILS.**§48-26-901. Establishment of local advisory councils authorized.**

1 A local government, a county or a combination thereof
2 may establish an advisory council on domestic violence.

§48-26-902. Purpose of local advisory councils.

1 The purpose of a local advisory council is to increase the
2 awareness and understanding of domestic violence and its
3 consequences and to reduce the incidence of domestic violence
4 within the locality by:

5 (1) Promoting effective strategies for identification of the
6 existence of domestic violence and intervention by public and
7 private agencies serving persons who are victims of domestic
8 violence;

9 (2) Providing for public education;

10 (3) Facilitating communication among public and private
11 agencies that provide programs to assist victims and programs
12 of intervention for perpetrators;

13 (4) Providing assistance to public and private agencies and
14 providers of services to develop statewide procedures and
15 community and staff education, including procedures to review
16 fatalities; and

17 (5) Developing a comprehensive plan of data collection
18 concerning domestic violence in cooperation with courts,
19 prosecutors, law-enforcement officers, health care practitioners
20 and other local agencies, in a manner that protects the identity
21 of victims of domestic violence. Nothing contained in this
22 subdivision shall be construed to modify or diminish any
23 existing law relating to the confidentiality of records.

PART 10. RESERVED.**PART 11. MISCELLANEOUS PROVISIONS.****§48-26-1101. Referral to shelters.**

1 Where shelters are available, the law-enforcement officer
2 or other public authority investigating an alleged incident of
3 domestic violence shall advise the victim of the availability of
4 the family protection shelter to which that person may be
5 admitted.

§48-26-1102. Continuation of board.

1 After having conducted a performance audit through its
2 joint committee on government operations, pursuant to article
3 ten, chapter four of this code, the Legislature hereby finds and
4 declares that the family protection services board should be
5 continued and reestablished. Accordingly, notwithstanding the
6 provisions of said article, the family protection services board
7 shall continue to exist until the first day of July, two thousand
8 six, unless sooner terminated, continued or reestablished by act
9 of the Legislature.

ARTICLE 27. PREVENTION AND TREATMENT OF DOMESTIC VIOLENCE.

§48-27-101. Findings and purposes.

§48-27-201. Applicability of definitions.

§48-27-202. Domestic violence defined.

§48-27-203. Family or household members defined.

§48-27-204. Law-enforcement agency defined.

§48-27-205. Program for victims of domestic violence defined.

§48-27-206. Program intervention for perpetrators defined.

§48-27-301. Jurisdiction.

§48-27-302. Venue.

§48-27-303. Effect of petitioner leaving residence.

§48-27-304. Commencement of proceeding.

§48-27-305. Persons who may file petition.

§48-27-306. Counterclaim or affirmative defenses.

- §48-27-307. Persons accompanying petitioner.
- §48-27-308. Charges for fees and costs postponed.
- §48-27-309. Priority of petitions.
- §48-27-310. Full faith and credit.
- §48-27-311. Service of process.
- §48-27-401. Proceedings when divorce action is pending.
- §48-27-402. Proceedings in magistrate court when temporary divorce, annulment or separate maintenance order is in effect.
- §48-27-403. Temporary orders of court; hearings; persons present.
- §48-27-501. Issuance of protective order; modification of order.
- §48-27-502. Mandatory provisions in protective order.
- §48-27-503. Permissive provisions in protective order.
- §48-27-504. Provisions in protective order for person witnessing or reporting domestic violence.
- §48-27-505. Time period a protective order is in effect; extension of order; notice of order or extension.
- §48-27-506. Effect of protective order on real and personal property.
- §48-27-507. Mutual protective orders prohibited.
- §48-27-508. Costs to be paid to family court fund.
- §48-27-509. Conditions of visitation in cases involving domestic violence.
- §48-27-510. Appeals.
- §48-27-511. Purging of domestic violence files.
- §48-27-601. Filing of orders with law-enforcement agency; affidavit as to award of possession of real property; service of order on respondent.
- §48-27-701. Service of pleadings and orders by law-enforcement officers.
- §48-27-702. Law-enforcement officers to provide information and transportation.
- §48-27-801. Reports of domestic violence to state police.
- §48-27-802. Maintenance of registry by state police.
- §48-27-803. Limitation on use of information.
- §48-27-901. Civil contempt; violation of protective orders; order to show cause.
- §48-27-902. Violations of protective orders; criminal complaints.
- §48-27-903. Misdemeanor offenses for violation of protective order, repeat offenses, penalties.
- §48-27-1001. Arrest for violations of protective orders.
- §48-27-1002. Arrest in domestic violence matters; conditions.
- §48-27-1101. The forms to be provided.
- §48-27-1102. Authorization for the promulgation of legislative rules.
- §48-27-1103. Training of law-enforcement officers in domestic violence.
- §48-27-1104. Judicial education on domestic violence.
- §48-27-1105. Rule for time-keeping requirements.

PART 1. GENERAL PROVISIONS.

§48-27-101. Findings and purposes.

1 (a) The Legislature of this state finds that:

2 (1) Every person has a right to be safe and secure in his or
3 her home and family and to be free from domestic violence.

4 (2) Children are often physically assaulted or witness
5 violence against one of their parents or other family or house-
6 hold members, violence which too often ultimately results in
7 death. These children may suffer deep and lasting emotional
8 harm from victimization and from exposure to domestic
9 violence;

10 (3) Domestic violence is a major health and
11 law-enforcement problem in this state with enormous costs to
12 the state in both dollars and human lives. It affects people of all
13 racial and ethnic backgrounds and all socioeconomic classes;
14 and

15 (4) Domestic violence can be deterred, prevented or
16 reduced by legal intervention that treats this problem with the
17 seriousness that it deserves.

18 (b) This article shall be liberally construed and applied to
19 promote the following purposes:

20 (1) To assure victims of domestic violence the maximum
21 protection from abuse that the law can provide;

22 (2) To create a speedy remedy to discourage violence
23 against family or household members with whom the perpetra-
24 tor of domestic violence has continuing contact;

25 (3) To expand the ability of law-enforcement officers to
26 assist victims, to enforce the domestic violence law more
27 effectively, and to prevent further abuse;

28 (4) To facilitate equal enforcement of criminal law by
29 deterring and punishing violence against family and household
30 members as diligently as violence committed against strangers;

31 (5) To recognize that domestic violence constitutes serious
32 criminal behavior with potentially tragic results and that it will
33 no longer be excused or tolerated; and

34 (6) To recognize that the existence of a former or on-going
35 familial or other relationship should not serve to excuse,
36 explain or mitigate acts of domestic violence which are
37 otherwise punishable as crimes under the laws of this state.

PART 2. DEFINITIONS.

§48-27-201. Applicability of definitions.

1 For the purposes of this article and article 26-101, et seq.,
2 of this chapter, the words or terms defined in this article, and
3 any variation of those words or terms required by the context,
4 have the meanings ascribed to them in this section. These
5 definitions are applicable unless a different meaning clearly
6 appears from the context.

*§48-27-202. Domestic violence defined.

1 “Domestic violence”, or “abuse” means the occurrence of
2 one or more of the following acts between family or household
3 members, as that term is defined in section 27-203:

4 (1) Attempting to cause or intentionally, knowingly or
5 recklessly causing physical harm to another with or without
6 dangerous or deadly weapons;

7 (2) Placing another in reasonable apprehension of physical
8 harm;

*Clerk’s Note: This section was also amended by S. B. 652 (Chapter 93), which passed subsequent to this act.

9 (3) Creating fear of physical harm by harassment, psycho-
10 logical abuse or threatening acts;

11 (4) Committing either sexual assault or sexual abuse as
12 those terms are defined in articles eight-b and eight-d, chapter
13 sixty-one of this code; and

14 (5) Holding, confining, detaining or abducting another
15 person against that person's will.

***§48-27-203. Family or household members defined.**

1 "Family or household members" means persons who:

2 (1) Are or were married to each other;

3 (2) Are or were living together as spouses;

4 (3) Are or were sexual or intimate partners;

5 (4) Are or were dating: *Provided*, That a casual acquaint-
6 tance or ordinary fraternization between persons in a business
7 or social context does not establish a dating relationship;

8 (5) Are or were residing together in the same household;

9 (6) Are or were related by marriage or related by consan-
10 guinity within the second degree;

11 (7) Have a child in common, regardless of whether they
12 have ever married or lived together; or

13 (8) Are the father, stepfather, mother, stepmother, brother
14 or sister of a family or household member described in subdivi-
15 sions one through seven of this subsection.

***§48-27-204. Law-enforcement agency defined.**

***Clerk's Note:** This section was also amended by S. B. 652 (Chapter 93), which passed subsequent to this act.

1 (a) “Law-enforcement agency” means and is limited to:

2 (1) The state police and its members;

3 (2) A county sheriff and his or her law-enforcement
4 deputies; and

5 (3) A police department in any municipality as defined in
6 section two, article one, chapter eight of this code.

7 (b) The term “law-enforcement agency” includes the
8 department of health and human resources in those instances of
9 child abuse reported to the department that are not otherwise
10 reported to any other law-enforcement agency.

***§48-27-205. Program for victims of domestic violence defined.**

1 “Program for victims of domestic violence” means a
2 licensed program for victims of domestic violence and their
3 children, which program provides advocacy, shelter, crisis
4 intervention, social services, treatment, counseling, education
5 or training.

***§48-27-206. Program of intervention for perpetrators defined.**

1 “Program of intervention for perpetrators” means a
2 licensed program, where available, or if no licensed program is
3 available, a program that:

4 (1) Accepts perpetrators of domestic violence into educa-
5 tional intervention groups or counseling pursuant to a court
6 order; or

7 (2) Offers educational intervention groups to perpetrators
8 of domestic violence.

PART 3. PROCEDURE.

***§48-27-301. Jurisdiction.**

***Clerk’s Note:** This section was also amended by S. B. 652 (Chapter 93), which passed subsequent to this act.

1 Circuit courts and magistrate courts, as constituted under
2 chapter fifty of this code, have concurrent jurisdiction over
3 proceedings under this article: *Provided*, That on and after the
4 first day of September, two thousand one, magistrate court
5 jurisdiction shall be limited, and thereafter, final hearings
6 wherein a protective order is sought shall be heard before a
7 circuit judge or a family law master.

§48-27-302. Venue.

1 The action may be heard in the county in which the
2 domestic violence occurred, in the county in which the respon-
3 dent is living or in the county in which the petitioner is living,
4 either temporarily or permanently. If the parties are married to
5 each other, the action may also be brought in the county in
6 which an action for divorce between the parties may be brought
7 as provided by 5-106.

§48-27-303. Effect of petitioner leaving residence.

1 The petitioner's right to relief under this article shall not be
2 affected by his or her leaving a residence or household to avoid
3 further abuse.

§48-27-304. Commencement of proceeding.

1 (a) An action under this article is commenced by the filing
2 of a verified petition.

3 (b) No person shall be refused the right to file a petition
4 under the provisions of this article. No person shall be denied
5 relief under the provisions of this article if she or he presents
6 facts sufficient under the provisions of this article for the relief
7 sought.

8 (c) Husband and wife are competent witnesses in domestic
9 violence proceedings and cannot refuse to testify on the
10 grounds of the privileged nature of their communications.

§48-27-305. Persons who may file petition.

1 A petition for a protective order may be filed by:

2 (1) A person seeking relief under this article for herself or
3 himself;

4 (2) An adult family or household member for the protection
5 of the victim or for any family or household member who is a
6 minor child or physically or mentally incapacitated to the extent
7 that he or she cannot file on his or her own behalf, or

8 (3) A person who reported or was a witness to domestic
9 violence and who, as a result, has been abused, threatened,
10 harassed or who has been the subject of other actions intended
11 to intimidate the person.

§48-27-306. Counterclaim or affirmative defenses.

1 (a) A respondent named in a petition alleging domestic
2 violence may file a verified counterclaim stating any claim that
3 the respondent has against the petitioner that would be a basis
4 for filing a petition under this article.

5 (b) In response to a petition or counterclaim, the person
6 alleged to have committed the domestic violence may assert
7 any affirmative defense that he or she may have available.

§48-27-307. Persons accompanying petitioner.

1 No person accompanying a person who is seeking to file a
2 petition under the provisions of this article is precluded from
3 being present if his or her presence is desired by the person

- 4 seeking a petition unless the person's behavior is disruptive to
- 5 the proceeding.

§48-27-308. Charges for fees and costs postponed.

- 1 No fees shall be charged for the filing of petitions or other
- 2 papers, service of petitions or orders, copies of orders, or other
- 3 costs for services provided by, or associated with, any proceed-
- 4 ings under this article until the matter is brought before the
- 5 court for final resolution.

***§48-27-309. Priority of petitions.**

- 1 Any petition filed under the provisions of this article shall
- 2 be given priority over any other civil action before the court,
- 3 except actions in which trial is in progress, and shall be
- 4 docketed immediately upon filing. Any appeal to the circuit
- 5 court of a magistrate's judgment on a petition for relief under
- 6 this article shall be heard within ten working days of the filing
- 7 of the appeal.

§48-27-310. Full faith and credit.

- 1 Any protective order issued pursuant to this article shall be
- 2 effective throughout the state in every county. Any protective
- 3 order issued by any other state, territory or possession of the
- 4 United States, Puerto Rico, the District of Columbia or Indian
- 5 tribe shall be accorded full faith and credit and enforced as if it
- 6 were an order of this state whether or not such relief is available
- 7 in this state. A protective order from another jurisdiction is
- 8 presumed to be valid if the order appears authentic on its face
- 9 and shall be enforced in this state. If the validity of the order is
- 10 contested, the court or law enforcement to which the order is
- 11 presented shall, prior to the final hearing, determine the
- 12 existence, validity and terms of such order in the issuing
- 13 jurisdiction. A protective order from another jurisdiction may

***Clerk's Note:** This section was also amended by S. B. 652 (Chapter 93), which passed subsequent to this act.

14 be enforced even if the order is not entered into the state
15 law-enforcement information system described by 27-802.

§48-27-311. Service of process.

1 A protective order may be served on the respondent by
2 means of a Class I legal advertisement published notice, with
3 the publication area being the county in which the respondent
4 resides, published in accordance with the provisions of section
5 two, article three, chapter fifty-nine of this code if: (1) The
6 petitioner files an affidavit with the court stating that an attempt
7 at personal service pursuant to rule four of the West Virginia
8 rules of civil procedure has been unsuccessful or evidence is
9 adduced at the hearing for the protective order that the respon-
10 dent has left the state of West Virginia; and (2) a copy of the
11 order is mailed by certified or registered mail to the respondent
12 at the respondent's last known residence and returned undeliv-
13 ered.

**PART 4. COORDINATION WITH PENDING
CIRCUIT COURT ACTIONS.**

***§48-27-401. Proceedings when divorce action is pending.**

1 (a) During the pendency of a divorce action, a person may
2 file for and be granted relief provided by this article, until an
3 order is entered in the divorce action pursuant to part 5-501, et
4 seq.

5 (b) If a person who has been granted relief under this article
6 should subsequently become a party to an action for divorce,
7 separate maintenance or annulment, such person shall remain
8 entitled to the relief provided under this article including the
9 right to file for and obtain any further relief, so long as no
10 temporary order has been entered in the action for divorce,
11 annulment and separate maintenance, pursuant to part 5-501, et
12 seq.

***Clerk's Note:** This section was also amended by S. B. 652 (Chapter 93), which passed subsequent to this act.

13 (c) Except as provided in section 27-402 of this article for
14 a petition and a temporary emergency protective order, no
15 person who is a party to a pending action for divorce, separate
16 maintenance or annulment in which an order has been entered
17 pursuant to part 5-501, et seq., of this chapter, shall be entitled
18 to file for or obtain relief against another party to that action
19 under this article until after the entry of a final order which
20 grants or dismisses the action for divorce, annulment or
21 separate maintenance.

22 (d) Notwithstanding the provisions set forth in section 27-
23 505, any order issued pursuant to this section where a subse-
24 quent action is filed seeking a divorce, annulment or separate
25 maintenance, shall remain in full force and effect by operation
26 of this statute until a temporary or final order is issued pursuant
27 to section part 5-501, et seq., or a final order granting or
28 dismissing the action for divorce, annulment or separate
29 maintenance.

***§48-27-402. Proceedings in magistrate court when temporary
divorce, annulment or separate maintenance
order is in effect.**

1 (a) The provisions of this section apply where a temporary
2 order has been entered by a family law master or judge in an
3 action for divorce, annulment or separate maintenance, notwith-
4 standing the provisions of subsection 27-401(c).

5 (b) A person who is a party to an action for divorce,
6 annulment or separate maintenance in which a temporary order
7 has been entered pursuant to section 5-501 of this chapter may
8 petition the magistrate court for a temporary emergency
9 protective order pursuant to this section for any violation of the
10 provisions of this article occurring after the date of entry of the
11 temporary order pursuant to section 5-501 of this chapter.

***Clerk's Note:** This section was also amended by S. B. 652 (Chapter 93), which passed subsequent to this act.

12 (c) The only relief that a magistrate may award pursuant to
13 this section is a temporary emergency protective order:

14 (1) Directing the respondent to refrain from abusing the
15 petitioner or minor children or both;

16 (2) Ordering the respondent to refrain from entering the
17 school, business or place of employment of the petitioner or
18 household members or family members for the purpose of
19 violating the protective order; and

20 (3) Ordering the respondent to refrain from contacting,
21 telephoning, communicating with, harassing or verbally abusing
22 the petitioner.

23 (d) A temporary emergency protective order may modify an
24 award of custody or visitation only upon a showing, by clear
25 and convincing evidence, of the respondent's abuse of a child,
26 as abuse is defined in section 27-202. An order of modification
27 shall clearly state which party has custody and describe why
28 custody or visitation arrangements were modified.

29 (e) The magistrate shall forthwith transmit a copy of any
30 temporary emergency protective order, together with a copy of
31 the petition, by mail or by facsimile machine to the family law
32 master before whom the action is pending and to
33 law-enforcement agencies. Upon receipt of the petition and
34 order, the master shall examine its provisions. Within ten days
35 of the magistrate's issuance of the temporary emergency
36 protective order, the master shall issue an order either to extend
37 such emergency protection for a time certain or to vacate the
38 magistrate's order. The master shall forthwith give notice to all
39 parties and to the issuing magistrate court. The magistrate court
40 clerk shall forward a copy of the master's order to
41 law-enforcement agencies.

42 If no temporary order has been entered in the pending
43 action for divorce, annulment or separate maintenance, the
44 master shall forthwith return the order with such explanation to
45 the issuing magistrate. The magistrate who issued the order
46 shall vacate the order, noting thereon the reason for termination.
47 The magistrate court clerk shall transmit a copy of the vacated
48 order to the parties and law-enforcement agencies.

***§48-27-403. Temporary orders of court; hearings; persons present.**

1 (a) Upon filing of a verified petition under this article, the
2 court may enter such temporary orders as it may deem neces-
3 sary to protect the petitioner or minor children from domestic
4 violence and, upon good cause shown, may do so ex parte
5 without the necessity of bond being given by the petitioner.
6 Clear and convincing evidence of immediate and present danger
7 of abuse to the petitioner or minor children shall constitute
8 good cause for the issuance of an ex parte order pursuant to this
9 section. If the respondent is not present at the proceeding, the
10 petitioner or the petitioner's legal representative shall certify to
11 the court, in writing, the efforts which have been made to give
12 notice to the respondent or just cause why notice should not be
13 required. Copies of medical reports or records may be admitted
14 into evidence to the same extent as though the original thereof.
15 The custodian of such records shall not be required to be
16 present to authenticate such records for any proceeding held
17 pursuant to this subsection. Following such proceeding, the
18 court shall order a copy of the petition to be served immediately
19 upon the respondent, together with a copy of any temporary
20 order issued pursuant to the proceedings, notice setting forth the
21 time and place of the final hearing and a statement of the right
22 of the respondent to be present and to be represented by
23 counsel. Copies of any order made under the provisions of this
24 section shall also be issued to the petitioner and any
25 law-enforcement agency having jurisdiction to enforce the

***Clerk's Note:** This section was also amended by S. B. 652 (Chapter 93), which passed subsequent to this act.

26 order, including municipal police, the county sheriff's office
27 and local office of the state police, within twenty-four hours of
28 the entry of the order. A temporary protective order is effective
29 until such time as a hearing is held and is in full force and effect
30 in every county in this state.

31 (b) Within five days following the issuance of the court's
32 temporary order, a final hearing shall be held at which the
33 petitioner must prove the allegation of domestic violence, or
34 that he or she reported or witnessed domestic violence against
35 another and has, as a result, been abused, threatened, harassed
36 or has been the subject of other actions to attempt to intimidate
37 him or her, by a preponderance of the evidence, or such petition
38 shall be dismissed. If the respondent has not been served with
39 notice of the temporary order, the hearing may be continued in
40 order to permit service to be effected. The failure to obtain
41 service upon the respondent does not constitute a basis for
42 dismissing the petition. Copies of medical reports may be
43 admitted into evidence to the same extent as though the original
44 thereof, upon proper authentication, by the custodian of such
45 records.

46 (c) No person requested by a party to be present during a
47 hearing held under the provisions of this article shall be
48 precluded from being present unless such person is to be a
49 witness in the proceeding and a motion for sequestration has
50 been made and such motion has been granted. A person found
51 by the court to be disruptive may be precluded from being
52 present.

53 (d) If a hearing is continued, the court may make or extend
54 such temporary orders as it deems necessary.

PART 5. PROTECTIVE ORDERS; VISITATION ORDERS.

§48-27-501. Issuance of protective order; modification of order.

1 (a) The court shall enter a protective order if it finds, after
2 hearing the evidence adduced by the parties, that the petitioner
3 has proved the allegations of domestic violence by a preponder-
4 ance of the evidence. If the respondent is present at the hearing
5 and elects not to contest the allegations of domestic violence or
6 does not contest the relief sought, the petitioner is not required
7 to adduce evidence and prove the allegations of domestic
8 violence and the court may directly address the issues of the
9 relief requested.

10 (b) The court may modify the terms of a protective order at
11 any time upon subsequent petition filed by any party.

§48-27-502. Mandatory provisions in protective order.

1 (a) A protective order must order the respondent to refrain
2 from abusing, harassing, stalking, threatening or otherwise
3 intimidating the petitioner or the minor children, or engaging in
4 other conduct that would place the petitioner or the minor
5 children in reasonable fear of bodily injury.

6 (b) The protective order must inform the respondent that he
7 or she is prohibited from possessing any firearm or ammuni-
8 tion, notwithstanding the fact that the respondent may have a
9 valid license to possess a firearm, and that possession of a
10 firearm or ammunition while subject to the court's protective
11 order is a criminal offense under federal law.

12 (c) The protective order must inform the respondent that the
13 order is in full force and effect in every county of this state.

14 (d) The protective order must contain on its face the
15 following statement, printed in bold-faced type or in capital
16 letters:

17 "VIOLATION OF THIS ORDER MAY BE PUNISHED
18 BY CONFINEMENT IN A REGIONAL OR COUNTY JAIL

19 FOR AS LONG AS ONE YEAR AND BY A FINE OF AS
20 MUCH AS TWO THOUSAND DOLLARS”.

§48-27-503. Permissive provisions in protective order.

1 The terms of a protective order may include:

2 (1) Granting possession to the petitioner of the residence or
3 household jointly resided in at the time the abuse occurred;

4 (2) Awarding temporary custody of or establishing tempo-
5 rary visitation rights with regard to minor children named in the
6 order;

7 (3) Establishing terms of temporary visitation with regard
8 to the minor children named in the order including, but not
9 limited to, requiring third party supervision of visitations if
10 necessary to protect the petitioner and/or the minor children;

11 (4) Ordering the noncustodial parent to pay to the caretaker
12 parent a sum for temporary support and maintenance of the
13 petitioner and children, if any;

14 (5) Ordering the respondent to pay to the petitioner a sum
15 for temporary support and maintenance of the petitioner, where
16 appropriate;

17 (6) Ordering the respondent to refrain from entering the
18 school, business or place of employment of the petitioner or
19 household or family members for the purpose of violating the
20 protective order;

21 (7) Ordering the respondent to participate in an intervention
22 program for perpetrators;

23 (8) Ordering the respondent to refrain from contacting,
24 telephoning, communicating, harassing or verbally abusing the
25 petitioner.

26 (9) Providing for either party to obtain personal property or
27 other items from a location, including granting temporary
28 possession of motor vehicles owned by either or both of the
29 parties, and providing for the safety of the parties while this
30 occurs, including ordering a law-enforcement officer to
31 accompany one or both of the parties.

32 (10) Ordering the respondent to reimburse the petitioner or
33 other person for any expenses incurred as a result of the
34 domestic violence, including, but not limited to, medical
35 expenses, transportation and shelter; and

36 (11) Ordering the petitioner and respondent to refrain from
37 transferring, conveying, alienating, encumbering, or otherwise
38 dealing with property which could otherwise be subject to the
39 jurisdiction of the court or another court in an action for divorce
40 or support, partition or in any other action affecting their
41 interests in property.

**§48-27-504. Provisions in protective order for person witnessing
or reporting domestic violence.**

1 When the person to be protected is a person who reported
2 or was a witness to the domestic violence, the terms of a
3 protective order may order the respondent:

4 (1) Order the respondent to refrain from abusing, contact-
5 ing, telephoning, communicating, harassing, verbally abusing
6 or otherwise intimidating the person to be protected; and

7 (2) Order the respondent to refrain from entering the
8 school, business or place of employment of the person to be
9 protected for the purpose of violating the protective order.

***§48-27-505. Time period a protective order is in effect; extension
of order; notice of order or extension.**

***Clerk's Note:** This section was also amended by S. B. 652 (Chapter 93), which
passed subsequent to this act.

1 (a) Except as otherwise provided by subsection 27-401(d)
2 of this article, a protective order issued by a magistrate, family
3 law master or circuit judge pursuant to this article is effective
4 for either ninety days or one hundred eighty days, in the
5 discretion of the court. If the court enters an order for a period
6 of ninety days, upon receipt of a written request from the
7 petitioner prior to the expiration of the ninety-day period, the
8 court shall extend its order for an additional ninety-day period.

9 (b) To be effective, a written request to extend an order
10 from ninety days to one hundred eighty days must be submitted
11 to the court prior to the expiration of the original ninety-day
12 period. A notice of the extension shall be sent by the clerk of
13 the court to the respondent by first class mail, addressed to the
14 last known address of the respondent as indicated by the court's
15 case filings. The extension of time is effective upon mailing of
16 the notice.

17 (c) Certified copies of any order or extension notice made
18 under the provisions of this section shall be issued to the
19 petitioner, the respondent and any law-enforcement agency
20 having jurisdiction to enforce the order, including the city
21 police, the county sheriff's office or local office of the West
22 Virginia state police within twenty-four hours of the entry of
23 the order.

24 (d) The court may amend the terms of a protective order at
25 any time upon subsequent petition filed by either party. The
26 protective order shall be in full force effect in every county of
27 this state and shall so state.

**§48-27-506. Effect of protective order on real and personal prop-
erty.**

1 No order entered pursuant to this article may in any manner
2 affect title to any real property, except as provided in section
3 14-301 for past due child support. The personal property of any

4 person ordered to pay child support pursuant to the provisions
5 of this article is subject to a lien for past due child support as
6 provided in part 14-201, et seq.

§48-27-507. Mutual protective orders prohibited.

1 Mutual protective orders are prohibited unless both parties
2 have filed a petition under part 3 of this article and have proven
3 the allegations of domestic violence by a preponderance of the
4 evidence. This shall not prevent other persons, including the
5 respondent, from filing a separate petition. The court may
6 consolidate two or more petitions if he or she determines that
7 consolidation will further the interest of justice and judicial
8 economy. The court shall enter a separate order for each
9 petition filed.

§48-27-508. Costs to be paid to family court fund.

1 Any person against whom a protective order is issued shall
2 be assessed costs of twenty-five dollars. Such costs shall be
3 paid to the family court fund established pursuant to section 29-
4 403 of this chapter.

§48-27-509. Conditions of visitation in cases involving domestic violence.

1 (a) A court may award visitation of a child by a parent who
2 has committed domestic violence only if the court finds that
3 adequate provision for the safety of the child and the petitioner
4 can be made.

5 (b) In a visitation order, a court may:

6 (1) Order an exchange of a child to occur in a protected
7 setting;

- 8 (2) Order that supervision be provided by another person or
9 agency;
- 10 (3) Order the perpetrator of domestic violence to attend and
11 complete, to the satisfaction of the court, a program of interven-
12 tion for perpetrators as a condition of the visitation;
- 13 (4) Order the perpetrator of domestic violence to abstain
14 from possession or consumption of alcohol or controlled
15 substances during the visitation and for the twelve hours that
16 precede the visitation;
- 17 (5) Order the perpetrator of domestic violence to pay the
18 costs of supervised visitation, if any;
- 19 (6) Prohibit overnight visitation;
- 20 (7) Impose any other condition that the court considers
21 necessary to provide for the safety of the child, the petitioner or
22 any other family or household member.
- 23 (c) Regardless of whether visitation is allowed, the court
24 may order that the address of the child and the petitioner be
25 kept confidential.
- 26 (d) If a court allows a family or household member to
27 supervise visitation, the court shall establish conditions to be
28 followed during visitation.

***§48-27-510. Appeals.**

1 Any party to a temporary or final protective order may as
2 a matter of right present a petition for appeal, within five days
3 of entry of the order in magistrate court, to the circuit court.
4 The order shall remain in effect pending an appeal unless stayed
5 by the circuit court. No bond shall be required for any appeal
6 under this section. In any case where a petition for appeal is

***Clerk's Note:** This section was also amended by S. B. 652 (Chapter 93), which passed subsequent to this act.

7 filed under this section, the petition shall be heard de novo by
8 the circuit court within ten days from the filing of the petition
9 for appeal.

§48-27-511. Purging of domestic violence files.

1 Two years after the entry of a final protective order, the
2 circuit court, may, upon motion, order that the protective order
3 and references to the order be purged from the file maintained
4 by any law-enforcement agency and may further order that the
5 file maintained by the court be sealed and not opened except
6 upon order of the court when such is in the interest of justice.

PART 6. DISPOSITION OF DOMESTIC VIOLENCE ORDERS.

***§48-27-601. Filing of orders with law-enforcement agency; affidavit as to award of possession of real property; service of order on respondent.**

1 (a) Upon entry of an order pursuant to section 27-403 or
2 part 27-501, et seq., or an order entered pursuant to part 5-501,
3 et seq., granting relief provided for by this article, a copy of the
4 order shall, no later than the close of the next business day, be
5 transmitted by the court or the clerk of the court to a local office
6 of the municipal police, the county sheriff and the West
7 Virginia state police, where it shall be placed in a confidential
8 file, with access provided only to the law-enforcement agency
9 and the respondent named on the order.

10 (b) A sworn affidavit may be executed by a party who has
11 been awarded exclusive possession of the residence or house-
12 hold, pursuant to an order entered pursuant to section 27-503,
13 and shall be delivered to such law-enforcement agencies
14 simultaneously with any order, giving his or her consent for a
15 law-enforcement officer to enter the residence or household,
16 without a warrant, to enforce the protective order or temporary
17 order.

***Clerk's Note:** This section was also amended by S. B. 730 (Chapter 181), which passed subsequent to this act.

18 (c) Orders shall be promptly served upon the respondent.
19 Failure to serve a protective order on the respondent does not
20 stay the effect of a valid order if the respondent has actual
21 notice of the existence and contents of the order.

**PART 7. LAW ENFORCEMENT RESPONSE
TO DOMESTIC VIOLENCE.**

§48-27-701. Service of pleadings and orders by law-enforcement officers.

1 Notwithstanding any other provision of this code to the
2 contrary, all law-enforcement officers are hereby authorized to
3 serve all pleadings and orders filed or entered pursuant to this
4 article on Sundays and legal holidays. No law-enforcement
5 officer shall refuse to serve any pleadings or orders entered
6 pursuant to this article.

§48-27-702. Law-enforcement officers to provide information and transportation.

1 (a) Any law-enforcement officer responding to an alleged
2 incident of domestic violence shall inform the parties of the
3 availability of the possible remedies provided by this article and
4 the possible applicability of the criminal laws of this state. Any
5 law-enforcement officer investigating an alleged incident of
6 domestic violence shall advise the victim of such violence of
7 the availability of the family protection shelter to which such
8 person may be admitted.

9 (b) If there is reasonable cause to believe that a person is a
10 victim of domestic violence or is likely to be a victim of
11 domestic violence, a law-enforcement officer responding to an
12 alleged incident of domestic violence shall, in addition to
13 providing the information required in subsection (a) of this
14 section, provide transportation for or facilitate transportation of

15 the victim, upon the request of such victim, to a shelter or an
16 appropriate court.

PART 8. RECORD-KEEPING BY LAW-ENFORCEMENT OFFICERS.

§48-27-801. Reports of domestic violence to state police.

1 (a) Each law-enforcement agency shall maintain records on
2 all incidents of domestic violence reported to it and shall
3 monthly make and deliver to the West Virginia state police a
4 report on a form prescribed by the state police, listing all such
5 incidents of domestic violence. Such reports shall include:

6 (1) The age and sex of the victim and the perpetrator of
7 domestic violence;

8 (2) The relationship between the parties;

9 (3) The type and extent of abuse;

10 (4) The number and type of weapons involved;

11 (5) Whether the law-enforcement agency responded to the
12 complaint and if so, the time involved, the action taken and the
13 time lapse between the agency's action and the victim's request
14 for assistance;

15 (6) Whether any prior reports have been made, received or
16 filed regarding domestic violence on any prior occasion and if
17 so, the number of such prior reports; and

18 (7) The effective dates and terms of any protective order
19 issued prior to or following the incident to protect the victim:
20 *Provided*, That no information which will permit the identifica-
21 tion of the parties involved in any incident of domestic violence
22 shall be included in such report.

23 (b) The West Virginia state police shall tabulate and
24 analyze any statistical data derived from the reports made by
25 law-enforcement agencies pursuant to this section and publish
26 a statistical compilation in its annual uniform crime report, as
27 provided for in section twenty-four, article two, chapter fifteen
28 of this code. The statistical compilation shall include, but is not
29 limited to, the following:

30 (1) The number of domestic violence complaints received;

31 (2) The number of complaints investigated;

32 (3) The number of complaints received from alleged
33 victims of each sex;

34 (4) The average time lapse in responding to such com-
35 plaints;

36 (5) The number of complaints received from alleged
37 victims who have filed such complaints on prior occasions;

38 (6) The number of aggravated assaults and homicides
39 resulting from such repeat incidents;

40 (7) The type of police action taken in disposition of the
41 cases; and

42 (8) The number of alleged violations of protective orders.

§48-27-802. Maintenance of registry by state police.

1 (a) The West Virginia state police shall maintain a registry
2 in which it shall enter certified copies of orders entered by
3 courts from every county in this state pursuant to the provisions
4 of this article, or from other jurisdictions pursuant to their laws:
5 *Provided, That the provisions of this subsection are not*
6 *effective until a central automated record system is developed.*

7 (b) A petitioner who obtains a protective order pursuant to
8 this article, or from another jurisdiction pursuant to its law, may
9 register that order in any county within this state where the
10 petitioner believes enforcement may be necessary.

11 (c) A protective order may be registered by the petitioner in
12 a county other than the issuing county by obtaining a copy of
13 the order of the issuing court, certified by the clerk of that
14 court, and presenting that certified order to the local office of
15 the West Virginia state police where the order is to be regis-
16 tered.

17 (d) Upon receipt of a certified order for registration, the
18 local office of the state police shall provide certified copies to
19 any law-enforcement agency within its jurisdiction, including
20 the city police and the county sheriff's office.

21 (e) Nothing in this section precludes the enforcement of an
22 order in a county other than the county or jurisdiction in which
23 the order was issued, if the petitioner has not registered the
24 order in the county in which an alleged violation of the order
25 occurs.

§48-27-803. Limitation on use of information.

1 Nothing in this article shall be construed to authorize the
2 inclusion of information contained in a report of an incident of
3 abuse in any local, state, interstate, national or international
4 systems of criminal identification pursuant to section
5 twenty-four, article two, chapter fifteen of this code: *Provided,*
6 That nothing in this section shall prohibit the West Virginia
7 state police from processing information through its criminal
8 identification bureau with respect to any actual charge or
9 conviction of a crime.

PART 9. SANCTIONS.

***§48-27-901. Civil contempt; violation of protective orders; order to show cause.**

1 (a) Any party to a protective order or a legal guardian or
2 guardian ad litem may file a petition for civil contempt alleging
3 a violation of an order issued pursuant to the provisions of this
4 article. Such petition shall be filed in a court in the county in
5 which the violation occurred or the county in which the order
6 was issued.

7 (b) When a petition for an order to show cause is filed, a
8 hearing on the petition shall be held within five days from the
9 filing of the petition. Any order to show cause which is issued
10 shall be served upon the alleged violator.

11 (c) Upon a finding of contempt, the court may order the
12 violator to comply with specific provisions of the protective
13 order and post a bond as surety for faithful compliance with
14 such order.

***§48-27-902. Violations of protective orders; criminal complaints.**

1 (a) When a respondent abuses the petitioner or minor
2 children, or both, or is physically present at any location in
3 knowing and willful violation of the terms of a temporary or
4 final protective order issued by a magistrate, a circuit court
5 judge or a family law master under the provisions of this article
6 or section 5-508 granting the relief pursuant to the provisions
7 of this article, any person authorized to file a petition pursuant
8 to the provisions of section 27-305 or the legal guardian or
9 guardian ad litem may file a petition for civil contempt as set
10 forth in section 27-901.

11 (b) When any such violation of a valid order has occurred,
12 the petitioner may file a criminal complaint. If the court finds
13 probable cause upon the complaint, the court shall issue a
14 warrant for arrest of the person charged.

***Clerk's Note:** This section was also amended by S. B. 652 (Chapter 93), which passed subsequent to this act.

***§48-27-903. Misdemeanor offenses for violation of protective order, repeat offenses, penalties.**

1 (a) A respondent who abuses the petitioner and/or minor
2 children or who is physically present at any location in knowing
3 and willful violation of the terms of a temporary or final
4 protective order issued by a magistrate, a circuit court judge or
5 a family law master under the provisions of this article or
6 section 5-508 granting the relief pursuant to the provisions of
7 this article, is guilty of a misdemeanor and, upon conviction
8 thereof, shall be confined in the county or regional jail for a
9 period of not less than one day nor more than one year, which
10 jail term shall include actual confinement of not less than
11 twenty-four hours, and shall be fined not less than two hundred
12 fifty dollars nor more than two thousand dollars.

13 (b) When a respondent previously convicted of the offense
14 described in subsection (a) of this section abuses the petitioner
15 and/or minor children or is physically present at any location in
16 knowing and willful violation of the terms of a temporary or
17 final protective order issued under the provisions of this article,
18 the respondent is guilty of a misdemeanor and, upon conviction
19 thereof, shall be confined in the county or regional jail for not
20 less than three months nor more than one year, which jail term
21 shall include actual confinement of not less than twenty-four
22 hours, and fined not less than five hundred dollars nor more
23 than three thousand dollars, or both.

PART 10. ARRESTS.

***§48-27-1001. Arrest for violations of protective orders.**

1 (a) When a law-enforcement officer observes any respon-
2 dent abuse the petitioner and/or minor children or the respon-
3 dent's physical presence at any location in knowing and willful
4 violation of the terms of a temporary or final protective order
5 issued by a magistrate, a circuit court judge or a family law

***Clerk's Note:** This section was also amended by S. B. 652 (Chapter 93), which passed subsequent to this act.

6 master under the provisions of this article or section 5-508
7 granting the relief pursuant to the provisions of this article, he
8 or she shall immediately arrest the respondent.

9 (b) When a family or household member is alleged to have
10 committed a violation of the provisions of section 27-903, a
11 law-enforcement officer may arrest the perpetrator for said
12 offense where:

13 (1) The law-enforcement officer has observed credible
14 corroborative evidence, as defined in subsection 27-1002(b),
15 that the offense has occurred; and

16 (2) The law-enforcement officer has received, from the
17 victim or a witness, a verbal or written allegation of the facts
18 constituting a violation of section 27-903; or

19 (3) The law-enforcement officer has observed credible
20 evidence that the accused committed the offense.

21 (c) Any person who observes a violation of a protective
22 order as described in this section, or the victim of such abuse or
23 unlawful presence, may call a local law-enforcement agency,
24 which shall verify the existence of a current order, and shall
25 direct a law-enforcement officer to promptly investigate the
26 alleged violation.

27 (d) Where there is an arrest, the officer shall take the
28 arrested person before a court or a magistrate and, upon a
29 finding of probable cause to believe a violation of an order as
30 set forth in this section has occurred, the court or magistrate
31 shall set a time and place for a hearing in accordance with the
32 West Virginia rules of criminal procedure.

§48-27-1002. Arrest in domestic violence matters; conditions.

1 (a) Notwithstanding any provision of this code to the
2 contrary, if a person is alleged to have committed a violation of
3 the provisions of subsection (a) or (b), section twenty-eight,
4 article two, chapter sixty-one of this code against a family or
5 household member, in addition to any other authority to arrest
6 granted by this code, a law-enforcement officer has authority to
7 arrest that person without first obtaining a warrant if:

8 (1) The law-enforcement officer has observed credible
9 corroborative evidence that an offense has occurred; and either:

10 (2) The law-enforcement officer has received, from the
11 victim or a witness, an oral or written allegation of facts
12 constituting a violation of section twenty-eight, article two,
13 chapter sixty-one of this code; or

14 (3) The law-enforcement officer has observed credible
15 evidence that the accused committed the offense.

16 (b) For purposes of this section, credible corroborative
17 evidence means evidence that is worthy of belief and corre-
18 sponds to the allegations of one or more elements of the offense
19 and may include, but is not limited to, the following:

20 (1) Condition of the alleged victim.—One or more contu-
21 sions, scratches, cuts, abrasions, or swellings; missing hair; torn
22 clothing or clothing in disarray consistent with a struggle;
23 observable difficulty in breathing or breathlessness consistent
24 with the effects of choking or a body blow; observable diffi-
25 culty in movement consistent with the effects of a body blow or
26 other unlawful physical contact.

27 (2) Condition of the accused.—Physical injury or other
28 conditions similar to those set out for the condition of the
29 victim which are consistent with the alleged offense or alleged
30 acts of self-defense by the victim.

31 (3) Condition of the scene.—Damaged premises or furnish-
32 ings; disarray or misplaced objects consistent with the effects
33 of a struggle.

34 (4) Other conditions.—Statements by the accused admitting
35 one or more elements of the offense; threats made by the
36 accused in the presence of an officer; audible evidence of a
37 disturbance heard by the dispatcher or other agent receiving the
38 request for police assistance; written statements by witnesses.

39 (c) Whenever any person is arrested pursuant to subsection
40 (a) of this section, the arrested person shall be taken before a
41 magistrate within the county in which the offense charged is
42 alleged to have been committed in a manner consistent with the
43 provisions of Rule 1 of the Administrative Rules for the
44 Magistrate Courts of West Virginia.

45 (d) If an arrest for a violation of subsection (c), section
46 twenty-eight, article two, chapter sixty-one of this code is
47 authorized pursuant to this section, that fact constitutes prima
48 facie evidence that the accused constitutes a threat or danger to
49 the victim or other family or household members for the
50 purpose of setting conditions of bail pursuant to section
51 seventeen-c, article one-c, chapter sixty-two of this code.

52 (e) Whenever any person is arrested pursuant to the
53 provisions of this article or for a violation of an order issued
54 pursuant to section 5-508, the arresting officer:

55 (1) Shall seize all weapons that are alleged to have been
56 involved or threatened to be used in the commission of domes-
57 tic violence; and

58 (2) May seize a weapon that is in plain view of the officer
59 or was discovered pursuant to a consensual search, as necessary
60 for the protection of the officer or other persons.

PART 11. MISCELLANEOUS PROVISIONS.***§48-27-1101. The forms to be provided.**

1 The West Virginia supreme court of appeals shall prescribe
2 forms which are necessary and convenient for proceedings
3 pursuant to this article, and the court shall distribute such forms
4 to the clerk of the circuit court and magistrate court of each
5 county within the state.

§48-27-1102. Authorization for the promulgation of legislative rules.

1 The governor's committee on crime, delinquency and
2 correction shall develop and promulgate rules for state, county
3 and municipal law-enforcement officers and law-enforcement
4 agencies with regard to domestic violence. The notice of the
5 public hearing on the rules shall be published before the first
6 day of July, one thousand nine hundred ninety-one. Prior to the
7 publication of the proposed rules, the governor's committee on
8 crime, delinquency and correction shall convene a meeting or
9 meetings of an advisory committee to assist in the development
10 of the rules. The advisory committee shall be composed of
11 persons invited by the committee to represent state, county and
12 local law-enforcement agencies and officers, to represent
13 magistrates and court officials, to represent victims of domestic
14 violence, to represent shelters receiving funding pursuant to
15 article 26-101, et seq., of this chapter and to represent other
16 persons or organizations who, in the discretion of the commit-
17 tee, have an interest in the rules. The rules and the revisions
18 thereof as provided in this section shall be promulgated as
19 legislative rules in accordance with chapter twenty-nine-a of
20 this code. Following the promulgation of said rules, the
21 committee shall meet at least annually to review the rules and
22 to propose revisions as a result of changes in law or policy.

***Clerk's Note:** This section was also amended by S. B. 652 (Chapter 93), which passed subsequent to this act.

§48-27-1103. Training of law-enforcement officers in domestic violence.

1 All law-enforcement officers shall receive training relating
2 to response to calls involving domestic violence.

***§48-27-1104. Judicial education on domestic violence.**

1 All judges may and magistrates and family law masters
2 shall receive a minimum of three hours of training by the first
3 day of October, one thousand nine hundred ninety-three, and
4 three hours per year each year thereafter on domestic violence
5 which shall include training on the psychology of domestic
6 violence, the battered wife and child syndromes, sexual abuse,
7 courtroom treatment of victims, offenders and witnesses,
8 available sanctions and treatment standards for offenders, and
9 available shelter and support services for victims. The supreme
10 court of appeals may provide such training in conjunction with
11 other judicial education programs offered by the supreme court.

§48-27-1105. Rule for time-keeping requirements.

1 The supreme court of appeals shall promulgate a procedural
2 rule to establish time-keeping requirements for magistrates,
3 magistrate court clerks and magistrate assistants so as to assure
4 the maximum funding of incentive payments, grants and other
5 funding sources available to the state for the processing of cases
6 filed for the establishment of temporary orders of child support
7 pursuant to the provisions of this article.

ARTICLE 28. [Reserved]**ARTICLE 29. PROPERTY, RIGHTS AND LIABILITIES OF MARRIED WOMEN; HUSBAND AND WIFE.**

§48-29-101. Emancipation from all disabilities under common law.

§48-29-102. Emancipation from all disabilities to contract.

§48-29-103. Emancipation from all disabilities as to personal or real property.

***Clerk's Note:** This section was also amended by S. B. 652 (Chapter 93), which passed subsequent to this act.

- §48-29-104. Liability for married woman's torts.
§48-29-105. Emancipation from liability for torts or contracts of spouse.
§48-29-201. Burden of proof.
§48-29-202. Presumption of gift in certain transactions between husband and wife.
§48-29-301. Requirement of a writing for contract between husband and wife.
§48-29-302. Loss of consortium.
§48-29-303. Liability of husband and wife for purchases and services.

**PART 1. EMANCIPATION FROM ALL
DISABILITIES AND INCAPACITIES.**

§48-29-101. Emancipation from all disabilities under common law.

1 All married women, including married women who are not
2 residents of this state to the extent that they are affected by the
3 laws of this state, are fully emancipated from all the disabilities
4 and relieved from all the incapacities to which they were
5 formerly subject under common law.

§48-29-102. Emancipation from all disabilities to contract.

1 All married women, including married women who are not
2 residents of this state to the extent that they are affected by the
3 laws of this state, may make contracts of any kind and assume
4 or stipulate for obligations of any kind, in any form or manner
5 permitted under this code. In no case may any act, contract or
6 obligation of a married woman require, for its validity or
7 effectiveness, the authority of her husband or of a judge.

§48-29-103. Emancipation from all disabilities as to personal or real property.

1 All married women, including married women who are not
2 residents of this state to the extent that they are affected by the
3 laws of this state, may own in their own right, real and personal
4 property, acquired by descent, gift or purchase and may
5 manage, sell, convey or dispose of any real or personal property

6 to the same extent and in the same manner a married man can
7 property belonging to him.

§48-29-104. Liability for married woman's torts.

1 All married women, including married women who are not
2 residents of this state to the extent that they are affected by the
3 laws of this state, are liable for torts that they have committed.

§48-29-105. Emancipation from liability for torts or contracts of spouse.

1 No married person, including married persons who are not
2 residents of this state to the extent that they are affected by the
3 laws of this state, is liable for the contracts or torts of his or her
4 spouse.

PART 2. CONVEYANCES BETWEEN MARRIED PERSONS.

§48-29-201. Burden of proof.

1 The burden of proof in any proceeding questioning the
2 validity or lawfulness of any conveyance or transfer of property
3 or any interest in property from one spouse to the other spouse
4 by the spouse making the conveyance or transfer, or his or her
5 heir, devisee or creditor is on the spouse in whose favor the
6 conveyance or transfer was made.

§48-29-202. Presumption of gift in certain transactions between husband and wife.

1 Where one spouse purchases real or personal property and
2 pays for the real or personal property, but takes title in the name
3 of the other spouse, the transaction, in the absence of evidence
4 of a contrary intention, is presumed to be a gift by the spouse so
5 purchasing to the spouse in whose name the title is taken:
6 *Provided*, That in the case of an action under the provisions of

7 article seven of this chapter wherein the court is required to
8 determine what property of the parties constitutes marital
9 property and equitably divide the same, the presumption created
10 by this section does not apply, and a gift between spouses must
11 be affirmatively proved.

PART 3. HUSBAND AND WIFE.

§48-29-301. Requirement of a writing for contract between husband and wife.

1 A contract between a husband and wife shall not be
2 enforceable by way of action or defense, unless there is some
3 writing sufficient to indicate that a contract has been made
4 between them and signed by the spouse against whom enforce-
5 ment is sought or by his or her authorized agent or broker.

§48-29-302. Loss of consortium.

1 A married woman may sue and recover for loss of consor-
2 tium to the same extent and in all cases as a married man.

§48-29-303. Liability of husband and wife for purchases and services.

1 (a) A husband and wife are both liable for the reasonable
2 and necessary services of a physician rendered to the husband
3 or wife while residing together as husband and wife, or for
4 reasonable and necessary services of a physician rendered to
5 their minor child while residing in the family of its parents, and
6 for the rental of any tenement or premises actually occupied by
7 the husband and wife as a residence and reasonably necessary
8 to them for such purpose.

9 (b) A husband and wife are liable when any article pur-
10 chased by either goes to:

- 11 (1) The support of the family;
- 12 (2) The joint benefit of both;
- 13 (3) The reasonable apparel of either and their minor child
14 residing in the family;
- 15 (4) The reasonable support of a spouse and child while
16 abandoned by the other spouse;
- 17 (c) A husband and wife are liable for the reasonable
18 services of any domestic, laborer or other person from which
19 the family or both husband and wife benefit.

ARTICLE 30. PROCEEDING BEFORE A FAMILY LAW MASTER.

§48-30-101. Hearings before a master.

§48-30-102. Hearing procedures.

§48-30-103. Acts or failures to act in the physical presence of family law masters.

§48-30-104. Family law master's docket.

§48-30-201. Default orders; temporary orders.

§48-30-202. Recommended orders.

§48-30-203. Form of notice of recommended order.

§48-30-204. Orders to be entered by circuit court exclusively.

§48-30-301. Circuit court review of master's action or recommended order.

§48-30-302. Procedure for review by circuit court.

§48-30-303. Form of petition for review.

§48-30-304. Answer in opposition to a petition for review.

§48-30-305. Circuit court review of family law master's recommended order.

§48-30-401. County commissions required to furnish offices for the family law
master.

§48-30-402. Budget of the family law master system.

§48-30-403. Family court fund.

§48-30-404. Continuation of family law masters system.

PART 1. HEARINGS.

§48-30-101. Hearings before a master.

- 1 (a) Persons entitled to notice of a master's hearing shall be
2 timely informed of:

- 3 (1) The time, place and nature of the hearing;
- 4 (2) The legal authority and jurisdiction under which the
5 hearing is to be held; and
- 6 (3) The matters of fact and law asserted.
- 7 (b) The master shall give all interested parties opportunity
8 for the submission and consideration of facts, arguments, offers
9 of settlement or proposals of adjustment when time, the nature
10 of the proceedings and the public interest permit. To the extent
11 that the parties are unable to settle or compromise a controversy
12 by consent, the master shall provide the parties a hearing and
13 make a recommended order in accordance with the provisions
14 of sections 30-102 and 30-202.
- 15 (c) The master who presides at the reception of evidence
16 pursuant to section 30-102 shall prepare the default order or
17 make and enter the temporary order provided for in section 30-
18 201, or make the recommended order required by section
19 thirteen of this article, as the case may be. Except to the extent
20 required for disposition of ex parte matters as authorized by this
21 chapter, a master may not consult a person or party on a fact in
22 issue, unless on notice and opportunity for all parties to
23 participate; nor shall the master attempt to supervise or direct
24 an employee or agent engaged in the performance of investiga-
25 tive or prosecuting functions for a prosecuting attorney, the
26 division of human services or any other agency or political
27 subdivision of this state.

§48-30-102. Hearing procedures.

- 1 (a) This section applies, according to the provisions thereof,
2 to hearings required by section ten, article two-a, chapter
3 fifty-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 dance 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 30-202;

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 30-202, and on payment of lawfully prescribed costs,
82 shall be made available to the parties. When a family law
83 master's final recommended order rests on official notice of a
84 material fact not appearing in the evidence in the record, a party
85 is entitled, on timely request, to an opportunity to show the
86 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.

§48-30-103. Acts or failures to act in the physical presence of family law masters.

1 (a) If in the master's presence a party, witness or other
2 person conducts himself or herself in a manner which would
3 constitute direct contempt if committed in the presence of a
4 circuit judge, the master shall halt any proceeding which may
5 be in progress and inform the person that their conduct consti-
6 tutes direct contempt and give notice of the procedures and
7 possible dispositions which may result.

8 (b) (1) If a circuit judge is sitting in the same county in
9 which the conduct occurred, or is otherwise available, the
10 alleged contemnor shall be immediately taken before the circuit
11 judge. Disposition of these matters shall be given priority over
12 any other matters, with the exception of a criminal trial in
13 progress.

14 (2) If a circuit judge is unavailable, then the master shall
15 schedule a hearing before the circuit court and the alleged
16 contemnor shall be advised, on the record, of the time and place
17 of the hearing. The master may elect, in his or her discretion, to
18 obtain a warrant for the arrest of the alleged contemnor from
19 the magistrate court on the charge of contempt with the matter
20 to be heard by the circuit court.

21 (c) At the hearing, the circuit court shall be advised of the
22 charges, receive the evidence and rule in the same manner as
23 would be appropriate if the conduct complained of occurred in

24 the physical presence of a circuit judge. In addition to other
25 sanctions the court may award attorney's fees and costs.

26 (d) Prior to or during any hearing before a master, if the
27 master determines that a situation exists which warrants the
28 presence of security during such hearing, the master shall
29 inform the sheriff of the need for such security and the time and
30 place of the hearing, and the sheriff shall assign a deputy to act
31 as bailiff during such hearing.

§48-30-104. Family law master's docket.

1 (a) Every family law master shall establish a regular docket
2 or other means for hearing urgent motions regarding child
3 support, child custody or visitation, protection from family
4 violence or abuse, possession of the home or other urgent
5 matter. The family law master shall make all decisions and
6 rulings before him or her within thirty days, or sooner after the
7 close of the evidence in the proceeding before the master. If the
8 master's recommended decision is not so timely made, the
9 master shall, in writing, notify the administrator of the West
10 Virginia supreme court as to why he or she has not so ruled; and
11 the administrator of the West Virginia supreme court may take
12 appropriate action against said master including pay suspen-
13 sions, or reprimand or dismissal without pay for up to six
14 months.

15 (b) Upon the request of the family law master, the clerk of
16 the circuit court shall, under the general direction of the master,
17 maintain the master's docket, schedule trials and hearings and
18 deliver case files to the master.

**PART 2. TEMPORARY ORDERS; DEFAULT ORDERS;
RECOMMENDED ORDERS.**

§48-30-201. Default orders; temporary orders.

1 (a) In any proceeding in which the amount of support is to
2 be established, if the obligor has been served with notice of a
3 hearing before a master and does not enter an appearance, the
4 family law master shall prepare a default order for entry by the
5 circuit judge, which order fixes support in an amount at least
6 equal to the amount paid as public assistance under section
7 four, article three, chapter nine of this code, if the obligee or
8 custodian receives public assistance, or in an amount at least
9 equal to the amount that would be paid as public assistance if
10 the obligee or custodian were eligible to receive public assis-
11 tance, unless the family law master has sufficient information
12 in the record so as to determine the amount to be fixed in
13 accordance with the child support guidelines.

14 (b) A master who presides at a hearing under the provisions
15 of section 30-102 is authorized to make and enter temporary
16 support and custody orders which, when entered, shall be
17 enforceable and have the same force and effect under law as
18 temporary support orders made and entered by a judge of the
19 circuit court, unless and until such support orders are modified,
20 vacated or superseded by an order of the circuit court.

21 (c) All orders prepared by a master shall provide for
22 automatic withholding from income of the obligor if arrearages
23 in support occur, if no such provision already exists in prior
24 orders or if the existing order as it relates to withholding is not
25 in compliance with applicable law.

§48-30-202. Recommended orders.

1 (a) This section applies, according to the provisions thereof,
2 when a hearing has been conducted in accordance with section
3 30-102.

4 (b) A master who has presided at the hearing pursuant to
5 section 30-102 shall recommend an order and findings of fact
6 and conclusions of law to the circuit court within ten days

7 following the close of the evidence. Before the recommended
8 order is made, the master may, in his or her discretion, require
9 the parties to submit proposed findings and conclusions and the
10 supporting reasons therefor.

11 (c) The master shall sign and send the recommended order,
12 any separate document containing the findings of fact and
13 conclusions of law and the notice of recommended order as set
14 forth in section 30-203 to the attorney for each party, or if a
15 party is unrepresented, directly to the party, in the same manner
16 as pleadings subsequent to an original complaint are served in
17 accordance with rule five of the rules of civil procedure. The
18 master shall file the recommended order and the record in the
19 office of the circuit clerk prior to the expiration of the ten-day
20 period during which exceptions can be filed.

21 (d) A copy of any supporting documents or a summary of
22 supporting documents, prepared or used by the bureau for child
23 support enforcement attorney or an employee of the bureau for
24 child support enforcement, and all documents introduced into
25 evidence before the master, shall be made available to the
26 attorney for each party and to each of the parties before the
27 circuit court takes any action on the recommendation.

28 (e) All recommended orders of the master shall include the
29 statement of findings of fact and conclusions of law, and the
30 reasons or basis therefor, on all the material issues of fact, law,
31 or discretion presented on the record; and the appropriate
32 sanction, relief or denial thereof. In every action where visita-
33 tion is recommended, the master shall specify a schedule for
34 visitation by the noncustodial parent: *Provided*, That with
35 respect to any existing order which provided for visitation but
36 which does not provide a specific schedule for visitation by the
37 noncustodial parent, upon motion of any party, notice of
38 hearing and hearing, the master shall recommend an order

39 which provides a specific schedule of visitation by the
40 noncustodial parent.

§48-30-203. Form of notice of recommended order.

1 IN THE CIRCUIT COURT OF
2 _____ COUNTY, WEST VIRGINIA,

3 _____
4 Petitioner,

5 vs. CIVIL ACTION NO. _____

6 _____
7 Respondent.

8 NOTICE OF RECOMMENDED ORDER

9 The undersigned family law master hereby recommends the
10 enclosed order to the circuit court of _____ county. If you
11 wish to file objections to this decision, you must file a written
12 petition in accordance with the provisions of section 48- 30-302
13 of the West Virginia Code within a period of ten days ending on
14 _____, _____, with the circuit clerk of county
15 and send a copy to counsel for the opposing party or if the party
16 is unrepresented to the party, and to the office of the family law
17 master located at _____.

18 If no written petition for review is filed by _____,
19 _____, then the recommended order will be sent to the circuit
20 judge assigned to this case. A recommended order which is not
21 signed by a party, or counsel for a party who is represented, by
22 the end of the ten-day period will still be sent to the circuit
23 judge for entry.

24 YOUR FAILURE TO SIGN THE ORDER AS HAVING
25 BEEN INSPECTED OR APPROVED WILL NOT DELAY
26 THE ENTRY THEREOF.

27 _____
28 Family Law Master

§48-30-204. Orders to be entered by circuit court exclusively.

1 With the exception of temporary support and custody orders
2 entered by a master in accordance with the provisions of section
3 30-201 and section 1-304, and procedural orders entered
4 pursuant to the provisions of section 30-102, an order imposing
5 sanctions or granting or denying relief may not be made and
6 entered except as authorized by law. Upon entry of a final order
7 in any action for divorce, separate maintenance or annulment,
8 the clerk of the circuit court shall deliver an attested copy of
9 such order to the parties who have appeared in such action or
10 their counsel of record by personal delivery or by first class
11 mail.

PART 3. CIRCUIT COURT REVIEW.**§48-30-301. Circuit court review of master's action or recommended order.**

1 (a) A person who alleges that he or she will be adversely
2 affected or aggrieved by a recommended order of a master is
3 entitled to review of the proceedings. The recommended order
4 of the master is the subject of review by the circuit court and a
5 procedural action or ruling not otherwise directly reviewable is
6 subject to review only upon the review of the recommended
7 order by the circuit court.

8 (b) When a master's action or recommended order is
9 presented to the circuit court for review upon the petition of any
10 party and such action or recommended order is subject to
11 review, the family law master or circuit court shall enter a
12 temporary support and custody order or otherwise provide for
13 relief during the pendency of the review proceedings upon any
14 party's request therefor or on the master's or court's own

15 motion if the family law master or court deems such order or
16 other relief to be fair and equitable.

§48-30-302. Procedure for review by circuit court.

1 (a) Within ten days after the master's recommended order,
2 any separate document with findings of fact and conclusions of
3 law and the notice of recommended order is served on the
4 parties as set forth in section 30-202, any party may file
5 exceptions thereto in a petition requesting that the action by the
6 master be reviewed by the circuit court. Failure to timely file
7 the petition shall constitute a waiver of exceptions, unless the
8 petitioner, prior to the expiration of the ten-day period, moves
9 for and is granted an extension of time from the circuit court. At
10 the time of filing the petition, a copy of the petition for review
11 shall be served on all parties to the proceeding, in the same
12 manner as pleadings subsequent to an original complaint are
13 served under rule five of the rules of civil procedure.

14 (b) Not more than ten days after the filing of the petition for
15 review, a responding party wishing to file a cross-petition that
16 would otherwise be untimely may file, with proof of service on
17 all parties, a cross-petition for review.

§48-30-303. Form of petition for review.

1 (a) The petition for review shall contain a list of exceptions
2 in the form of questions presented for review, expressed in the
3 terms and circumstances of the case, designating and pointing
4 out the errors complained of with reasonable certainty, so as to
5 direct the attention of the circuit court specifically to them, but
6 without unnecessary detail. The statement of questions should
7 be short and concise and should not be argumentative or
8 repetitious. The statement of a question presented will be
9 deemed to comprise every subsidiary question fairly included
10 therein. Only the questions set forth in the petition or fairly

11 included therein will be considered by the court. Parts of the
12 master's report not excepted to be admitted to be correct, not
13 only as regards the principles, but as to the evidence, upon
14 which they are founded.

15 (b) The circuit court may require, or a party may choose to
16 submit with the petition for review, a brief in support thereof,
17 which should include a direct and concise argument amplifying
18 the reasons relied upon for modification of the master's
19 recommended order and citing the constitutional provisions,
20 statutes and regulations which are applicable.

§48-30-304. Answer in opposition to a petition for review.

1 (a) A respondent shall have ten days after the filing of a
2 petition within which to file an answer disclosing any matter or
3 ground why the recommended order of the master should not be
4 modified by the court in the manner sought by the petition. The
5 judge may require, or a party may choose to submit with the
6 answer, a brief in opposition to the petition, which should
7 include a direct and concise argument in support of the master's
8 recommended order and citing the constitutional provisions,
9 statutes and regulations which are applicable.

10 (b) No motion by a respondent to dismiss a petition for
11 review will be received.

12 (c) Any party may file a supplemental brief at any time
13 while a petition for review is pending, calling attention to new
14 cases or legislation or other intervening matter not available at
15 the time of the party's last filing.

**§48-30-305. 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.

PART 4. MISCELLANEOUS PROVISIONS.

§48-30-401. County commissions required to furnish offices for the family law master.

1 Each county commission of this state has a duty to provide
2 premises for the family law master which are adequate for the
3 conduct of the duties required of such master under the provi-
4 sions of this chapter and which conform to standards estab-
5 lished by rules promulgated by the supreme court of appeals.
6 The administrative office of the supreme court of appeals shall
7 pay to the county commission a reasonable amount as rent for
8 the premises furnished by the county commission to the family
9 law master and his or her staff pursuant to the provisions of this
10 section.

§48-30-402. Budget of the family law master system.

1 The budget for the payment of the salaries and benefits of
2 the family law masters and clerical and secretarial assistants
3 shall be included in the appropriation for the supreme court of
4 appeals. The family law master administration fund is hereby
5 created and shall be a special account in the state treasury. The
6 fund shall operate as a special fund administered by the state
7 auditor which shall be appropriated by line item by the Legisla-
8 ture for payment of administrative expenses of the family law
9 master system. All agencies or entities receiving federal
10 matching funds for the services of family law masters and their
11 staff, including, but not limited to, the commissioner of the
12 bureau for child support enforcement and the secretary of the
13 department of health and human resources, shall enter into an
14 agreement with the administrative office of the supreme court
15 of appeals whereby all federal matching funds paid to and
16 received by said agencies or entities for the activities by family
17 law masters and staff of the program shall be paid into the
18 family law master administration fund. Said agreement shall
19 provide for advance payments into the fund by such agencies,

20 from available federal funds pursuant to Title IV-D of the
21 Social Security Act and in accordance with federal regulations.

§48-30-403. 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.

§48-30-404. Continuation of family law masters system.

1 After having conducted a performance and fiscal audit
2 through its joint committee on government operations, pursuant
3 to article ten, chapter four of this code, the Legislature hereby
4 finds and declares the family law masters system should be
5 continued and reestablished as recreated in article two-a,
6 chapter fifty-one of this code.

CHAPTER 49. CHILD WELFARE.

ARTICLE 3. CHILD WELFARE AGENCIES.

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

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

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

21 (3) For purposes of any placement of a child for adoption
22 by the department, the department shall first consider the
23 suitability and willingness of any known grandparent or
24 grandparents to adopt the child. Once any such grandparents
25 who are interested in adopting the child have been identified,
26 the department shall conduct a home study evaluation, includ-
27 ing home visits and individual interviews by a licensed social
28 worker. If the department determines, based on the home study
29 evaluation, that the grandparents would be suitable adoptive
30 parents, it shall assure that the grandparents are offered the

31 placement of the child prior to the consideration of any other
32 prospective adoptive parents.

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

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

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

56 (3) In addition, notice shall be given to any putative,
57 outsider or unknown father who has asserted or exercised
58 parental rights and duties to and with the child and who has not
59 relinquished any parental rights and such rights have not
60 otherwise been terminated, or who has not had reasonable
61 opportunity before or after the birth of the child to assert or
62 exercise such rights: *Provided*, That if such child is more than

63 six months old at the time such notice would be required and
64 such father has not asserted or exercised his parental rights and
65 he knew the whereabouts of the child, then such father shall be
66 presumed to have had reasonable opportunity to assert or
67 exercise such rights.

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

74 (2) Such notice shall inform the person that his parental
75 rights, if any, may be terminated in the proceeding and that
76 such person may appear and defend any such rights within
77 twenty days of such service. In the case of any such person who
78 is a nonresident or whose whereabouts are unknown, service
79 shall be achieved: (1) By personal service; (2) by registered or
80 certified mail, return receipt requested, postage prepaid, to the
81 person's last known address, with instructions to forward; or (3)
82 by publication. If personal service is not acquired, then if the
83 person giving notice shall have any knowledge of the where-
84 abouts of the person to be served, including a last known
85 address, service by mail shall be first attempted as herein
86 provided. Any such service achieved by mail shall be complete
87 upon mailing and shall be sufficient service without the need
88 for notice by publication. In the event that no return receipt is
89 received giving adequate evidence of receipt of the notice by
90 the addressee or of receipt of the notice at the address to which
91 the notice was mailed or forwarded, or if the whereabouts of the
92 person are unknown, then the person required to give notice
93 shall file with the court an affidavit setting forth the circum-
94 stances of any attempt to serve the notice by mail, and the
95 diligent efforts to ascertain the whereabouts of the person to be

96 served. If the court determines that the whereabouts of the
97 person to be served cannot be ascertained and that due diligence
98 has been exercised to ascertain such person's whereabouts, then
99 the court shall order service of such notice by publication as a
100 Class II publication in compliance with the provisions of article
101 three, chapter fifty-nine of this code, and the publication area
102 shall be the county where such proceedings are had, and in the
103 county where the person to be served was last known to reside.
104 In the case of a person under disability, service shall be made
105 on the person and his personal representative, or if there be
106 none, on a guardian ad litem.

107 (3) In the case of service by publication or mail or service
108 on a personal representative or a guardian ad litem, the person
109 shall be allowed thirty days from the date of the first publica-
110 tion or mailing of such service on a personal representative or
111 guardian ad litem in which to appear and defend such parental
112 rights.

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

115 (e) If the court finds that the person certified to parental
116 rights is guilty of the allegations set forth in the petition, the
117 court shall enter an order terminating his parental rights and
118 shall award the legal and physical custody and control of said
119 child to the petitioner.

CHAPTER 51. COURTS AND THEIR OFFICERS.

ARTICLE 2A. CIRCUIT COURTS; FAMILY COURT DIVISION.

***§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:

***Clerk's Note:** This section was also amended by S. B. 437 (Chapter 95), which passed prior to this act.

3 (1) Actions to obtain orders of support brought under the
4 provisions of section one hundred one, article fourteen, chapter
5 forty-eight of this code;

6 (2) All actions to establish paternity brought under the
7 provisions of article twenty-four, chapter forty-eight of this
8 code, and any dependent claims related to such action regarding
9 child 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 violence,
14 wherein either party has requested such referral or the court on
15 its own motion in individual cases or by general order has
16 referred such motions to the family law master: *Provided*, That
17 if the family law master determines, in his or her discretion, that
18 the pleadings raise substantial issues concerning the identifica-
19 tion of separate property or the division of marital property
20 which may have a bearing on an award of support, the family
21 law master shall notify the appropriate circuit court of this fact
22 and the circuit court may refer the case to a special commis-
23 sioner chosen by the circuit court to serve in such capacity;

24 (5) All petitions for modification of an order involving
25 child custody, child visitation, child support or spousal support;

26 (6) All actions for divorce, annulment or separate mainte-
27 nance brought pursuant to articles three, four and five, chapter
28 forty-eight of this code: *Provided*, That an action for divorce,
29 annulment or separate maintenance which does not involve
30 child custody or child support shall be heard by a circuit judge
31 if, at the time of the filing of the action, the parties file a written
32 property settlement agreement which has been signed by both
33 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 article sixteen, chapter
40 forty-eight of this code or the interstate family support act of
41 another state;

42 (9) Proceedings for the enforcement of support, custody or
43 visitation orders;

44 (10) All actions to allocate custodial responsibility for a
45 minor child, including actions brought pursuant to the uniform
46 child custody jurisdiction act and actions brought to establish
47 grandparent visitation: *Provided*, That any action instituted
48 under article six, chapter forty-nine of this code shall be heard
49 by a circuit judge;

50 (11) Civil contempt and direct contempts: *Provided*, That
51 criminal contempts must be heard by a circuit judge; and

52 (12) On and after the first day of September, two thousand
53 one, final hearings in domestic violence proceedings wherein a
54 protective order is sought.

55 (b) On its own motion or upon motion of a party, the circuit
56 court may revoke the referral of a particular matter to a family
57 law master if the family law master is recused, if the matter is
58 uncontested, or for other good cause, or if the matter will be
59 more expeditiously and inexpensively heard by a circuit judge
60 without substantially affecting the rights of parties.

CHAPTER 56. PLEADING AND PRACTICE.

ARTICLE 10. MISCELLANEOUS PROVISIONS RELATING TO PROCEDURE.

§56-10-8. Priority of cases involving placement of children.

1 Any action or motion which involves a contested issue
2 regarding the permanent or temporary placement of a minor
3 child shall be given priority over any civil action before the
4 court except actions in which trial is in progress and actions
5 brought under article twenty-seven, chapter forty-eight of this
6 code and shall be docketed immediately upon filing.

CHAPTER 57. EVIDENCE AND WITNESSES.

ARTICLE 3. COMPETENCY OF WITNESSES.

§57-3-9. Communications to priests, nuns, clergy, rabbis, Christian Science practitioners or other religious counselors not subject to being compelled as testimony.

1 No priest, nun, rabbi, duly accredited Christian Science
2 practitioner or member of the clergy authorized to celebrate the
3 rites of marriage in this state pursuant to the provisions of
4 article two, chapter forty-eight of this code shall be compelled
5 to testify in any criminal or grand jury proceedings or in any
6 domestic relations action in any court of this state:

7 (1) With respect to any confession or communication, made
8 to such person, in his or her professional capacity in the course
9 of discipline enjoined by the church or other religious body to
10 which he or she belongs, without the consent of the person
11 making such confession or communication; or

12 (2) With respect to any communication made to such
13 person, in his or her professional capacity, by either spouse, in
14 connection with any effort to reconcile estranged spouses,
15 without the consent of the spouse making the communication.

16 This subsection is in addition to the protection and privilege
17 afforded pursuant to section three hundred one, article one,
18 chapter forty-eight of this code.

**CHAPTER 59. FEES, ALLOWANCES AND COSTS;
NEWSPAPERS; LEGAL ADVERTISEMENTS.**

ARTICLE 1. FEES AND ALLOWANCES.

***§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.

***Clerk's Note:** This section was also amended by S. B. 652 (Chapter 93) and
H. B. 3131 (Chapter 65), which passed subsequent to this act.

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 six hundred four, article two,
33 chapter forty-eight of this code, an amount of thirty dollars;

34 (3) Into the family court fund established under section four
35 hundred three, article thirty, chapter forty-eight 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) For each action for divorce, separate maintenance or
42 annulment instituted in the circuit court, the clerk of the court
43 shall, at the end of each month, pay into the funds or accounts
44 in this subsection an amount equal to the amount set forth in
45 this subsection of every filing fee received for instituting such
46 divorce action as follows:

47 (1) Into the regional jail and correctional facility develop-
48 ment fund in the state treasury established pursuant to the
49 provisions of section ten, article twenty, chapter thirty-one of
50 this code, the amount of ten dollars;

51 (2) Into the special revenue account of the state treasury,
52 established pursuant to section twenty-four, article one, chapter
53 forty-eight of this code, an amount of thirty dollars;

54 (3) Into the family court fund established under section four
55 hundred three, article thirty, chapter forty-eight of this code, an
56 amount of seventy dollars; and

57 (4) Into the court security fund in the state treasury,
58 established pursuant to the provisions of section fourteen,
59 article three, chapter fifty-one of this code, the amount of five
60 dollars.

61 (d) Notwithstanding any provision of subsection (a) or (b)
62 of this section to the contrary, the clerk of the court shall, at the
63 end of each month, pay into the family court fund established
64 under section four hundred three, article thirty, chapter forty-
65 eight of this code an amount equal to the amount of every fee
66 received for petitioning for the modification of an order
67 involving child custody, child visitation, child support or
68 spousal support as determined by subdivision (3), subsection
69 (a), section eleven of this article.

70 (e) The clerk of the court from which a protective order is
71 issued shall, at the end of each month, pay into the family court
72 fund established under section four hundred three, article thirty,
73 chapter forty-eight of this code an amount equal to every fee
74 received pursuant to the provisions of section five hundred
75 eight, article twenty-seven, chapter forty-eight of this code.

76 (f) The clerk of each circuit court shall, at the end of each
77 month, pay into the regional jail and prison development fund
78 in the state treasury an amount equal to forty dollars of every
79 fee for service received in any criminal case against any
80 respondent convicted in such court and shall pay an amount
81 equal to five dollars of every such fee into the court security
82 fund in the state treasury established pursuant to the provisions
83 of section fourteen, article three, chapter fifty-one of this code.

CHAPTER 92

(H. B. 2774 — By Delegates Campbell, J. Smith, Keener,
Browning, Hubbard, Hall and Harrison)

[Passed April 14, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twelve, article seven-b, chapter eighteen of the code of West Virginia, one thousand nine hundred and thirty-one, as amended, relating to allowing immediate distribution to the alternate payee named in a qualified domestic relations order.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7B. TEACHER'S DEFINED CONTRIBUTION RETIREMENT SYSTEM.

§18-7B-12. Retirement, commencement of annuity payments, payments under a qualified domestic relations order.

- 1 (a) Subject to the provisions of section twelve-a of this
- 2 article, an employee attaining fifty-five years of age, may elect
- 3 to take retirement by notifying the board or its designee in
- 4 writing of his or her intention to retire. The notice of retirement
- 5 must be received by the board or its designee no fewer than
- 6 sixty days prior to the effective date of retirement. Retirement

7 payments shall commence within thirty days of the retirement
8 date under the payment option selected by the employee.

9 (b) An alternate payee named in a qualified domestic
10 relations order may elect to receive a distribution awarded from
11 this plan. If the alternate payee elects, the board or its designee
12 shall promptly compute the amount due without regard to
13 whether the employee is receiving benefits at the time of
14 election. After the amount due has been computed, the board
15 shall promptly initiate payments to the alternate payee.

16 (c) For purposes of this section, the term “qualified
17 domestic relations order” means a “qualified domestic relations
18 order” as defined in Section 414(p) of the Internal Revenue
19 Code with respect to government plans.

CHAPTER 93

(Com. Sub. for S. B. 652 — By Senator Wooton)

[Passed April 14, 2001; in effect from passage. Approved by the Governor.]

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

said chapter; to amend and reenact sections one hundred three and one hundred four, article eight of said chapter; to amend article nine of said chapter by adding thereto a new section, designated section six hundred four; to amend and reenact sections one hundred one, one hundred four, one hundred five, one hundred six, one hundred seven, one hundred eight, one hundred nine, one hundred ten, one hundred eleven, one hundred twelve, one hundred thirteen and one hundred fourteen, article twelve of said chapter; to further amend said article by adding thereto three new sections, designated sections one hundred fifteen, one hundred sixteen and one hundred seventeen; to amend and reenact sections four hundred one, four hundred two, four hundred three, four hundred four, five hundred one, five hundred two, five hundred three, eight hundred one and eight hundred two, article thirteen of said chapter; to further amend said article by adding thereto a new section, designated section eight hundred three; to amend and reenact section seven hundred one, article fourteen of said chapter; to amend and reenact section one hundred five, article eighteen of said chapter; to amend and reenact section one hundred three, article nineteen of said chapter; to amend and reenact section one hundred one, article twenty-four of said chapter; to amend and reenact sections two hundred two, two hundred three, two hundred four, two hundred five, two hundred six, three hundred one, three hundred nine, four hundred one, four hundred two, four hundred three, five hundred five, five hundred ten, nine hundred one, nine hundred two, nine hundred three, one thousand one, eleven hundred one and eleven hundred four, article twenty-seven of said chapter; to further amend said article by adding thereto three new sections, designated sections two hundred seven, two hundred eight and two hundred nine; to amend and reenact section seventeen, article one, chapter fifty-two of said code; and to amend and reenact sections eleven and twenty-eight-a, article one, chapter fifty-nine of said code, all relating generally to substantive revisions in the recodification of domestic relations law; providing for the calculation of interest on

support obligations, and the award or approval of prejudgment interest in a domestic relations action; providing for proceedings in contempt; providing for the collection of child or spousal support by collection agencies; authorizing court to enter protective order as temporary relief in divorce proceeding; providing for revising or altering an order concerning the maintenance of parties to an action for divorce or separate maintenance; describing the effect of fault or misconduct on an award for spousal support; eliminating the bar that denies spousal support if both parties prove a grounds for divorce, or if a party determined to be at fault has committed adultery, been convicted of a felony subsequent to the marriage or has abandoned or deserted for six months; creating a parent education and mediation fund in the state treasury; defining certain terms applicable to medical support enforcement; providing for use of the national medical support notice; revising terminology used in child support awards; making technical revisions to worksheets; revising archaic terminology; requiring enrollment of the child in a health-care coverage plan; establishing the obligation of an employer to transfer the national medical support notice to the appropriate plan; establishing notice requirements for certain newly hired employees; requiring a notice upon termination of a parent's employment; making the liability of a parent for employee contributions subject to appropriate enforcement; providing a parent with a description of the coverage available, and other documents; requiring notice of coverage to the IV-D agency; describing the employer's duties upon service of a national medical support notice; describing the employer's duties where a parent is required by court or administrative order to provide health care coverage; providing that the signature of the custodian for a child constitutes a valid authorization to an insurer; describing the obligations of an insurer; providing for the transfer of notice upon an obligated parent's change of unemployment; establishing eligibility of a child until emancipation or termination of the child from coverage; providing for contempt and other

remedies if an obligated parent fails to comply with an order to provide insurance coverage; establishing a mandatory date for the use of the national medical support notice; providing for the payment of arrearages or reimbursement support when the obligor is not paying a current child support obligation; setting forth the general duties and powers of the bureau for child support enforcement; setting forth the duties of bureau for child support enforcement attorneys; providing for the jurisdiction of courts over paternity proceedings; requiring that a copy of the complaint be served on the person whose name appears as the father on the birth certificate if the proceeding is brought against another person; defining and redefining terms used in domestic violence proceedings; revising procedures for domestic violence petitions; providing for emergency protective orders; providing for hearings on final protective orders; establishing appeal process and standard of review; providing for proceedings in contempt and criminal complaints; establishing misdemeanor offense and criminal penalties; authorizing arrest for violations; requiring forms; requiring judicial education; providing for the manner in which jury costs are to be deposited in the state treasury; increasing certain fees to be charged by the clerk of the circuit court; and providing for the disposition of filing fees in divorce and other civil actions.

Be it enacted by the Legislature of West Virginia:

That sections two hundred twenty-two, two hundred thirty-nine, three hundred two and three hundred four, article one, chapter forty-eight 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 eight new sections, designated sections two hundred thirty-three.one, two hundred thirty-three.two, two hundred thirty-five.one, two hundred thirty-five.two, two hundred thirty-five.three, two hundred thirty-five.four, two hundred thirty-five.five and three hundred seven; that section five hundred nine,

article five of said chapter be amended and reenacted; that sections one hundred three and one hundred four, 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 hundred four; that sections one hundred one, one hundred four, one hundred five, one hundred six, one hundred seven, one hundred eight, one hundred nine, one hundred ten, one hundred eleven, one hundred twelve, one hundred thirteen and one hundred fourteen, article twelve of said chapter be amended and reenacted; that said article be further amended by adding thereto three new sections, designated sections one hundred fifteen, one hundred sixteen and one hundred seventeen; that sections four hundred one, four hundred two, four hundred three, four hundred four, five hundred one, five hundred two, five hundred three, eight hundred one and eight hundred two, article thirteen of said chapter be amended and reenacted; that said article be further amended by adding thereto a new section, designated section eight hundred three; that section seven hundred one, article fourteen of said chapter be amended and reenacted; that section one hundred five, article eighteen of said chapter be amended and reenacted; that section one hundred three, article nineteen of said chapter be amended and reenacted; that section one hundred one, article twenty-four of said chapter be amended and reenacted; that section two hundred two, two hundred three, two hundred four, two hundred five, two hundred six, three hundred one, three hundred nine, four hundred one, four hundred two, four hundred three, five hundred five, five hundred ten, nine hundred one, nine hundred two, nine hundred three, one thousand one, eleven hundred one and eleven hundred four, article twenty-seven of said chapter be amended and reenacted; that said article be further amended by adding thereto three new sections, designated sections two hundred seven, two hundred eight and two hundred nine; that section seventeen, article one, chapter fifty-two of said code be amended and reenacted; and that sections eleven and twenty-eight-a, article one, chapter fifty-nine of said code be amended and reenacted, all to read as follows:

Chapter**48. Domestic Relations.****52. Juries.****59. Fees, Allowances and Costs; Newspapers; Legal Advertisements.****CHAPTER 48. DOMESTIC RELATIONS.****Article**

- 1. General Provisions; Definitions.**
- 5. Divorce.**
- 8. Spousal Support.**
- 9. Custody of Children.**
- 12. Medical Support.**
- 13. Guidelines for Child Support Awards.**
- 14. Remedies for the Enforcement of Support Obligations.**
- 18. Bureau for Child Support Enforcement.**
- 19. Bureau for Child Support Enforcement Attorney.**
- 24. Establishment of Paternity.**
- 27. Prevention and Treatment of Domestic Violence.**

ARTICLE 1. GENERAL PROVISIONS; DEFINITIONS.**Part 2. Definitions.**

- §48-1-222. Domestic relations action defined.
- §48-1-233.1. Mediation defined.
- §48-1-233.2. Mediator defined.
- §48-1-235.1. Parent defined.
- §48-1-235.2. Parenting functions defined.
- §48-1-235.3. Parenting plan defined.
- §48-1-235.4. Permanent parenting plan defined.
- §48-1-235.5. Rehabilitative spousal support defined.
- §48-1-239. Shared parenting plan.
- §48-1-302. Calculation of interest.
- §48-1-304. Proceedings in contempt.
- §48-1-307. Collection of child or spousal support by collection agencies.

***§48-1-222. Domestic relations action defined.**

1 “Domestic relations action” means an action:

***Clerk’s Note:** This section was also amended by H. B. 2199 (Chapter 91), which passed subsequent to this act.

- 2 (1) To obtain a divorce;
- 3 (2) To have a marriage annulled;
- 4 (3) To be granted separate maintenance;
- 5 (4) To establish paternity;
- 6 (5) To establish and enforce child or spousal support,
7 including actions brought under the provisions of the uniform
8 interstate family support act; and
- 9 (6) To allocate custodial responsibility and determine
10 decision-making responsibility, or to otherwise determine child
11 custody, as in an action petitioning for a writ of habeas corpus
12 wherein the issue is child custody.

§48-1-233.1. Mediation defined.

1 “Mediation” means a method of alternative dispute resolu-
2 tion in which a neutral third person helps resolve a dispute.
3 Mediation is an informal, non-adversarial process whereby the
4 neutral third person, the mediator, assists parties to a dispute to
5 resolve, by agreement, some or all of the differences between
6 them. The mediator has no authority to render a judgment on
7 any issue of the dispute.

§48-1-233.2. Mediator defined.

1 “Mediator” means a neutral third person who interposes
2 between two contending parties, with their consent, for the
3 purpose of assisting them in settling their differences.

§48-1-235.1. Parent defined.

1 “Parent” means a legal parent as defined in section 1-232
2 unless otherwise specified.

§48-1-235.2. Parenting functions defined.

1 “Parenting functions” means tasks that serve the needs of
2 the child or the child’s residential family. Parenting functions
3 include caretaking functions, as defined in section 1-210.
4 Parenting functions also include functions that are not
5 caretaking functions, including:

6 (A) Provision of economic support;

7 (B) Participation in decision-making regarding the child’s
8 welfare;

9 (C) Maintenance or improvement of the family residence,
10 home or furniture repair, home-improvement projects, yard
11 work and house cleaning;

12 (D) Financial planning and organization, car repair and
13 maintenance, food and clothing purchasing, cleaning and
14 maintenance of clothing, and other tasks supporting the
15 consumption and savings needs of the family; and

16 (E) Other functions usually performed by a parent or
17 guardian that are important to the child’s welfare and develop-
18 ment.

§48-1-235.3. Parenting plan defined.

1 “Parenting plan” means a temporary parenting plan as
2 defined in subdivision (22) of this section or a permanent
3 parenting plan as defined in subdivision (17) of this section.

§48-1-235.4. Permanent parenting plan defined.

1 “Permanent parenting plan” means a plan for parenting a
2 child that is incorporated into a final order or subsequent
3 modification order in a domestic relations action. The plan

4 principally establishes, but is not limited to, the allocation of
5 custodial responsibility and significant decision-making
6 responsibility and provisions for resolution of subsequent
7 disputes between the parents.

§48-1-235.5. Rehabilitative spousal support defined.

1 “Rehabilitative spousal support” means spousal support
2 payable for a specific and determinable period of time, designed
3 to cease when the payee is, after the exercise of reasonable
4 efforts, in a position of self-support.

***§48-1-239. Shared parenting defined.**

1 (a) “Shared parenting” means either basic shared parenting
2 or extended shared parenting.

3 (b) “Basic shared parenting” means an arrangement under
4 which one parent keeps a child or children overnight for less
5 than thirty-five percent of the year and under which both
6 parents contribute to the expenses of the child or children in
7 addition to the payment of child support.

8 (c) “Extended shared parenting” means an arrangement
9 under which each parent keeps a child or children overnight for
10 more than thirty-five percent of the year and under which both
11 parents contribute to the expenses of the child or children in
12 addition to the payment of child support.

Part 3. Miscellaneous Provisions Relating to Domestic Relations.

***§48-1-302. 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 56-6-31 of this
3 code. Interest accrues only upon the outstanding principal of

***Clerk’s Note:** This section was also amended by H. B. 2199 (Chapter 91), which passed prior to this act.

4 such obligation. On and after the ninth day of June, one
5 thousand nine hundred ninety-five, this section will be con-
6 strued to permit the accumulation of simple interest, and may
7 not be construed to permit the compounding of interest. Interest
8 which accrued on unpaid installments accruing before the ninth
9 day of June, one thousand nine hundred ninety-five, may not be
10 modified by any court, irrespective of whether such installment
11 accrued simple or compound interest: *Provided*, That unpaid
12 installments upon which interest was compounded before the
13 effective date of this section shall accrue only simple interest
14 thereon on and after the ninth day of June, one thousand nine
15 hundred ninety-five.

16 (b) Notwithstanding any other provision of law, no court
17 may award or approve prejudgment interest in a domestic
18 relations action against a party unless the court finds, in writing,
19 that the party engaged in conduct that would violate subsection
20 (b), rule eleven of the West Virginia rules of civil procedure. If
21 prejudgment interest is awarded, the court shall calculate
22 prejudgment interest from the date the offending representation
23 was presented to the court.

24 (c) Upon written agreement by both parties, an obligor may
25 petition the court to enter an order conditionally suspending the
26 collection of all or part of the interest that has accrued on past
27 due child support prior to the date of the agreement: *Provided*,
28 That said agreement shall also establish a reasonable payment
29 plan which is calculated to fully discharge all arrearages within
30 twenty-four months. Upon successful completion of the
31 payment plan, the court shall enter an order which permanently
32 relieves the obligor of the obligation to pay the accrued interest.
33 If the obligor fails to comply with the terms of the written
34 agreement, then the court shall enter an order which reinstates
35 the accrued interest. Any proceeding commenced pursuant to
36 the provisions of this subsection may only be filed after the first

37 day of January, two thousand one and before the thirty-first day
38 of December, two thousand one.

***§48-1-304. Proceedings in contempt.**

1 (a) Upon a verified petition for contempt, notice of hearing
2 and hearing, if the petition alleges criminal contempt or the
3 court informs the parties that the matter will be treated and tried
4 as a criminal contempt, the matter shall be tried in the circuit
5 court before a jury, unless the party charged with contempt
6 shall knowingly and intelligently waive the right to a jury trial
7 with the consent of the court and the other party. If the jury, or
8 the circuit court sitting without a jury, shall find the defendant
9 in contempt for willfully failing to comply with an order of the
10 court made pursuant to the provisions of articles three, four,
11 five, eight, nine, eleven, twelve, fourteen and fifteen, as charged
12 in the petition, the court may find the person to be in criminal
13 contempt and may commit such person to the county jail for a
14 determinate period not to exceed six months.

15 (b) If trial is had under the provisions of subsection (a) of
16 this section and the court elects to treat a finding of criminal
17 contempt as a civil contempt, and the matter is not tried before
18 a jury and the court finds the defendant in contempt for
19 willfully failing to comply with an order of the court made
20 pursuant to the provisions of articles three, four, five, eight,
21 nine, eleven, twelve, fourteen and fifteen, and if the court
22 further finds the person has the ability to purge himself of
23 contempt, the court shall afford the contemnor a reasonable
24 time and method whereby he may purge himself of contempt.
25 If the contemnor fails or refuses to purge himself of contempt,
26 the court may confine the contemnor to the county jail for an
27 indeterminate period not to exceed six months or until such
28 time as the contemnor has purged himself, whichever shall first
29 occur. If the petition alleges civil contempt, the matter shall be
30 heard by the family court. The family court has the same power

***Clerk's Note:** This section was also amended by H. B. 2199 (Chapter 91), which passed prior to this act.

31 and authority as the circuit court under the provisions of this
32 section for criminal contempt proceedings which the circuit
33 court elects to treat as civil contempt.

34 (c) In the case of a charge of contempt based upon the
35 failure of the defendant to pay alimony, child support or
36 separate maintenance, if the court or jury finds that the defen-
37 dant did not pay because he was financially unable to pay, the
38 defendant may not be imprisoned on charges of contempt of
39 court.

40 (d) Regardless of whether the court or jury finds the
41 defendant to be in contempt, if the court shall find that a party
42 is in arrears in the payment of alimony, child support or
43 separate maintenance ordered to be paid under the provisions of
44 this article, the court shall enter judgment for such arrearage
45 and award interest on such arrearage from the due date of each
46 unpaid installment. Following any hearing wherein the court
47 finds that a party is in arrears in the payment of alimony, child
48 support or separate maintenance, the court may, if sufficient
49 assets exist, require security to ensure the timely payment of
50 future installments.

51 (e) At any time during a contempt proceeding, the court
52 may enter an order to attach forthwith the body of, and take into
53 custody, any person who refuses or fails to respond to the
54 lawful process of the court or to comply with an order of the
55 court. Such order of attachment shall require the person to be
56 brought forthwith before the court or the judge thereof in any
57 county in which the court may then be sitting.

§48-1-307. Collection of child or spousal support by collection agencies.

1 (a) Any person attempting to collect a child or spousal
2 support obligation or arrearage on behalf of a resident or from

3 a resident of this state is subject to the provisions of article
4 sixteen, chapter forty-seven of this code, and the provisions of
5 this section, and is otherwise subject to the jurisdiction of this
6 state.

7 (b) The amount of delinquent child or spousal support or
8 arrearage established by order of a court of competent jurisdic-
9 tion in this state is not subject to waiver or compromise, either
10 by agreement of the parties or by a collection agency acting on
11 behalf of a party and may only be modified by an order of a
12 court of competent jurisdiction.

13 (c) No child or spousal support or arrearage of child or
14 spousal support collected by the state IV-D agency may be
15 redirected to any collection agency.

16 (d) No collection agency attempting to collect a child or
17 spousal support obligation or arrearage on behalf of a resident
18 or from a resident of this state may include any funds collected
19 by a IV-D agency in the amount from which their fee is
20 determined or collected.

21 (e) No collection agency, other than an attorney licensed to
22 practice law in this state, attempting to collect a child support
23 or spousal support obligation or arrearage may engage in
24 conduct which is considered the practice of law, including, but
25 not limited to:

26 (1) The performance of legal services, the offering of legal
27 advice or the making of a false representation, directly or by
28 implication, that a person is an attorney;

29 (2) Any communication with persons in the name of an
30 attorney or upon stationery or other written matter bearing an
31 attorney's name; and

32 (3) Any demand for or payment of money constituting a
33 share of compensation for services performed or to be per-
34 formed by an attorney in collecting a claim.

35 (f) No collection agency may collect or attempt to collect
36 any money alleged to be due and owing by any threat, coercion
37 or attempt to coerce, including, but not limited to:

38 (1) The use, or the express or implicit threat of use, of
39 violence or other criminal means, to cause harm to the person,
40 reputation or property of any person;

41 (2) The accusation or threat to accuse any person of fraud,
42 of any crime, or of any conduct which, if true, would tend to
43 disgrace the other person or in any way subject them to ridicule
44 or contempt of society;

45 (3) False accusations made to another person, including any
46 credit reporting agency, that a person is willfully refusing to
47 pay a just claim, or the threat to make such false accusations;

48 (4) The threat that nonpayment of an alleged claim will
49 result in the arrest of any person, or of the taking of any other
50 action requiring judicial sanction, without informing the person
51 that there must be in effect a court order permitting the action
52 before it can be taken; and

53 (5) The threat to take any action prohibited by this section
54 or other law regulating the conduct of a collection agency.

55 (g) No collection agency may unreasonably oppress or
56 abuse any person in connection with the collection of or attempt
57 to collect any child or spousal support obligation or arrearage,
58 including, but not limited to:

59 (1) The use of profane or obscene language or language that
60 is intended to unreasonably abuse the listener or reader;

61 (2) The placement of telephone calls without disclosure of
62 the caller's identity and with the intent to annoy, harass or
63 threaten any person at the called number;

64 (3) Causing expense to any person in the form of long
65 distance telephone tolls, telegram fees or other charges incurred
66 by a medium of communication, by concealment of the true
67 purpose of the communication; and

68 (4) Causing a telephone to ring or engaging any person in
69 telephone conversation repeatedly or continuously, or at
70 unusual times or at times known to be inconvenient, with intent
71 to annoy, abuse, oppress or threaten any person at the called
72 number.

73 (h) No collection agency may unreasonably publicize
74 information relating to any alleged child or spousal support
75 obligation or arrearage, including, but not limited to:

76 (1) The communication to any employer or his or her agent
77 of any information relating to an employee's indebtedness other
78 than through proper legal action, process or proceeding;

79 (2) The disclosure, publication, or communication of
80 information relating to a child or spousal support obligation or
81 arrearage to any relative or family member of the obligor,
82 except through proper legal action or process or at the express
83 and unsolicited request of the obligor;

84 (3) The disclosure, publication or communication of any
85 information relating to an obligor's child or spousal support
86 obligation or arrearage to any other person other than a credit
87 reporting agency, by publishing or posting any list of persons,
88 commonly known as "deadbeat lists," or in any manner other
89 than through proper legal action, process or proceeding; and

90 (4) The use of any form of communication to the obligor,
91 which ordinarily may be seen by any other person, that displays
92 or conveys any information about the alleged claim other than
93 the name, address and telephone number of the collection
94 agency.

95 (i) No collection agency may use any fraudulent, deceptive
96 or misleading representation or means to collect or attempt to
97 collect claims or to obtain information concerning support
98 obligors, including, but not limited to:

99 (1) The use of any business, company or organization name
100 while engaged in the collection of claims, other than the true
101 name of the collection agency's business, company or organiza-
102 tion;

103 (2) Any false representation that the collection agency has
104 in its possession information or something of value for the
105 obligor with the underlying purpose of soliciting or discovering
106 information about the person;

107 (3) The failure to clearly disclose the name of the person to
108 whom the claim is owed, at the time of making any demand for
109 money;

110 (4) Any false representation or implication of the character,
111 extent or amount of a claim against an obligor or of the status
112 of any legal proceeding;

113 (5) Any false representation or false implication that any
114 collection agency is vouched for, bonded by, affiliated with an
115 agency, instrumentality, agent or official of this state or of the
116 federal or local government;

117 (6) The use, distribution or sale of any written communica-
118 tion which simulates or is falsely represented to be a document

119 authorized, issued or approved by a court, an official or any
120 other legally constituted or authorized authority, or which
121 creates a false impression about its source, authorization or
122 approval;

123 (7) Any representation that an existing obligation of the
124 obligor may be increased by the addition of attorney's fees,
125 investigation fees, service fees or any other fees or charges
126 when in fact the fees or charges may not legally be added to the
127 existing obligation; and

128 (8) Any false representation or false impression about the
129 status or true nature of the services rendered by the collection
130 agency.

131 (j) No collection agency may use unfair or unconscionable
132 means to collect or attempt to collect any claim, including, but
133 not limited to:

134 (1) The collection of or the attempt to collect any interest
135 in excess of that interest authorized by the provisions of this
136 chapter, or other charge, fee or expense incidental to the
137 principal obligation that exceeds ten percent of the principal
138 amount from an obligor or obligee; and

139 (2) Any communication with an obligor whenever it
140 appears the obligor is represented by an attorney and the
141 attorney's name and address are known, or could be easily
142 ascertained, unless the attorney fails to answer correspondence,
143 return telephone calls or discuss the obligation in question, or
144 unless the attorney and the obligor consent to direct communi-
145 cation.

146 (k) No collection agency may use, distribute, sell or prepare
147 for use any written communication which violates or fails to
148 conform to United States postal laws and regulations.

149 (l) No collection agency may place a telephone call or
150 otherwise communicate by telephone with an obligor at any
151 place, including a place of employment, falsely stating that the
152 call is “urgent” or an “emergency”.

153 (m) No collection agency may attempt to collect any
154 portion of a fee from any money collected by any other entity
155 or authority. The collection agency may only collect a fee from
156 funds procured solely through its collection activities.

157 (n) A collection agency must provide the state IV-D agency
158 with an accounting of any money collected and forwarded to
159 the obligee as child support, spousal support, or arrearages
160 every sixty days until the collection agency ceases all collection
161 activity.

162 (o) Any resident of this state who contracts for services
163 with a collection agency to collect child support, spousal
164 support arrearages may, upon thirty days written notice, cancel
165 the contract for collection. The notice must be mailed to the
166 collection agency by first class mail. All contracts signed by
167 residents of this state must include written notification of this
168 right of cancellation.

169 (p) Any person who violates the provisions of this section
170 is subject to the penalties set forth in section 47-16-5 and
171 section 11-12-9.

172 (q) Any person who violates the provisions of this section
173 is liable to the injured party in a civil action. Additionally, any
174 person who violates the provisions of this section is guilty of a
175 misdemeanor and, upon conviction thereof, shall be fined not
176 less than one thousand dollars nor more than five thousand
177 dollars for each separate incident.

178 (r) For any action filed pursuant to this section alleging
179 illegal, fraudulent or unconscionable conduct or any prohibited
180 debt collection practice, the court, in its discretion, may award
181 all or a portion of the costs of litigation, including reasonable
182 attorney fees, court costs and fees, to the injured party. Upon a
183 finding by the court that an action filed pursuant to this section
184 on the grounds of illegal, fraudulent or unconscionable conduct
185 or any prohibited debt collection practice was brought in bad
186 faith and for the purposes of harassment, the court may award
187 the defendant reasonable attorney fees.

ARTICLE 5. DIVORCE.

*§48-5-509. Enjoining abuse, emergency protective order.

1 (a) The court may enjoin the offending party from molest-
2 ing or interfering with the other, or otherwise imposing any
3 restraint on the personal liberty of the other, or interfering with
4 the custodial or visitation rights of the other. This order may
5 enjoin the offending party from:

6 (1) Entering the school, business or place of employment of
7 the other for the purpose of molesting or harassing the other;

8 (2) Contacting the other, in person or by telephone, for the
9 purpose of harassment or threats; or

10 (3) Harassing or verbally abusing the other in a public
11 place.

12 (b) Any order entered by the court to protect a party from
13 abuse may grant any other relief that may be appropriate for
14 inclusion under the provisions of article twenty-seven of this
15 chapter.

16 (c) The court, in its discretion, may enter a protective order,
17 as provided in article twenty-seven of this chapter, as part of the
18 temporary relief in a divorce action.

***Clerk's Note:** This section was also amended by H. B. 2199 (Chapter 91), which passed prior to this act.

ARTICLE 8. SPOUSAL SUPPORT.

§48-8-103. Payment of spousal support.

§48-8-104. Effect of fault or misconduct on award of spousal support.

***§48-8-103. Payment of spousal support.**

1 (a) Upon ordering a divorce or granting a decree of separate
2 maintenance, the court may require either party to pay spousal
3 support in the form of periodic installments, or a lump sum, or
4 both, for the maintenance of the other party. Payments of
5 spousal support are to be ordinarily made from a party's
6 income, but when the income is not sufficient to adequately
7 provide for those payments, the court may, upon specific
8 findings set forth in the order, order the party required to make
9 those payments to make them from the corpus of his or her
10 separate estate. An award of spousal support shall not be
11 disproportionate to a party's ability to pay as disclosed by the
12 evidence before the court.

13 (b) At any time after the entry of an order pursuant to the
14 provisions of this article, the court may, upon motion of either
15 party, revise or alter the order concerning the maintenance of
16 the parties, or either of them, and make a new order concerning
17 the same, issuing it forthwith, as the altered circumstances or
18 needs of the parties may render necessary to meet the ends of
19 justice.

***§48-8-104. Effect of fault or misconduct on award of spousal support.**

1 In determining whether spousal support is to be awarded,
2 or in determining the amount of spousal support, if any, to be
3 awarded, the court shall consider and compare the fault or
4 misconduct of either or both of the parties and the effect of the
5 fault or misconduct as a contributing factor to the deterioration
6 of the marital relationship.

***Clerk's Note:** This section was also amended by H. B. 2199 (Chapter 91), which passed prior to this act.

ARTICLE 9. CUSTODY OF CHILDREN.**§48-9-604. Parent education and mediation fund.**

1 There is hereby created in the state treasury a special
2 revenue account, designated the “parent education and media-
3 tion fund”. The moneys of the fund shall be expended by the
4 administrator of the supreme court of appeals for parent
5 education and mediation programs.

ARTICLE 12. MEDICAL SUPPORT.

§48-12-101. Definitions applicable to medical support enforcement.

§48-12-104. Use of national medical support notice; employer to enroll child and withhold premium.

§48-12-105. Employer’s obligation to transfer notice to appropriate plan.

§48-12-106. Notice to requirements for certain newly-hired employees.

§48-12-107. Notice requirement upon termination of parent.

§48-12-108. Certain liabilities of parent for contributions under the plan subject to enforcement; exceptions.

§48-12-109. Custodial parent to receive coverage information, documents.

§48-12-110. Employer, union to notify IV-D agency within forty days of receipt of notice.

§48-12-111. Employer’s duties upon service of national medical support notice.

§48-12-112. Employer’s duties where court-ordered coverage available.

§48-12-113. Signature of custodian of child is valid authorization to insurer; insurer’s obligations.

§48-12-114. Notice to be transferred on parent’s change of employment.

§48-12-115. Insurer to notify custodian when obligated parent’s employment is terminated or coverage is denied, modified or terminated; explanation of conversion privileges; employer to notify bureau of termination.

§48-12-116. Child is eligible for coverage until emancipated; remedies available if obligated parent fails to provide ordered coverage; failure to maintain coverage is basis for modification of support order.

§48-12-117. Mandatory date for use the national medical support notice.

***§48-12-101. Definitions applicable to medical support enforcement.**

1 For the purposes of this article:

***Clerk’s Note:** This section was also amended by H. B. 2199 (Chapter 91), which passed prior to this act.

2 (1) "Custodian for the children" means a parent, legal
3 guardian, committee or other third party appointed by court
4 order as custodian of a child or children for whom child support
5 is ordered.

6 (2) "Obligated parent" means a natural or adoptive parent
7 who is required by agreement or order to pay for insurance
8 coverage and medical care, or some portion thereof, for his or
9 her child.

10 (3) "Insurance coverage" means coverage for medical,
11 dental, including orthodontic, optical, psychological, psychiat-
12 ric or other health care service.

13 (4) "Child" means a child to whom a duty of child support
14 is owed.

15 (5) "Medical care" means medical, dental, optical, psycho-
16 logical, psychiatric or other health care service for children in
17 need of child support.

18 (6) "Insurer" means any company, health maintenance
19 organization, self-funded group, multiple employer welfare
20 arrangement, hospital or medical services corporation, trust,
21 group health plan, as defined in 29 U.S.C. § 1167, Section
22 607(1) of the Employee Retirement Income Security Act of
23 1974 or other entity which provides insurance coverage or
24 offers a service benefit plan.

25 (7) "National medical support notice" means the written
26 notice described in 29 U.S.C. §1169 (a)(5)(C) and 42 U.S.C.
27 §666 (a)(19), and issued as a means of enforcing the health care
28 coverage provisions in a child support order for children whose
29 parent or parents are required to provide health-care coverage
30 through an employment-related group health plan. This notice

31 is considered under ERISA to be a qualified medical child
32 support order (QMSO).

33 (8) "Qualified medical child support order" means a
34 medical child support order which creates or recognizes the
35 existence of an alternate recipient's right to, or assigns to an
36 alternate recipient the right to, receive benefits from which a
37 participant or beneficiary is eligible under a group health plan.
38 A qualified medical child support order must include the name
39 and the last known mailing address, if any, of the participant
40 and the name and mailing address of each alternate recipient
41 covered by the order, except that, to the extent provided in the
42 order, the name and mailing address of an official of the IV-D
43 agency may be substituted for the mailing address of any
44 alternate recipient, a reasonable description of the type of
45 coverage provided to each alternate recipient, or the manner in
46 which the type of coverage is determined, and the time period
47 for which the order applies.

***§48-12-104. Use of national medical support notice; employer to
enroll child and withhold premium.**

1 (a) All child support orders which include a provision for
2 health care coverage of a child shall be enforced, where
3 appropriate, through the use of the national medical support
4 notice, as set forth in 42 U.S.C. §666 (a)(19) and 29 U.S.C.
5 §1169 (a)(5)(C) et seq.

6 (b) Unless alternative coverage is permitted in any order by
7 a court of competent jurisdiction, in any case in which a parent
8 is required pursuant to a child support order to provide the
9 health care coverage and the employer of the parent is known
10 to the IV-D agency, the IV-D agency shall use the national
11 medical support notice to give notice of the provision for the
12 health care coverage of the child to the employer. The employer
13 shall enroll the child as a beneficiary in the group insurance

***Clerk's Note:** This section was also amended by H. B. 2199 (Chapter 91), which
passed prior to this act.

14 plan and withhold any required premium from the obligated
15 parent's income or wages, and remit any amount withheld for
16 the premium directly to the plan.

***48-12-105. Employer's obligation to transfer notice to appropriate plan.**

1 Within twenty business days after the date of receipt of the
2 national medical support notice, the employer shall transfer the
3 notice, excluding the severable employer withholding notice
4 described in section 401 (b)(2)(C) of the Child Support Performance and Incentive Act of 1998, to the appropriate plan
5 providing any health care coverage for which the child is
6 eligible.
7

***§48-12-106. Notice requirements for certain newly-hired employees.**

1 In any case in which the parent is a newly hired employee
2 who is reported to the state directory of new hires pursuant to
3 section 18-125 of this chapter, and if the bureau for child
4 support enforcement is currently providing services for this
5 case, the agency shall issue, where appropriate, the national
6 medical support notice, together with an income withholding
7 notice issued pursuant to section 14-405 of this chapter, within
8 two days after the date of the entry of the employee in the
9 directory.

***§48-12-107. Notice requirement upon termination of parent.**

1 In any case in which the employment of the parent with any
2 employer who received a national medical support notice is
3 terminated, the employer is required to notify the IV-D agency
4 of the termination, within fourteen days of the termination, and
5 shall provide the bureau for child support enforcement with the
6 obligor's last known address at the time of termination.

***Clerk's Note:** This section was also amended by H. B. 2199 (Chapter 91), which passed prior to this act.

***§48-12-108. Certain liabilities of parent for contributions under the plan subject to enforcement; exceptions.**

1 Any liability a parent may have for employee contributions
2 required under the plan for enrollment of the child is subject to
3 appropriate enforcement unless the parent contests the enforce-
4 ment based upon a mistake of fact, except that if enforcement
5 of both the full amount of cash child support and the full
6 amount of medical support violates the application provisions
7 of 15 U.S.C. §1673, Section 303(b) of the Consumer Credit
8 Protection Act, then the current month's cash child support
9 shall receive priority, and shall be deducted in full prior to any
10 deduction being made for payment of either current medical
11 support or health insurance premiums. If the employee contests
12 the withholding in the manner prescribed within the notice, the
13 employer must initiate withholding until such time as the
14 employer receives notice that the contest is resolved.

***§48-12-109. Custodial parent to receive coverage information, documents.**

1 Within forty business days after the date of the national
2 medical support notice, the plan administrator shall provide to
3 the custodial parent a description of the coverage available and
4 any forms or documents, including an insurance enrollment
5 card, to effectuate the coverage.

***§48-12-110. Employer, union to notify IV-D agency within forty days of receipt of notice.**

1 Within forty days of receipt of a national medical support
2 notice, the obligated parent's employer, multiemployer trust or
3 union shall notify the IV-D agency with respect to whether
4 coverage for the child is available, and if so, whether the child
5 is covered under the plan, the effective date of the coverage and
6 the name of the insurer.

***Clerk's Note:** This section was also amended by H. B. 2199 (Chapter 91), which passed prior to this act.

***§48-12-111. Employer's duties upon service of national medical support notice.**

1 (a) Upon service of the national medical support notice
2 requiring insurance coverage for the children, the employer,
3 multiemployer trust or union shall enroll the child as a benefi-
4 ciary in the group insurance plan and withhold any required
5 premium from the obligated parent's income or wages, unless
6 the child is already enrolled in this plan.

7 (b) If more than one plan is offered by the employer,
8 multiemployer trust or union, the child shall be enrolled in the
9 same plan as the obligated parent. If the obligated parent is not
10 enrolled for insurance coverage, the employer shall promptly
11 report the availability of plans to the IV-D agency. The IV-D
12 agency, in consultation with parent, shall promptly select the
13 most appropriate plan, considering both the health needs of the
14 child and the cost to the parents, and shall notify the plan
15 administrator and the parties of the selection.

16 (c) Insurance coverage for the child which is ordered
17 pursuant to the provisions of this section shall not be terminated
18 except as provided in section 12-115 of this chapter.

***§48-12-112. Employer's duties where court-ordered coverage available.**

1 (a) Where a parent is required by a court or administrative
2 order to provide health coverage, which is available through an
3 employer doing business in this state, the employer is required:

4 (1) To permit the parent to enroll under family coverage
5 any child who is otherwise eligible for coverage without regard
6 to any enrollment season restrictions;

***Clerk's Note:** This section was also amended by H. B. 2199 (Chapter 91), which passed prior to this act.

7 (2) If the parent is enrolled but fails to make application to
8 obtain coverage of the child, to enroll the child under family
9 coverage upon application by the child's other parent, by the
10 state agency administering the medicaid program or by the
11 bureau for child support enforcement;

12 (3) Not to disenroll or eliminate coverage of the child
13 unless the employer is provided satisfactory written evidence
14 that:

15 (A) The court or administrative order is no longer in effect;

16 (B) The child is or will be enrolled in comparable coverage
17 which will take effect no later than the effective date of
18 disenrollment; or

19 (C) The employer eliminated family health coverage for all
20 of its employees; and

21 (4) To withhold from the employee's compensation the
22 employee's share, if any, of premiums for health coverage and
23 to pay this amount to the insurer: *Provided*, That the amount so
24 withheld may not exceed the maximum amount permitted to be
25 withheld under 15 U.S.C. §1673, Section 303(b) of the con-
26 sumer credit protection act.

***§48-12-113. Signature of custodian of child is valid authorization
to insurer; insurer's obligations.**

1 (a) The signature of the custodian for the child shall
2 constitute a valid authorization to the insurer for the purposes
3 of processing an insurance payment to the provider of medical
4 care for the child.

5 (b) No insurer, employer or multiemployer trust in this state
6 may refuse to honor a claim for a covered service when the

***Clerk's Note:** This section was also amended by H. B. 2199 (Chapter 91), which
passed prior to this act.

7 custodian for the child or the obligated parent submits proof of
8 payment for medical bills for the child.

9 (c) The insurer shall reimburse the custodian for the child
10 or the obligated parent who submits copies of medical bills for
11 the child with proof of payment.

12 (d) All insurers in this state shall comply with the provi-
13 sions of section 33-15-16 and section 33-16-11 of this code and
14 shall provide insurance coverage for the child of a covered
15 employee notwithstanding the amount of support otherwise
16 ordered by the court and regardless of the fact that the child
17 may not be living in the home of the covered employee.

***§48-12-114. Notice to be transferred on parent's change of em-
ployment.**

1 Where an obligated parent changes employment and the
2 new employer provides the obligated parent's health care
3 coverage, the bureau for child support enforcement shall
4 transfer to the new employer notice of the obligated parent's
5 duty to provide health care coverage by use of the national
6 medical support notice.

**§48-12-115. Insurer to notify custodian when obligated parent's
employment is terminated or coverage is denied,
modified or terminated; explanation of conversion
privileges; employer to notify bureau of termina-
tion.**

1 When an order for insurance coverage for a child pursuant
2 to this article is in effect and the obligated parent's employment
3 is terminated or the insurance coverage for the child is denied,
4 modified or terminated, the insurer shall in addition to comply-
5 ing with the requirements of article sixteen-a, chapter
6 thirty-three of this code, within ten days after the notice of

***Clerk's Note:** This section was also amended by H. B. 2199 (Chapter 91), which passed prior to this act.

7 change in coverage is sent to the covered employee, notify the
8 custodian for the child and provide an explanation of any
9 conversion privileges available from the insurer. In any case in
10 which the employment of the obligated parent to provide
11 insurance is terminated, the employer shall notify the bureau for
12 child support enforcement of the termination.

**§48-12-116. Child is eligible for coverage until emancipated;
remedies available if obligated parent fails to
provide ordered coverage; failure to maintain
coverage is basis for modification of support
order.**

1 (a) A child of an obligated parent shall remain eligible for
2 insurance coverage until the child is emancipated or until the
3 insurer under the terms of the applicable insurance policy
4 terminates said child from coverage, whichever is later in time,
5 or until further order of the court.

6 (b) If the obligated parent fails to comply with the order to
7 provide insurance coverage for the child, the court shall:

8 (1) Hold the obligated parent in contempt for failing or
9 refusing to provide the insurance coverage or for failing or
10 refusing to provide the information required in subdivision (4)
11 of this subsection;

12 (2) Enter an order for a sum certain against the obligated
13 parent for the cost of medical care for the child and any
14 insurance premiums paid or provided for the child during any
15 period in which the obligated parent failed to provide the
16 required coverage;

17 (3) In the alternative, other enforcement remedies available
18 under sections 14-2, 14-3 and 14-4 of this chapter, or otherwise
19 available under law, may be used to recover from the obligated

20 parent the cost of medical care or insurance coverage for the
21 child;

22 (4) In addition to other remedies available under law, the
23 bureau for child support enforcement may initiate an income
24 withholding against the wages, salary or other employment
25 income of, and withhold amounts from state tax refunds to any
26 person who:

27 (A) Is required by court or administrative order to provide
28 coverage of the cost of health services to a child; and

29 (B) Has received payment from a third party for the costs
30 of the services but has not used the payments to reimburse
31 either the other parent or guardian of the child or the provider
32 of the services, to the extent necessary to reimburse the state
33 medicaid agency for its costs: *Provided*, That claims for current
34 and past due child support shall take priority over these claims.

35 (c) Proof of failure to maintain court ordered insurance
36 coverage for the child constitutes a showing of substantial
37 change in circumstances or increased need, and provides a basis
38 for modification of the child support order.

**§48-12-117. Mandatory date for use the national medical support
notice.**

1 Provisions of this article which require the use of the
2 national medical support notice are not mandatory until April
3 1, 2002.

ARTICLE 13. GUIDELINES FOR CHILD SUPPORT AWARDS.

Part 4. Support in Basic Shared Parenting Cases.

§48-13-401. Basic child support obligation in basic shared parenting.

§48-13-402. Division of basic child support obligation in basic shared parenting.

§48-13-403. Worksheet for calculating basic child support obligation in basic shared parenting cases.

§48-13-404. Additional calculation to be made in basic shared parenting cases.

§48-13-501. Extended shared parenting adjustment.

§48-13-502. Extended shared parenting worksheet.

§48-13-503. Split physical custody adjustment.

§48-13-801. Tax exemption for child due support.

§48-13-802. Investment of child support.

§48-13-803. Reimbursement or arrearage only support.

***§48-13-401. Basic child support obligation in basic shared parenting.**

1 For basic shared parenting cases, the total child support
2 obligation consists of the basic child support obligation plus the
3 child's share of any unreimbursed health care expenses, work-
4 related child care expenses and any other extraordinary ex-
5 penses 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.

***§48-13-402. Division of basic child support obligation in basic shared parenting.**

1 For basic shared parenting cases, the total basic child
2 support obligation is divided between the parents in proportion
3 to their income. From this amount is subtracted the payor's
4 direct expenditures of any items which were added to the basic
5 child support obligation to arrive at the total child support
6 obligation.

***§48-13-403. Worksheet for calculating basic child support obligation in basic shared parenting cases.**

1 Child support for basic shared parenting cases shall be
2 calculated using the following worksheet:

***Clerk's Note:** This section was also amended by H. B. 2199 (Chapter 91), which passed prior to this act.

WORKSHEET A: BASIC SHARED PARENTING

IN THE FAMILY 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 §48-1-228(b)(6)	+	+	
d. Additional dependents deduction			
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. PAYOR PARENT ADJUSTMENT (Enter payor parent's line 5e.)	\$	\$	
9. RECOMMENDED CHILD SUPPORT ORDER (Subtract line 8 from line 7 for the payor parent only. Leave payee parent column blank.)	\$	\$	
PART II. ABILITY TO PAY CALCULATION (Complete if the payor parent's adjusted monthly gross income is below \$1,550.)			

10. Spendable Income (0.80 x line 2 for payor 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 payor parent directly pays extraordinary expenses.

PREPARED BY:

Date:

***§48-13-404. Additional calculation to be made in basic shared parenting cases.**

1 In cases where the payor parent's adjusted gross income is
 2 below one thousand five hundred fifty dollars per month, an
 3 additional calculation in Worksheet A, Part II shall be made.
 4 This additional calculation sets the child support order at
 5 whichever is lower.

6 (1) Child support at the amount determined in Part I; or

7 (2) The difference between eighty percent of the payor
 8 parent's adjusted gross income and five hundred dollars, or fifty
 9 dollars, whichever is more.

**PART 5. SUPPORT IN EXTENDED SHARED
 PARENTING OR SPLIT PHYSICAL CUSTODY CASES.**

***§48-13-501. Extended shared parenting adjustment.**

1 Child support for cases with extended shared parenting is
 2 calculated using Worksheet B. The following method is used

***Clerk's Note:** This section was also amended by H. B. 2199 (Chapter 91), which passed prior to this act.

3 only for extended shared parenting: That is, in cases where each
4 parent has the child for more than one hundred twenty-seven
5 days per year (thirty-five percent).

6 (1) The basic child support obligation is multiplied by 1.5
7 to arrive at a shared parenting basic child support obligation.
8 The shared parenting basic child support obligation is appor-
9 tioned to each parent according to his or her income. In turn, a
10 child support obligation is computed for each parent by
11 multiplying that parent's portion of the shared parenting child
12 support obligation by the percentage of time the child spends
13 with the other parent. The respective basic child support
14 obligations are then offset, with the parent owing more basic
15 child support paying the difference between the two amounts.
16 The transfer for the basic obligation for the parent owing less
17 basic child support shall be set at zero dollars.

18 (2) Adjustments for each parent's additional direct expenses
19 on the child are made by apportioning the sum of the parent's
20 direct expenditures on the child's share of any unreimbursed
21 child health care expenses, work-related child care expenses
22 and any other extraordinary expenses agreed to by the parents
23 or ordered by the court less any extraordinary credits agreed to
24 by the parents or ordered by the court to each parent according
25 to their income share. In turn each parent's net share of addi-
26 tional direct expenses is determined by subtracting the parent's
27 actual direct expenses on the child's share of any unreimbursed
28 child health care expenses, work-related child care expenses
29 and any other extraordinary expenses agreed to by the parents
30 or by the court less any extraordinary credits agreed to by the
31 parents or ordered by the court from their share. The parent
32 with a positive net share of additional direct expenses owes the
33 other parent the amount of his or her net share of additional
34 direct expenses. The parent with zero or a negative net share of

35 additional direct expenses owes zero dollars for additional
36 direct expenses.

37 (3) The final amount of the child support order is deter-
38 mined by summing what each parent owes for the basic support
39 obligation and additional direct expenses as defined in subdivi-
40 sions (1) and (2) of this section. The respective sums are then
41 offset, with the parent owing more paying the other parent the
42 difference between the two amounts.

***§48-13-502. Extended shared parenting worksheet.**

1 Child support for extended shared parenting cases shall be
2 calculated using the following worksheet:

WORKSHEET B: EXTENDED SHARED PARENTING

IN THE FAMILY COURT OF _____ COUNTY, WEST VIRGINIA
CASE NO. _____

Mother: _____ SS No.: _____

Father: _____ SS 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 compensa- tion)	\$	\$	
a. Minus preexisting child support payment	-	-	
b. Minus maintenance paid	-	-	

***Clerk's Note:** This section was also amended by H. B. 2199 (Chapter 91), which passed prior to this act.

c. Plus overtime compensation, if not excluded, and not to exceed 50%, pursuant to W. Va. Code §48-1-228(b)(6)	+	+	
d. Additional dependent deduction			
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 PARENTING ADJUSTMENT			
5. Shared Parenting Basic Obligation (line 4 x 1.50)			\$
6. Each Parent's Share (Line 5 x each parent's line 3)	\$	\$	
7. Overnights with Each Parent (must total 365)			365
8. Percentage with Each Parent (Line 7 divided by 365)	%	%	100%
9. Amount Retained (Line 6 x line 8 for each parent)	\$	\$	
10. Each Parent's Obligation (Line 6 - line 9)	\$	\$	
11. AMOUNT TRANSFERRED FOR BASIC OBLIGATION (Subtract smaller amount on line 10 from larger amount on line 10. Parent with larger amount on line 10 owes the other parent the difference. Enter \$0 for other parent.)	\$	\$	
PART III. ADJUSTMENTS FOR ADDITIONAL EXPENSES (Expenses paid directly by each parent.)			

12a. Work-Related Child Care Costs Adjusted for Federal Tax Credit (0.75 x actual work-related child care costs.)	\$	\$	
12b. Extraordinary Medical Expenses (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.)	\$	\$	
12d. Minus Extraordinary Adjustments (Agreed to by parents or by order of the court.)	\$	\$	
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:

***§48-13-503. Split physical custody adjustment.**

1 In cases with split physical custody, the court shall use
 2 Worksheet A as set forth in section 13-403 to calculate a
 3 separate child support order for each parent based on the
 4 number of children in that parent's custody. Instead of transfer-
 5 ring the calculated orders between parents, the two orders are
 6 offset. The difference of the two orders is the child support
 7 order to be paid by the parent with the higher sole-parenting
 8 order.

PART 8. MISCELLANEOUS PROVISIONS
 RELATING TO CHILD SUPPORT ORDERS.

***§48-13-801. Tax exemption for child due support.**

1 Unless otherwise agreed to by the parties, the court shall
 2 allocate the right to claim dependent children for income tax
 3 purposes to the payee parent except in cases of extended shared
 4 parenting. In extended shared parenting cases, these rights shall
 5 be allocated between the parties in proportion to their adjusted
 6 gross incomes for child support calculations. In a situation
 7 where allocation would be of no tax benefit to a party, the court
 8 need make no allocation to that party. However, the tax
 9 exemptions for the minor child or children should be granted to
 10 the payor parent only if the total of the payee parent's income
 11 and child support is greater when the exemption is awarded to
 12 the payor parent.

***§48-13-802. Investment of child support.**

***Clerk's Note:** This section was also amended by H. B. 2199 (Chapter 91), which passed prior to this act.

1 (a) The court has the discretion, in appropriate cases, to
2 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 court may order such investment when all of the child's
5 day-to-day needs are being met such that, with due consider-
6 ation of the age of the child, the child is living as well as his or
7 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.

§48-13-803. Reimbursement or arrearage only support.

1 When the payor is not paying any current support obliga-
2 tion but is required to pay for arrearages or reimbursement
3 support, the court shall set a payment amount for the repayment
4 of reimbursement support or of a support arrearage that is
5 reasonable pursuant to the provisions of this article or section
6 6-301, but not to exceed the limits set out in section 14-408.

ARTICLE 14. REMEDIES FOR THE ENFORCEMENT OF SUPPORT OBLIGATIONS.**PART 7. BONDS OR SECURITY TO SECURE
PAYMENT OF OVERDUE SUPPORT.*****§48-14-701. Posting of bonds or giving security to guarantee payment of overdue support.**

1 (a) An obligor with a pattern of overdue support may be
2 required by order of the court to post bond, give security or
3 some other guarantee to secure payment of overdue support.
4 The guarantee may include an order requiring that stocks, bonds
5 or other assets of the obligor be held in escrow by the court
6 until the obligor pays the support.

7 (b) No less than fifteen days before such an order may be
8 entered the bureau for child support enforcement attorney shall
9 cause the mailing of a notice by first class mail to the obligor
10 informing the obligor of the impending action, his or her right
11 to contest it, and setting forth a date, time and place for a
12 meeting with the bureau for child support enforcement attorney
13 and the date, time and place of a hearing before the family court
14 if the impending action is contested.

ARTICLE 18. BUREAU FOR CHILD SUPPORT ENFORCEMENT.***§48-18-105. General duties and powers of the bureau for child support enforcement.**

1 In carrying out the policies and procedures for enforcing the
2 provisions of this chapter, the bureau shall have the following
3 power and authority:

4 (1) To undertake directly, or by contract, activities to obtain
5 and enforce support orders and establish paternity;

***Clerk's Note:** This section was also amended by H. B. 2199 (Chapter 91), which passed prior to this act.

6 (2) To undertake directly, or by contract, activities to
7 establish paternity for minors for whom paternity has not been
8 acknowledged by the father or otherwise established by law;

9 (3) To undertake directly, or by contract, activities to
10 collect and disburse support payments;

11 (4) To contract for professional services with any person,
12 firm, partnership, professional corporation, association or other
13 legal entity to provide representation for the bureau and the
14 state in administrative or judicial proceedings brought to obtain
15 and enforce support orders and establish paternity;

16 (5) To ensure that activities of a contractor under a contract
17 for professional services are carried out in a manner consistent
18 with attorneys' professional responsibilities as established in
19 the rules of professional conduct as promulgated by the
20 supreme court of appeals;

21 (6) To contract for collection services with any person,
22 firm, partnership, corporation, association or other legal entity
23 to collect and disburse amounts payable as support;

24 (7) To ensure the compliance of contractors and their
25 employees with the provisions of this chapter and legislative
26 rules promulgated pursuant to this chapter, and to terminate,
27 after notice and hearing, the contractual relationship between
28 the bureau and a contractor who fails to comply;

29 (8) To require a contractor to take appropriate remedial or
30 disciplinary action against any employee who has violated or
31 caused the contractor to violate the provisions of this chapter,
32 in accordance with procedures prescribed in legislative rules
33 promulgated by the commission;

34 (9) To locate parents who owe a duty to pay child support;

35 (10) To cooperate with other agencies of this state and other
36 states to search their records to help locate parents;

37 (11) To cooperate with other states in establishing and
38 enforcing support obligations;

39 (12) To exercise such other powers as may be necessary to
40 effectuate the provisions of this chapter.

**ARTICLE 19. BUREAU FOR CHILD SUPPORT ENFORCEMENT ATTOR-
NEY.**

***§48-19-103. Duties of the bureau for support enforcement attor-
neys.**

1 Subject to the control and supervision of the commissioner:

2 (a) The bureau for child support enforcement attorney shall
3 supervise and direct the secretarial, clerical and other employ-
4 ees in his or her office in the performance of their duties as such
5 performance affects the delivery of legal services. The bureau
6 for child support enforcement attorney will provide appropriate
7 instruction and supervision to employees of his or her office
8 who are nonlawyers, concerning matters of legal ethics and
9 matters of law, in accordance with applicable state and federal
10 statutes, rules and regulations.

11 (b) In accordance with the requirements of rule 5.4(c) of the
12 rules of professional conduct as promulgated and adopted by
13 the supreme court of appeals, the bureau for child support
14 enforcement attorney shall not permit a nonlawyer who is
15 employed by the department of health and human resources in
16 a supervisory position over the bureau for child support
17 enforcement attorney to direct or regulate the attorney's
18 professional judgment in rendering legal services to recipients
19 of services in accordance with the provisions of this chapter;

***Clerk's Note:** This section was also amended by H. B. 2199 (Chapter 91), which
passed prior to this act.

20 nor shall any nonlawyer employee of the department attempt to
21 direct or regulate the attorney's professional judgment.

22 (c) The bureau for child support enforcement attorney shall
23 make available to the public an informational pamphlet,
24 designed in consultation with the commissioner. The informa-
25 tional pamphlet shall explain the procedures of the court and the
26 bureau for child support enforcement attorney; the duties of the
27 bureau for child support enforcement attorney; the rights and
28 responsibilities of the parties; and the availability of human
29 services in the community. The informational pamphlet shall be
30 provided as soon as possible after the filing of a complaint or
31 other initiating pleading. Upon request, a party to a domestic
32 relations proceeding shall receive an oral explanation of the
33 informational pamphlet from the office of the bureau for child
34 support enforcement attorney.

35 (d) The bureau for child support enforcement shall act to
36 establish the paternity of every child born out of wedlock for
37 whom paternity has not been established, when the child's
38 caretaker is an applicant for or recipient of temporary assistance
39 for needy families, and when the caretaker has assigned to the
40 division of human services any rights to support for the child
41 which might be forthcoming from the putative father: *Provided,*
42 That if the bureau for child support enforcement attorney is
43 informed by the secretary of the department of health and
44 human resources or his or her authorized employee that it has
45 been determined that it is against the best interest of the child
46 to establish paternity, the bureau for child support enforcement
47 attorney shall decline to so act. The bureau for child support
48 enforcement attorney, upon the request of the mother, alleged
49 father or the caretaker of a child born out of wedlock, regardless
50 of whether the mother, alleged father or the caretaker is an
51 applicant or recipient of temporary assistance for needy
52 families, shall undertake to establish the paternity of such child.

53 (e) The bureau for child support enforcement attorney shall
54 undertake to secure support for any individual who is receiving
55 temporary assistance for needy families when such individual
56 has assigned to the division of human services any rights to
57 support from any other person such individual may have:
58 *Provided*, That if the bureau for child support enforcement
59 attorney is informed by the secretary of the department of
60 health and human resources or his or her authorized employee
61 that it has been determined that it is against the best interests of
62 a child to secure support on the child's behalf, the bureau for
63 child support enforcement attorney shall decline to so act. The
64 bureau for child support enforcement attorney, upon the request
65 of any individual, regardless of whether such individual is an
66 applicant or recipient of temporary assistance for needy
67 families, shall undertake to secure support for the individual. If
68 circumstances require, the bureau for child support enforcement
69 attorney shall utilize the provisions of article 16-101, et seq., of
70 this code and any other reciprocal arrangements which may be
71 adopted with other states for the establishment and enforcement
72 of support obligations, and if such arrangements and other
73 means have proven ineffective, the bureau for child support
74 enforcement attorney may utilize the federal courts to obtain
75 and enforce court orders for support.

76 (f) The bureau for child support enforcement attorney shall
77 pursue the enforcement of support orders through the withhold-
78 ing from income of amounts payable as support:

79 (1) Without the necessity of an application from the obligee
80 in the case of a support obligation owed to an obligee to whom
81 services are already being provided under the provisions of this
82 chapter; and

83 (2) On the basis of an application for services in the case of
84 any other support obligation arising from a support order
85 entered by a court of competent jurisdiction.

86 (g) The bureau for child support enforcement attorney may
87 decline to commence an action to obtain an order of support
88 under the provisions of article 14-101, et seq., if an action for
89 divorce, annulment or separate maintenance is pending, or the
90 filing of such action is imminent, and such action will deter-
91 mine the issue of support for the child: *Provided*, That such
92 action shall be deemed to be imminent if it is proposed by the
93 obligee to be commenced within the twenty-eight days next
94 following a decision by the bureau for child support enforce-
95 ment attorney that an action should properly be brought to
96 obtain an order for support.

97 (h) If the bureau for child support enforcement office,
98 through the bureau for child support enforcement attorney, shall
99 undertake paternity determination services, child support
100 collection or support collection services upon the written
101 request of an individual who is not an applicant or recipient of
102 assistance from the division of human services, the office may
103 impose an application fee for furnishing such services. Such
104 application fee shall be in a reasonable amount, not to exceed
105 twenty-five dollars, as determined by the commissioner:
106 *Provided*, That the commissioner may fix such amount at a
107 higher or lower rate which is uniform for this state and all other
108 states if the secretary of the federal department of health and
109 human services determines that a uniform rate is appropriate for
110 any fiscal year to reflect increases or decreases in administra-
111 tive costs. Any cost in excess of the application fee so imposed
112 may be collected from the obligor who owes the child or
113 spousal support obligation involved.

ARTICLE 24. ESTABLISHMENT OF PATERNITY.

*§48-24-101. Paternity proceedings.

1 (a) A civil action to establish the paternity of a child and to
2 obtain an order of support for the child may be instituted, by

*Clerk's Note: This section was also amended by H. B. 2199 (Chapter 91), which passed prior to this act.

3 verified complaint, in the circuit court of the county where the
4 child resides: *Provided*, That if such venue creates a hardship
5 for the parties, or either of them, or if judicial economy
6 requires, the court may transfer the action to the county where
7 either of the parties resides.

8 (b) A “paternity proceeding” is a summary proceeding,
9 equitable in nature and within the domestic relations jurisdic-
10 tion of the courts, wherein a court upon the petition of the state
11 or another proper party may intervene to determine and protect
12 the respective personal rights of:

13 (A) A child for whom paternity has not been lawfully
14 established;

15 (B) The mother of the child; and

16 (C) The putative father of the child.

17 The parties to a paternity proceeding are not entitled to a
18 trial by jury.

19 (c) The sufficiency of the statement of the material allega-
20 tions in the complaint set forth as grounds for relief and the
21 grant or denial of the relief prayed for in a particular case shall
22 rest in the sound discretion of the court, to be exercised by the
23 court according to the circumstances and exigencies of the case,
24 having due regard for precedent and the provisions of the
25 statutory law of this state.

26 (d) An order made and entered by a court in a paternity
27 proceeding shall include a determination of the filial relation-
28 ship, if any, that exists between a child and his or her putative
29 father and, if such relationship is established, shall resolve
30 dependent claims arising from family rights and obligations
31 attendant to such filial relationship.

32 (e) A paternity proceeding may be brought by any of the
33 following persons:

34 (1) An unmarried woman with physical or legal custody of
35 a child to whom she gave birth;

36 (2) A married woman with physical or legal custody of a
37 child to whom she gave birth, if the complaint alleges that:

38 (A) The married woman lived separate and apart from her
39 husband preceding the birth of the child;

40 (B) The married woman did not cohabit with her husband
41 at any time during such separation and that such separation has
42 continued without interruption; and

43 (C) The respondent, rather than her husband, is the father
44 of the child;

45 (3) The state of West Virginia, including the bureau for
46 child support enforcement;

47 (4) Any person who is not the mother of the child, but who
48 has physical or legal custody of the child;

49 (5) The guardian or committee of the child;

50 (6) The next friend of the child when the child is a minor;

51 (7) By the child in his or her own right at any time after the
52 child's eighteenth birthday but prior to the child's twenty-first
53 birthday; or

54 (8) A man who believes he is the father of a child born out
55 of wedlock, when there has been no prior judicial determination
56 of paternity.

57 (f) If a paternity proceeding is brought that names the father
58 of the child as being someone other than the person whose
59 name appears on the child's birth certificate, then the person
60 bringing the action shall cause a copy of the verified complaint
61 to be served on the person named as the father on the birth
62 certificate. Service must be in accordance with rule 4 of the
63 rules of civil procedure.

64 (g) Blood or tissue samples taken pursuant to the provisions
65 of this article may be ordered to be taken in such locations as
66 may be convenient for the parties so long as the integrity of the
67 chain of custody of the samples can be preserved.

68 (h) A person who has sexual intercourse in this state
69 submits to the jurisdiction of the courts of this state for a
70 proceeding brought under this article with respect to a child
71 who may have been conceived by that act of intercourse.
72 Service of process may be perfected according to the rules of
73 civil procedure.

74 (i) When the person against whom the proceeding is
75 brought has failed to plead or otherwise defend the action after
76 proper service has been obtained, judgment by default shall be
77 issued by the court as provided by the rules of civil procedure.

ARTICLE 27. PREVENTION AND TREATMENT OF DOMESTIC VIOLENCE.

PART 2. DEFINITIONS.

- §48-27-202. Domestic violence defined.
- §48-27-203. Emergency hearing defined.
- §48-27-204. Family or household members defined.
- §48-27-205. Final hearing defined.
- §48-27-206. Law-enforcement agency defined.
- §48-27-207. Program for victims of domestic violence defined.
- §48-27-208. Program of intervention for perpetrators defined.
- §48-27-209. Protective order defined.

- §48-27-301. Jurisdiction.
- §48-27-309. Priority of petitions.
- §48-27-401. Proceedings when divorce action is pending.
- §48-27-402. Proceedings in magistrate court when temporary divorce, annulment or separate maintenance order is in effect.
- §48-27-403. Emergency protective orders of court; hearing; persons present.
- §48-27-505. Time period a protective order is in effect; extension of order; notice of order extension.
- §48-27-510. Appeals.
- §48-27-901. Civil contempt; violation of protective orders; to show cause.
- §48-27-902. Violations of protective orders; criminal complaints.
- §48-27-903. Misdemeanor offenses for violation of protective order, repeat offenses, penalties.
- §48-27-1001. Arrest for violations of protective orders.
- §48-27-1101. Forms to be provided; operative date.
- §48-27-1104. Judicial education on domestic violence.

***§48-27-202. Domestic violence defined.**

1 “Domestic violence” or “abuse” means the occurrence of
2 one or more of the following acts between family or household
3 members, as that term is defined in section 27-204:

4 (1) Attempting to cause or intentionally, knowingly or
5 recklessly causing physical harm to another with or without
6 dangerous or deadly weapons;

7 (2) Placing another in reasonable apprehension of physical
8 harm;

9 (3) Creating fear of physical harm by harassment, psycho-
10 logical abuse or threatening acts;

11 (4) Committing either sexual assault or sexual abuse as
12 those terms are defined in articles eight-b and eight-d, chapter
13 sixty-one of this code; and

14 (5) Holding, confining, detaining or abducting another
15 person against that person’s will.

***Clerk’s Note:** This section was also amended by H. B. 2199 (Chapter 91), which passed prior to this act.

***§48-27-203. Emergency hearing defined.**

1 “Emergency hearing” means the hearing before a magis-
2 trate upon the filing of a petition for a protective order. An
3 emergency hearing may be held ex parte.

***§48-27-204. Family or household members defined.**

1 “Family or household members” means persons who:

2 (1) Are or were married to each other;

3 (2) Are or were living together as spouses;

4 (3) Are or were sexual or intimate partners;

5 (4) Are or were dating: *Provided*, That a casual acquaint-
6 tance or ordinary fraternization between persons in a business
7 or social context does not establish a dating relationship;

8 (5) Are or were residing together in the same household;

9 (6) Have a child in common, regardless of whether they
10 have ever married or lived together; and

11 (7) Have the following relationships to another person:

12 (A) Parent;

13 (B) Step parent;

14 (C) Brother or sister;

15 (D) Half-brother or half-sister;

16 (E) Stepbrother or stepsister;

***Clerk’s Note:** This section was also amended by H. B. 2199 (Chapter 91), which passed prior to this act.

- 17 (F) Step father-in-law or step mother-in-law;
- 18 (G) Child or step child;
- 19 (H) Daughter-in-law or son-in-law;
- 20 (I) Step daughter-in-law or step son-in-law;
- 21 (J) Grandparent;
- 22 (K) Step grandparent;
- 23 (L) Aunt, aunt-in-law or step-aunt;
- 24 (M) Uncle, uncle-in-law or step-uncle;
- 25 (N) Niece or nephew;
- 26 (O) First or second cousin; or
- 27 (8) Persons who have the relationships set forth in subpara-
28 graphs (A) through (O), subdivision (7) of this section to a
29 family or household member, as defined in subdivisions (1)
30 through (6) of this section.

***§48-27-205. Final hearing defined.**

1 “Final hearing” means the hearing before a family court
2 judge as may be requested by the respondent following the
3 entry of an order by a magistrate as a result of the emergency
4 hearing.

***§48-27-206. Law-enforcement agency defined.**

1 (a) “Law-enforcement agency” means and is limited to:
2 (1) The state police and its members;

***Clerk’s Note:** This section was also amended by H. B. 2199 (Chapter 91), which passed prior to this act.

3 (2) A county sheriff and his or her law-enforcement
4 deputies; and

5 (3) A police department in any municipality as defined in
6 section two, article one, chapter eight of this code.

7 (b) The term “law-enforcement agency” includes the
8 department of health and human resources in those instances of
9 child abuse reported to the department that are not otherwise
10 reported to any other law-enforcement agency.

§48-27-207. Program for victims of domestic violence defined.

1 “Program for victims of domestic violence” means a
2 licensed program for victims of domestic violence and their
3 children, which program provides advocacy, shelter, crisis
4 intervention, social services, treatment, counseling, education
5 or training.

§48-27-208. Program of intervention for perpetrators defined.

1 “Program of intervention for perpetrators” means a licensed
2 program, where available, or if no licensed program is avail-
3 able, a program that:

4 (1) Accepts perpetrators of domestic violence into educa-
5 tional intervention groups or counseling pursuant to a court
6 order; or

7 (2) Offers educational intervention groups to perpetrators
8 of domestic violence.

§48-27-209. Protective order defined.

1 “Protective order” means an emergency protective order
2 issued by a magistrate as a result of the emergency hearing or
3 a final protective order issued by a family court judge when the

4 respondent has requested a hearing before the family court
5 judge following the entry of the emergency protective order by
6 the magistrate.

PART 3. PROCEDURE.

***§48-27-301. Jurisdiction.**

1 Circuit courts, family courts and magistrate courts, have
2 concurrent jurisdiction over domestic violence proceedings as
3 provided in this article.

***§48-27-309. Priority of petitions.**

1 Any petition filed under the provisions of this article shall
2 be given priority over any other civil action before the court,
3 except actions in which trial is in progress, and shall be
4 docketed immediately upon filing.

PART 4. COORDINATION WITH PENDING COURT ACTIONS.

***§48-27-401. Proceedings when divorce action is pending.**

1 (a) During the pendency of a divorce action, a person may
2 file for and be granted relief provided by this article, until an
3 order is entered in the divorce action pursuant to part 5-501, *et*
4 *seq.*

5 (b) If a person who has been granted relief under this article
6 should subsequently become a party to an action for divorce,
7 separate maintenance or annulment, such person shall remain
8 entitled to the relief provided under this article including the
9 right to file for and obtain any further relief, so long as no
10 temporary order has been entered in the action for divorce,
11 annulment and separate maintenance, pursuant to part 5-501, *et*
12 *seq.*

***Clerk's Note:** This section was also amended by H. B. 2199 (Chapter 91), which passed prior to this act.

13 (c) Except as provided in section 5-509 of this chapter and
14 section 27-402 of this article for a petition and a temporary
15 emergency protective order, no person who is a party to a
16 pending action for divorce, separate maintenance or annulment
17 in which an order has been entered pursuant to part 5-501, *et*
18 *seq.* of this chapter, shall be entitled to file for or obtain relief
19 against another party to that action under this article until after
20 the entry of a final order which grants or dismisses the action
21 for divorce, annulment or separate maintenance.

22 (d) Notwithstanding the provisions set forth in section 27-
23 505, any order issued pursuant to this section where a subse-
24 quent action is filed seeking a divorce, annulment or separate
25 maintenance, shall remain in full force and effect by operation
26 of this statute until a temporary or final order is entered
27 pursuant to part 5-501, *et seq.* of this chapter, or a final order is
28 entered granting or dismissing the action for divorce, annulment
29 or separate maintenance.

***§48-27-402. Proceedings in magistrate court when temporary
divorce, annulment or separate maintenance
order is in effect.**

1 (a) The provisions of this section apply where a temporary
2 order has been entered by a family court in an action for
3 divorce, annulment or separate maintenance, notwithstanding
4 the provisions of subsection 27-401(c) of this article.

5 (b) A person who is a party to an action for divorce,
6 annulment or separate maintenance in which a temporary order
7 has been entered pursuant to section 5-501 of this chapter may
8 petition the magistrate court for a temporary emergency
9 protective order pursuant to this section for any violation of the
10 provisions of this article occurring after the date of entry of the
11 temporary order pursuant to section 5-501 of this chapter.

***Clerk's Note:** This section was also amended by H. B. 2199 (Chapter 91), which passed prior to this act.

12 (c) The only relief that a magistrate may award pursuant to
13 this section is a temporary emergency protective order:

14 (1) Directing the respondent to refrain from abusing the
15 petitioner or minor children, or both;

16 (2) Ordering the respondent to refrain from entering the
17 school, business or place of employment of the petitioner or
18 household members or family members for the purpose of
19 violating the protective order; and

20 (3) Ordering the respondent to refrain from contacting,
21 telephoning, communicating with, harassing or verbally abusing
22 the petitioner.

23 (d) A temporary emergency protective order may modify an
24 award of custody or visitation only upon a showing, by clear
25 and convincing evidence, of the respondent's abuse of a child,
26 as abuse is defined in section 27-202 of this article. An order of
27 modification shall clearly state which party has custody and
28 describe why custody or visitation arrangements were modified.

29 (e) (1) The magistrate shall forthwith transmit a copy of any
30 temporary emergency protective order, together with a copy of
31 the petition, by mail or by facsimile machine to the family court
32 in which the action is pending and to law-enforcement agencies.
33 Upon receipt of the petition and order, the family court shall
34 examine its provisions. Within ten days of the magistrate's
35 issuance of the temporary emergency protective order, the
36 family court shall issue an order either to extend such emer-
37 gency protection for a time certain or to vacate the magistrate's
38 order. The family court shall forthwith give notice to all parties
39 and to the issuing magistrate court. The magistrate court clerk
40 shall forward a copy of the family court order to
41 law-enforcement agencies.

42 (2) If no temporary order has been entered in the pending
43 action for divorce, annulment or separate maintenance the
44 family court shall forthwith return the order with such explana-
45 tion to the issuing magistrate. The magistrate who issued the
46 order shall vacate the order, noting thereon the reason for
47 termination. The magistrate court clerk shall transmit a copy of
48 the vacated order to the parties and law-enforcement agencies.

49 (f) Notwithstanding any other provision of this code, if the
50 family court extends the temporary emergency protective order
51 entered by the magistrate or if, pursuant to the provisions of
52 section 5-509 the family court enters a protective order as
53 temporary relief in an action for divorce, the family court order
54 shall be treated and enforced as a protective order issued under
55 the provisions of this article.

***§48-27-403. Emergency protective orders of court; hearings;
persons present.**

1 (a) Upon the filing of a verified petition under this article,
2 the court may enter an emergency protective order as it may
3 deem necessary to protect the petitioner or minor children from
4 domestic violence and, upon good cause shown, may do so ex
5 parte without the necessity of bond being given by the peti-
6 tioner. Clear and convincing evidence of immediate and present
7 danger of abuse to the petitioner or minor children shall
8 constitute good cause for the issuance of an emergency protec-
9 tive order pursuant to this section. If the respondent is not
10 present at the proceeding, the petitioner or the petitioner's legal
11 representative shall certify to the court, in writing, the efforts
12 which have been made to give notice to the respondent or just
13 cause why notice should not be required. Copies of medical
14 reports or records may be admitted into evidence to the same
15 extent as though the original thereof. The custodian of such
16 records shall not be required to be present to authenticate such
17 records for any proceeding held pursuant to this subsection. If

***Clerk's Note:** This section was also amended by H. B. 2199 (Chapter 91), which passed prior to this act.

18 the court determines to enter an emergency protective order, the
19 order shall prohibit the respondent from possessing firearms.

20 (b) Following the proceeding, the court shall order a copy
21 of the petition to be served immediately upon the respondent,
22 together with a copy of any emergency protective order issued
23 pursuant to the proceedings, and a statement of the right of the
24 respondent to request a final hearing before the family court, as
25 provided in subsection (d) of this section. Copies of any order
26 entered under the provisions of this section and a statement of
27 the right of the petitioner to request a final hearing as provided
28 in subsection (d) of this section shall also be delivered to the
29 petitioner. Copies of any order entered shall also be delivered
30 to any law-enforcement agency having jurisdiction to enforce
31 the order, including municipal police, the county sheriff's office
32 and local office of the state police, within twenty-four hours of
33 the entry of the order. An emergency protective order is
34 effective for ninety days or one hundred eighty days, in the
35 discretion of the court, unless modified by order of the family
36 court upon hearing as provided in this section. The order is in
37 full force and effect in every county in this state.

38 (c) Subsequent to the entry of the emergency protective
39 order and service on the respondent and the delivery to the
40 petitioner and law-enforcement officers, the court file shall be
41 transferred to the office of the clerk of the circuit court for use
42 by the family court, if necessary, under the provisions of this
43 section.

44 (d) After the respondent has been served with the emer-
45 gency protective order, the respondent may request a final
46 hearing on the domestic violence petition before the family
47 court. After the order has been delivered to the petitioner, the
48 petitioner may request a final hearing on the domestic violence
49 petition before the family court. The request for hearing may be
50 made in person, telephonically or by written request to the

51 office of the family court. If the respondent's request for
52 hearing is made within five days from the date the order was
53 served on the respondent or if the petitioner's request for
54 hearing is made within five days from the date the order was
55 delivered to the petitioner, the hearing must be scheduled by the
56 family court within ten days. If the request is made more than
57 five days after the respondent was served with the order or
58 more than five days after the order was delivered to the
59 petitioner, the hearing must be scheduled on an expedited basis.
60 The statement advising the parties of the right to a final hearing
61 must include, clearly and concisely, all of the information
62 contained in this subsection and the name, mailing address,
63 physical location and telephone number of the family court
64 having jurisdiction over the proceedings.

65 (e) If requested by the respondent or by the petitioner, as
66 provided in subsection (d) of this section, the family court must
67 hold, a final hearing at which the petitioner must prove the
68 allegation of domestic violence, or that he or she reported or
69 witnessed domestic violence against another and has, as a
70 result, been abused, threatened, harassed or has been the subject
71 of other actions to attempt to intimidate him or her, by a
72 preponderance of the evidence, or such petition shall be
73 dismissed by the family court. Copies of medical reports may
74 be admitted into evidence to the same extent as though the
75 original thereof, upon proper authentication, by the custodian
76 of such records.

77 (f) No person requested by a party to be present during a
78 hearing held under the provisions of this article shall be
79 precluded from being present unless such person is to be a
80 witness in the proceeding and a motion for sequestration has
81 been made and such motion has been granted. A person found
82 by the court to be disruptive may be precluded from being
83 present.

84 (g) Upon hearing, the family court may dismiss the petition
85 or enter a final protective order for a period of ninety days or,
86 in the discretion of the court, for a period of one hundred eighty
87 days. If a hearing is continued, the family court may make or
88 extend such temporary orders as it deems necessary.

PART 5. PROTECTIVE ORDERS; VISITATION ORDERS.

***§48-27-505. Time period a protective order is in effect; extension
of order; notice of order or extension.**

1 (a) Except as otherwise provided by subsection 27-401(d) of
2 this article, an emergency protective order issued by a magis-
3 trate, family court or circuit judge pursuant to this article, is
4 effective for either ninety days, or one hundred eighty days, in
5 the discretion of the court. If the court enters an order for a
6 period of ninety days, upon receipt of a written request from the
7 petitioner prior to the expiration of the ninety-day period, the
8 family or circuit court shall extend its order for an additional
9 ninety-day period.

10 (b) To be effective, a written request to extend an order
11 from ninety days to one hundred eighty days must be submitted
12 to the court prior to the expiration of the original ninety-day
13 period. A notice of the extension shall be sent by the clerk of
14 the court to the respondent by first class mail, addressed to the
15 last known address of the respondent as indicated by the court's
16 case filings. The extension of time is effective upon mailing of
17 the notice.

18 (c) Certified copies of any order entered or extension notice
19 made under the provisions of this section shall be issued to the
20 petitioner, the respondent and any law-enforcement agency
21 having jurisdiction to enforce the order, including the city
22 police, the county sheriff's office or local office of the West
23 Virginia state police within twenty-four hours of the entry of

***Clerk's Note:** This section was also amended by H. B. 2199 (Chapter 91), which passed prior to this act.

24 the order. The protective order shall be in full force and effect
25 in every county of this state.

26 (d)The family court may modify the terms of an emergency
27 or final protective order upon motion of either party.

***§48-27-510. Appeals.**

1 (a) A petitioner who has been denied an emergency
2 protective order may file a petition for appeal of the denial,
3 within five days of the denial, to the family court.

4 (b) Any party to a final protective order may file a petition
5 for appeal, within ten days of the entry of the order in family
6 court, to the circuit court. The order shall remain in effect
7 pending an appeal unless stayed by the circuit court. No bond
8 shall be required for any appeal under this section.

9 (c) A petition for appeal filed pursuant to this section shall
10 be heard by the court within ten days from the filing of the
11 petition.

12 (d) The standard of review of findings of fact made by the
13 family court is clearly erroneous and the standard of review of
14 application of the law to the facts is an abuse of discretion
15 standard.

PART 9. SANCTIONS.

***§48-27-901. Civil contempt; violation of protective orders; order
to show cause.**

1 (a) Any party to a protective order or a legal guardian or
2 guardian ad litem may file a petition for civil contempt alleging
3 a violation of an order issued pursuant to the provisions of this
4 article. The petition shall be filed in the family court, if a family
5 court entered an order or in the circuit court, if a circuit court

***Clerk's Note:** This section was also amended by H. B. 2199 (Chapter 91), which
passed prior to this act.

6 entered the order, in the county in which the violation occurred
7 or the county in which the order was issued.

8 (b) When a petition for an order to show cause is filed, a
9 hearing on the petition shall be held within five days from the
10 filing of the petition. Any order to show cause which is issued
11 shall be served upon the alleged violator.

12 (c) Upon a finding of contempt, the court may order the
13 violator to comply with specific provisions of the protective
14 order and post a bond as surety for faithful compliance with
15 such order.

***§48-27-902. Violations of protective orders; criminal complaints.**

1 (a) When a respondent abuses the petitioner or minor
2 children, or both, or is physically present at any location in
3 knowing and willful violation of the terms of an emergency or
4 final protective order under the provisions of this article or
5 section 5-509 of this chapter granting the relief pursuant to the
6 provisions of this article, any person authorized to file a petition
7 pursuant to the provisions of section 27-305 or the legal
8 guardian or guardian ad litem may file a petition for civil
9 contempt as set forth in section 27-901.

10 (b) When any such violation of a valid order has occurred,
11 the petitioner may file a criminal complaint. If the court finds
12 probable cause upon the complaint, the court shall issue a
13 warrant for arrest of the person charged.

***§48-27-903. Misdemeanor offenses for violation of protective
order, repeat offenses, penalties.**

1 (a) A respondent who abuses the petitioner or minor
2 children or who is physically present at any location in knowing
3 and willful violation of the terms of an emergency or final

***Clerk's Note:** This section was also amended by H. B. 2199 (Chapter 91), which
passed prior to this act.

4 protective order issued under the provisions of this article or
5 section 5-509 of this chapter granting the relief pursuant to the
6 provisions of this article, is guilty of a misdemeanor and, upon
7 conviction thereof, shall be confined in the county or regional
8 jail for a period of not less than one day nor more than one year,
9 which jail term shall include actual confinement of not less than
10 twenty-four hours, and shall be fined not less than two hundred
11 fifty dollars nor more than two thousand dollars.

12 (b) When a respondent previously convicted of the offense
13 described in subsection (a) of this section abuses the petitioner
14 or minor children or is physically present at any location in
15 knowing and willful violation of the terms of a temporary or
16 final protective order issued under the provisions of this article,
17 the respondent is guilty of a misdemeanor and, upon conviction
18 thereof, shall be confined in the county or regional jail for not
19 less than three months nor more than one year, which jail term
20 shall include actual confinement of not less than twenty-four
21 hours, and fined not less than five hundred dollars nor more
22 than three thousand dollars, or both.

PART 10. ARRESTS.

***§48-27-1001. Arrest for violations of protective orders.**

1 (a) When a law-enforcement officer observes any respon-
2 dent abuse the petitioner or minor children or the respondent's
3 physical presence at any location in knowing and willful
4 violation of the terms of an emergency or final protective order
5 issued under the provisions of this article or section 5-509 of
6 this chapter granting the relief pursuant to the provisions of this
7 article, he or she shall immediately arrest the respondent.

8 (b) When a family or household member is alleged to have
9 committed a violation of the provisions of section 27-903, a

***Clerk's Note:** This section was also amended by H. B. 2199 (Chapter 91), which passed prior to this act.

10 law-enforcement officer may arrest the perpetrator for said
11 offense where:

12 (1) The law-enforcement officer has observed credible
13 corroborative evidence, as defined in subsection 27-1002(b),
14 that the offense has occurred;and

15 (2) The law-enforcement officer has received, from the
16 victim or a witness, a verbal or written allegation of the facts
17 constituting a violation of section 27-903; or

18 (3) The law-enforcement officer has observed credible
19 evidence that the accused committed the offense.

20 (c) Any person who observes a violation of a protective
21 order as described in this section, or the victim of such abuse or
22 unlawful presence, may call a local law-enforcement agency,
23 which shall verify the existence of a current order, and shall
24 direct a law-enforcement officer to promptly investigate the
25 alleged violation.

26 (d) Where there is an arrest, the officer shall take the
27 arrested person before a circuit court or a magistrate and, upon
28 a finding of probable cause to believe a violation of an order as
29 set forth in this section has occurred, the court or magistrate
30 shall set a time and place for a hearing in accordance with the
31 West Virginia rules of criminal procedure.

PART 11. MISCELLANEOUS PROVISIONS.

***§48-27-1101. Forms to be provided; operative date.**

1 (a) The West Virginia supreme court of appeals shall
2 prescribe forms which are necessary and convenient for
3 proceedings pursuant to this article, and the court shall distrib-
4 ute such forms to the clerk of the circuit court, the secretary-

***Clerk's Note:** This section was also amended by H. B. 2199 (Chapter 91), which passed prior to this act.

5 clerk of the family court and the clerk of magistrate court of
6 each county within the state.

7 (b) The amendment enacted to this article by the passage of
8 Engrossed Committee Substitute for Senate Bill No. 652 during
9 the regular session of the Legislature in the year two thousand
10 one is effective the first day of September, two thousand one.

***§48-27-1104. Judicial education on domestic violence.**

1 All circuit court judges may and magistrates and family
2 courts shall receive a minimum of three hours training each
3 year on domestic violence which shall include training on the
4 psychology of domestic violence, the battered wife and child
5 syndromes, sexual abuse, courtroom treatment of victims,
6 offenders and witnesses, available sanctions and treatment
7 standards for offenders, and available shelter and support
8 services for victims. The supreme court of appeals may provide
9 such training in conjunction with other judicial education
10 programs offered by the supreme court.

CHAPTER 52. JURIES.

ARTICLE 1. PETIT JURIES.

§52-1-17. Reimbursement of jurors.

1 (a) A juror shall be paid mileage, at the rate set by the
2 commissioner of finance and administration for state employ-
3 ees, for travel expenses from the juror's residence to the place
4 of holding court and return and shall be reimbursed for other
5 expenses incurred as a result of required attendance at sessions
6 of the court at a rate of between fifteen and forty dollars, set at
7 the discretion of the circuit court or the chief judge thereof, for
8 each day of required attendance. Such reimbursement shall be
9 based on vouchers submitted to the sheriff. Such mileage and
10 reimbursement shall be paid out of the state treasury.

***Clerk's Note:** This section was also amended by H. B. 2199 (Chapter 91), which passed prior to this act.

11 (b) When a jury in any case is placed in the custody of the
12 sheriff, he or she shall provide for and furnish the jury neces-
13 sary meals and lodging while they are in the sheriff's custody
14 at a reasonable cost to be determined by an order of the court;
15 and the meals and lodging shall be paid for out of the state
16 treasury.

17 (c) Anytime a panel of prospective jurors has been required
18 to report to court for the selection of a petit jury in any sched-
19 uled matter, the court shall, by specific provision in a court
20 order, assess a jury cost. In circuit court cases the jury cost shall
21 be the actual cost of the jurors' service, and in magistrate court
22 cases, the jury cost assessed shall be two hundred dollars. Such
23 costs shall be assessed against the parties as follows:

24 (1) In every criminal case, against the defendant upon
25 conviction, whether by plea, by bench trial or by jury verdict;

26 (2) In every civil case, against either party or prorated
27 against both parties, at the court's discretion, if the parties settle
28 the case or trial is to the bench; and

29 (3) In the discretion of the court, and only when fairness
30 and justice so require, a circuit court or magistrate court may
31 forego assessment of the jury fee, but shall set out the reasons
32 therefor in a written order: *Provided*, That a waiver of the
33 assessment of a jury fee in a case tried before a jury in magis-
34 trate court may only be permitted after the circuit court, or the
35 chief judge thereof, has reviewed the reasons set forth in the
36 order by the magistrate and has approved such waiver.

37 (d)(1) The circuit or magistrate court clerk shall by the
38 tenth day of the month following the month of collection remit
39 to the state treasurer for deposit as described in subdivision (2)
40 of this subsection all jury costs collected, and the clerk and the
41 clerk's surety are liable therefor on the clerk's official bond as

42 for other money coming into the clerk's hands by virtue of the
43 clerk's office.

44 (2) The jury costs described in subdivision (1) of this
45 subsection shall upon receipt by the state treasurer be deposited
46 as follows: (A) One-half shall be deposited into the parent
47 education and mediation fund created in section six hundred
48 four, article nine, chapter forty-eight of this code; and (B) one-
49 half shall be deposited into the domestic violence legal services
50 fund created in section six hundred three, article twenty-six,
51 chapter forty-eight of this code.

52 (e) The sheriff shall pay into the state treasury all jury costs
53 received from the court clerks, and the sheriff shall be held to
54 account in the sheriff's annual settlement for all such moneys.

CHAPTER 59. FEES, ALLOWANCES AND COSTS; NEWSPAPERS; LEGAL ADVERTISEMENTS.

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, eighty-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 thirty-five dollars;

15 (3) For petitioning for the modification of an order involv-
16 ing child custody, child visitation, child support or spousal
17 support, eighty-five dollars; and

18 (4) For petitioning for an expedited modification of a child
19 support order, thirty-five dollars.

20 (b) In addition to the foregoing fees, the following fees
21 shall likewise be charged and collected:

22 (1) For preparing an abstract of judgment, five dollars;

23 (2) For any transcript, copy or paper made by the clerk for
24 use in any other court or otherwise to go out of the office, for
25 each page, fifty cents;

26 (3) For action on suggestion, ten dollars;

27 (4) For issuing an execution, ten dollars;

28 (5) For issuing or renewing a suggestee execution, includ-
29 ing copies, postage, registered or certified mail fees and the fee
30 provided by section four, article five-a, chapter thirty-eight of
31 this code, three dollars;

32 (6) For vacation or modification of a suggestee execution,
33 one dollar;

34 (7) For docketing and issuing an execution on a transcript
35 of judgment from magistrate's court, three dollars;

36 (8) For arranging the papers in a certified question, writ of
37 error, appeal or removal to any other court, five dollars;

38 (9) For postage and express and for sending or receiving
39 decrees, orders or records, by mail or express, three times the
40 amount of the postage or express charges;

41 (10) For each subpoena, on the part of either plaintiff or
42 defendant, to be paid by the party requesting the same, fifty
43 cents; and

44 (11) For additional service (plaintiff or appellant) where
45 any case remains on the docket longer than three years, for each
46 additional year or part year, twenty dollars.

47 (c) The clerk shall tax the following fees for services in any
48 criminal case against any defendant convicted in such court:

49 (1) In the case of any misdemeanor, fifty-five dollars; and

50 (2) In the case of any felony, sixty-five dollars.

51 (d) No such clerk shall be required to handle or accept for
52 disbursement any fees, cost or amounts, of any other officer or
53 party not payable into the county treasury, except it be on order
54 of the court or in compliance with the provisions of law
55 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,

***Clerk's Note:** This section was also amended by H. B. 2199 (Chapter 91), and
H. B. 3131 (Chapter 65), which passed prior to this act.

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 the action as follows:

15 (1) Into the regional jail and correctional facility authority
16 fund in the state treasury established pursuant to the provisions
17 of section ten, article twenty, chapter thirty-one of this code, the
18 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, report to
24 the supreme court of appeals, the number of actions filed by
25 persons unable to pay, and pay into the funds or accounts in this
26 subsection an amount equal to the amount set forth in this
27 subsection of every filing fee received for instituting the
28 divorce action as follows:

29 (1) Into the regional jail and correctional facility authority
30 fund in the state treasury established pursuant to the provisions
31 of section ten, article twenty, chapter thirty-one of this code, the
32 amount of ten dollars;

33 (2) Into the special revenue account of the state treasury,
34 established pursuant to section six hundred four, article two,
35 chapter forty-eight of this code, an amount of thirty dollars;

36 (3) Into the family court fund established under section four
37 hundred three, article thirty, chapter forty-eight of this code, an
38 amount of fifty dollars; and

39 (4) Into the court security fund in the state treasury,
40 established pursuant to the provisions of section fourteen,
41 article three, chapter fifty-one of this code, the amount of five
42 dollars.

43 (c) For each action for divorce, separate maintenance or
44 annulment instituted in the circuit court, the clerk of the court
45 shall, at the end of each month, pay into the funds or accounts
46 in this subsection an amount equal to the amount set forth in
47 this subsection of every filing fee received for instituting the
48 divorce action as follows:

49 (1) Into the regional jail and correctional facility authority
50 fund in the state treasury established pursuant to the provisions
51 of section ten, article twenty, chapter thirty-one of this code, the
52 amount of ten dollars;

53 (2) Into the special revenue account of the state treasury,
54 established pursuant to section six hundred four, article two,
55 chapter forty-eight of this code, an amount of thirty dollars;

56 (3) Into the family court fund established under section four
57 hundred three, article thirty, chapter forty-eight 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 four hundred three, article thirty, chapter forty-
67 eight of this code an amount equal to the amount of every fee
68 received for petitioning for the modification of an order
69 involving child custody, child visitation, child support or
70 spousal support as determined by subdivision (3), subsection
71 (a), section eleven of this article and for petitioning for an
72 expedited modification of a child support order as provided in
73 subdivision (4), subsection (a), section eleven of this article.

74 (e) The clerk of the court from which a protective order is
75 issued shall, at the end of each month, pay into the family court
76 fund established under section four hundred three, article thirty,
77 chapter forty-eight of this code an amount equal to every fee
78 received pursuant to the provisions of section five hundred
79 eight, article twenty-seven, chapter forty-eight of this code.

80 (f) The clerk of each circuit court shall, at the end of each
81 month, pay into the regional jail and correctional facility
82 authority fund in the state treasury an amount equal to forty
83 dollars of every fee for service received in any criminal case
84 against any respondent convicted in such court and shall pay an
85 amount equal to five dollars of every such fee into the court
86 security fund in the state treasury established pursuant to the
87 provisions of section fourteen, article three, chapter fifty-one of
88 this code.

CHAPTER 94

(Com. Sub. for S. B. 59 — By Senator Bailey)

[Passed April 14, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four hundred two, article two, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to persons authorized to celebrate marriages; requiring the secretary of state to authorize certain persons to celebrate marriages; establishing a statewide registry for persons authorized to celebrate marriages; permitting a registration fee; requiring county clerks to transmit names of persons authorized to celebrate marriages to secretary of state; and creating registration fee fund.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. MARRIAGES.

***§48-2-402. Qualifications of religious representative for celebrating marriages; registry of persons authorized to perform marriage ceremonies; special revenue fund.**

1 (a) Beginning the first day of September, two thousand one,
2 the secretary of state shall, upon payment of the registration fee
3 established by the secretary of state pursuant to subsection (d)
4 of this section, make an order authorizing a person who is a
5 religious representative to celebrate the rites of marriage in all
6 the counties of the state, upon proof that the person:

7 (1) Is eighteen years of age or older;

8 (2) Is duly authorized to perform marriages by his or her
9 church, synagogue, spiritual assembly or religious organization;
10 and

***Clerk's Note:** This section was also amended by H. B. 2199 (Chapter 91), which passed prior to this act.

11 (3) Is in regular communion with the church, synagogue,
12 spiritual assembly or religious organization of which he or she
13 is a member.

14 (b) The person shall give bond in the penalty of one
15 thousand five hundred dollars, with surety approved by the
16 commission. Any religious representative who gives proof
17 before the county commission of his or her ordination or
18 authorization by his or her respective church, synagogue,
19 spiritual assembly or religious organization is exempt from
20 giving the bond.

21 (c) The secretary of state shall establish a central registry of
22 persons authorized to celebrate marriages in this state. Every
23 person authorized under the provisions of subsection (a) of this
24 section to celebrate marriages shall be listed in this registry.
25 Every county clerk shall, prior to the first day of October, two
26 thousand one, transmit to the secretary of state the name of
27 every person authorized to celebrate marriages by order issued
28 in his or her county since one thousand nine hundred sixty and
29 the secretary of state shall include these names in the registry.
30 The completed registry and periodic updates shall be transmit-
31 ted to every county clerk.

32 (d) A fee not to exceed twenty-five dollars may be charged
33 by the secretary of state for each registration received on or
34 after the first day of September, two thousand one, and all
35 money received shall be deposited in a special revenue revolv-
36 ing fund designated the "Marriage Celebrants Registration Fee
37 Administration Fund" in the state treasury to be administered
38 by the secretary of state. Expenses incurred by the secretary in
39 the implementation and operation of the registry program shall
40 be paid from the fund.

41 (e) No marriage performed by a person authorized by law
42 to celebrate marriages may be invalidated solely because the
43 person was not listed in the registry provided for in this section.

44 (f) The secretary of state shall promulgate rules to imple-
45 ment the provisions of this section.



CHAPTER 95

(S. B. 437 — By Senators Wooton, Burnette, Fanning, Hunter, Kessler, Minard, Oliverio, Redd, Ross, Rowe, Deem, Facemyer and McKenzie)

[Passed March 16, 2001; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections three and eleven, article two-a, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section ten, article two-a, chapter fifty-one of said code, all relating to extending the date circuit courts and family law masters will assume jurisdiction of full hearings in domestic violence proceedings.

Be it enacted by the Legislature of West Virginia:

That sections three and eleven, article two-a, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section ten, article two-a, chapter fifty-one of said code be amended and reenacted, all to read as follows:

Chapter

48. Domestic Relations.

51. Courts and Their Officers.

CHAPTER 48. DOMESTIC RELATIONS.

ARTICLE 2A. PREVENTION AND TREATMENT OF DOMESTIC AND FAMILY 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-11. Appeals.

***§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.**

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 September, two thousand one,
5 magistrate court jurisdiction shall be limited, and thereafter
6 final hearings wherein a protective order is sought shall be
7 heard before a 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 final hearing, determine the existence, validity and terms of
38 such 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-11. Appeals.

1 (a) Prior to the first day of September, two thousand one,
2 any party to a temporary or final protective order entered by a
3 magistrate may, as a matter of right, present a petition for
4 appeal, within five days of entry of the order in magistrate

5 court, to the circuit court. The order shall remain in effect
6 pending an appeal unless stayed by the circuit court.

7 (b) On and after the first day of September, two thousand
8 one, any party to a temporary order entered by a magistrate or
9 a final protective order entered by a family law master may, as
10 a matter of right, present a petition for appeal, within five days
11 of entry of the order by the magistrate or family law master, to
12 the circuit court. The order shall remain in effect pending an
13 appeal unless stayed by the circuit court.

14 (c) No bond shall be required for any appeal under this
15 section.

16 (d) In any case where a petition for appeal is filed under
17 this section, the petition shall be heard de novo by the circuit
18 court within ten days from the filing of the petition for appeal.

CHAPTER 51. COURTS AND THEIR OFFICERS.

ARTICLE 2A. CIRCUIT COURTS; FAMILY COURT DIVISION.

*§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

*Clerk's Note: This section was also amended by H. B. 2199 (Chapter 91), which passed subsequent to this act.

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 contempts 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 September, two thousand
54 one, final 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.



CHAPTER 96

(H. B. 3128 — By Mr. Speaker, Mr. Kiss, and Delegates Wills,
Staton, Webster, Amores and Mezzatesta)

[Passed April 12, 2001; in effect from passage. Approved by the Governor.]

AN ACT to amend article twenty-six, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section four hundred seven, relating to exempting domestic violence shelters from zoning restrictions, under certain circumstances.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 26. DOMESTIC VIOLENCE ACT.

§48-26-407. Domestic violence shelters not in violation of zoning rules and resolutions as to use.

1 Domestic violence shelters established pursuant to section
2 four hundred two of this article, called the domestic violence
3 act, shall not be subject to the enforcement of municipal zoning
4 ordinances on the basis of being in noncompliance or variance
5 with a particular use district: *Provided*, That as to all other
6 provisions of those ordinances, the ordinances will control.

CHAPTER 97

(Com. Sub. for S. B. 127 — By Senators Tomblin,
Mr. President, and Sprouse)
[By Request of the Executive]

[Passed April 14, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article sixteen-c, relating to prescription drug cost management; providing legislative findings and purpose; defining terms; providing for review and approval of certain contracts by the public employees insurance agency finance board; authorizing the director of the public employees insurance agency to execute certain prescription drug purchasing agreements, to amend existing contracts and to execute pharmacy benefit manager contracts; exempting the agreements and contracts from certain purchasing requirements; requiring an audit and reports; authorizing the public employees insurance agency director to explore innovative strategies for managing prescription drug costs; requiring semi-annual report to the joint committee on government and finance; and providing for termination of authorizations.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 16C. PRESCRIPTION DRUG COST MANAGEMENT ACT.

§5-16C-1. Legislative findings; purpose; short title.

§5-16C-2. Definitions.

§5-16C-3. Finance board responsibilities for review and approval of certain contracts.

§5-16C-4. Authorization to execute prescription drug purchasing agreements.

§5-16C-5. Authorization to amend existing contracts.

§5-16C-6. Authorization to execute pharmacy benefit management contract.

§5-16C-7. Exemption from purchasing division requirements.

§5-16C-8. Audit required; reports.

§5-16C-9. Innovative strategies.

§5-16C-10. Termination.

§5-16C-1. Legislative findings; purpose; short title.

1 The Legislature finds that the rapidly rising cost of pre-
 2 scription drugs places an undue financial burden on the state of
 3 West Virginia, the payors and the consumers of prescription
 4 drugs. The purpose of this legislation is to authorize the director
 5 of the public employees insurance agency to act on behalf of
 6 specified agencies, programs and political subdivisions to
 7 manage the steady increase in prescription drug costs, thus
 8 benefitting the citizens and fiscal strength of this state. This
 9 article shall be known and may be cited as the "Prescription
 10 Drug Cost Management Act".

§5-16C-2. Definitions.

1 As used in this article:

2 (1) "Audit" means a systematic examination and collection
 3 of sufficient, competent evidential matter needed for an auditor
 4 to attest to the fairness of management's assertions in the
 5 financial statements and to evaluate whether management has
 6 sufficiently and effectively carried out its responsibilities and
 7 complied with applicable laws and regulations, conducted by an
 8 independent certified public accountant in accordance with the
 9 applicable statement on standards: *Provided*, That the report

10 shall include an incurred-but-not-reported calculation, where
11 available.

12 (2) "Director" means the director of the public employees
13 insurance agency created under article sixteen of this chapter.

14 (3) "Finance board" means the public employees insurance
15 agency finance board created in section four, article sixteen of
16 this chapter.

17 (4) "Pharmacy benefit manager" means an entity that
18 procures prescription drugs at a negotiated rate under a contract
19 and which may serve as a third party prescription drug benefit
20 administrator.

21 (5) "Prescription drug purchasing agreement" means a
22 written agreement to pool all parties' prescription drug buying
23 power in order to negotiate the best possible prices and which
24 delegates authority to negotiate on behalf of the parties to the
25 director.

26 (6) "Prescription drugs" mean substances recognized as
27 drugs in the official "United States Pharmacopoeia, official
28 Homeopathic Pharmacopoeia of the United States or National
29 Formulary", or any supplement thereto, dispensed pursuant to
30 a prescription issued by an authorized health care practitioner,
31 for use in the diagnosis, cure, mitigation, treatment or preven-
32 tion of disease in a human, as well as prescription drug delivery
33 systems, testing kits and related supplies.

**§5-16C-3. Finance board responsibilities for review and approval
of certain contracts.**

1 The finance board is responsible for reviewing any pro-
2 posed contract authorized by this article before it is executed by
3 the director of the public employees insurance agency. If the
4 board determines that the proposed contract meets the require-

5 ments of this article and would assist in effectively managing
6 the costs for the programs involved and would not result in
7 jeopardizing state funds or funds due the state, it shall approve
8 the contract and authorize the director of the public employees
9 insurance agency to execute the contract.

§5-16C-4. Authorization to execute prescription drug purchasing agreements.

1 (a) The director may execute, subject to the provisions of
2 subsections (b), (c) and (d) of this section and as permitted by
3 applicable federal law, prescription drug purchasing agreements
4 with:

5 (1) All departments, agencies, authorities, institutions,
6 programs, quasipublic corporations and political subdivisions
7 of this state, including, but not limited to, the children's health
8 insurance program, the division of corrections, the division of
9 juvenile services, the regional jail and correctional facility
10 authority, the workers' compensation fund, state colleges and
11 universities, public hospitals, state or local institutions such as
12 nursing homes, veterans' homes, the division of rehabilitation,
13 public health departments and the bureau of medical services:
14 *Provided*, That any contract or agreement executed with or on
15 behalf of the bureau of medical services shall contain all
16 necessary provisions to comply with the provisions of Title
17 XIX of the Social Security Act, 42 U.S.C. §1396 *et seq.*,
18 dealing with pharmacy services offered to recipients under the
19 medical assistance plan of West Virginia;

20 (2) Governments of other states and jurisdictions and their
21 individual departments, agencies, authorities, institutions,
22 programs, quasipublic corporations and political subdivisions;

23 (3) Regional or multistate purchasing alliances or consortia,
24 formed for the purpose of pooling the combined purchasing

25 power of the individual members in order to increase bargain-
26 ing power; and

27 (4) Arrangements with entities in the private sector,
28 including self-funded benefit plans, toward combined purchas-
29 ing of health care services, health care management services,
30 pharmacy benefits management services or pharmaceutical
31 products: *Provided*, That no private entity may be compelled to
32 participate in the prescription drug purchasing pool: *Provided*,
33 *however*, That the director may not execute a contract with a
34 private entity without further enactment of the Legislature
35 specifically authorizing the agreement.

36 (b) The finance board shall approve each agreement before
37 it is executed by the director and the director may not execute
38 any agreement not approved by the finance board.

39 (c) The finance board may not approve and the director may
40 not execute any agreement that does not effectively and
41 efficiently manage rising drug costs on behalf of the parties to
42 the agreement.

43 (d) The finance board may not approve and the director
44 may not execute any agreement that grants the state's credit for
45 the purchase of prescription drugs by any entity other than this
46 state.

§5-16C-5. Authorization to amend existing contracts.

1 The director may renegotiate and amend existing prescrip-
2 tion drug contracts to which the public employees insurance
3 agency is a party for the purpose of managing rising drug costs.

**§5-16C-6. Authorization to execute pharmacy benefit manage-
ment contract.**

1 The director may negotiate and execute pharmacy benefit
2 management contracts for the purpose of managing rising drug
3 costs for this state and all parties which have executed prescrip-
4 tion drug purchasing agreements with the director.

§5-16C-7. Exemption from purchasing division requirements.

1 The provisions of article three, chapter five-a of this code
2 do not apply to the agreements and contracts executed under the
3 provisions of this article, except that the contracts and agree-
4 ments shall be approved as to form and conformity with
5 applicable law by the attorney general.

§5-16C-8. Audit required; reports.

1 (a) The director shall cause to be conducted an audit of any
2 funds expended pursuant to any prescription drug purchasing
3 agreement or pharmacy benefit management contract executed
4 under the provisions of this article for each fiscal year that the
5 prescription drug purchasing agreement or pharmacy benefit
6 management contract is in effect. The director shall submit the
7 audit to the joint committee on government and finance upon
8 completion, but in no event later than the thirty-first day of
9 December after the end of the fiscal year subject to audit.

10 (b) The director shall provide written notice to the joint
11 committee on government and finance before executing a
12 prescription drug purchasing agreement or a pharmacy benefit
13 management contract or amending an existing prescription drug
14 contract.

§5-16C-9. Innovative strategies.

1 (a) The director may explore innovative strategies by which
2 West Virginia may manage the increasing costs of prescription
3 drugs and increase access to prescription drugs for all of the
4 state's citizens, including:

- 5 (1) Enacting fair prescription drug pricing policies;
- 6 (2) Providing for discount prices or rebate programs for
7 seniors and persons without prescription drug insurance;
- 8 (3) Coordinating programs offered by pharmaceutical
9 manufacturers that provide prescription drugs for free or at
10 reduced prices;
- 11 (4) Requiring prescription drug manufacturers to disclose
12 to the state expenditures for advertising, marketing and promo-
13 tion, as well as for provider incentives and research and
14 development efforts;
- 15 (5) Establishing counter-detailing programs aimed at
16 educating health care practitioners authorized to prescribe
17 prescription drugs about the relative costs and benefits of
18 various prescription drugs, with an emphasis on generic
19 substitution for brand name drugs when available and appropri-
20 ate; prescribing older, less costly drugs instead of newer, more
21 expensive drugs, when appropriate; and prescribing lower
22 dosages of prescription drugs, when available and appropriate;
- 23 (6) Establishing disease state management programs aimed
24 at enhancing the effectiveness of treating certain diseases
25 identified as prevalent among this state's population with
26 prescription drugs;
- 27 (7) Studying the feasibility and appropriateness of execut-
28 ing prescription drug purchasing agreements with large private
29 sector purchasers of prescription drugs and including those
30 private entities in pharmacy benefit management contracts;
- 31 (8) Studying the feasibility and appropriateness of authoriz-
32 ing the establishment of voluntary private buying clubs,
33 cooperatives or purchasing alliances comprised of small

34 businesses and or individuals for the purpose of purchasing
35 prescription drugs at optimal prices; and

36 (9) Other strategies, as permitted under state and federal
37 law, aimed at managing escalating prescription drug prices and
38 increasing affordable access to prescription drugs for all West
39 Virginia citizens.

40 (b) The director shall report to the joint committee on
41 government and finance on a semi-annual basis regarding
42 activities and recommendations relating to the mandates of this
43 section.

§5-16C-10. Termination.

1 The authorizations provided for in this article terminate
2 pursuant to the provisions of article ten, chapter four of this
3 code on the first day of July, two thousand five, unless contin-
4 ued pursuant to the provisions of that article by legislation
5 enacted prior to the termination.

CHAPTER 98

(S. B. 529 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]

[Passed April 13, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article two, chapter five-b
of the code of West Virginia, one thousand nine hundred thirty-

one, as amended, relating to expanding the membership of the council for community and economic development.

Be it enacted by the Legislature of West Virginia:

That section two, 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-2-2. Council for community and economic development; members, appointment and expenses; meetings; appointment and compensation of director.

1 (a) The council for community and economic development,
2 within the West Virginia development office, is a body corpo-
3 rate and politic, constituting a public corporation and govern-
4 ment instrumentality. Membership on the council consists of:

5 (1) No less than nine nor more than eleven members to be
6 appointed by the governor, with the advice and consent of the
7 Senate, representing community or regional interests, including
8 economic development, commerce, banking, manufacturing,
9 the utility industry, the mining industry, the telecommunica-
10 tions/data processing industry, small business, labor, tourism or
11 agriculture: *Provided*, That one member appointed pursuant to
12 this subsection shall be a member of a regional planning and
13 development council. Of the members representing community
14 or regional interests, there shall be at least three members from
15 each congressional district of the state and they shall be
16 appointed in such a manner as to provide a broad geographical
17 distribution of members of the council;

18 (2) Two at-large members to be appointed by the governor
19 with the advice and consent of the Senate;

20 (3) One member to be appointed by the governor from a list
21 of two persons recommended by the speaker of the House of
22 Delegates;

23 (4) One member to be appointed by the governor from a list
24 of two persons recommended by the president of the Senate;

25 (5) The president of the West Virginia economic develop-
26 ment council; and

27 (6) The chair, or his or her designee, of the tourism com-
28 mission created pursuant to the provisions of section eight of
29 this article.

30 In addition, the president of the Senate and the speaker of
31 the House of Delegates, or his or her designee, shall serve as ex
32 officio nonvoting members.

33 (b) The governor shall appoint the appointed members of
34 the council to four-year terms. Any member whose term has
35 expired shall serve until his or her successor has been duly
36 appointed and qualified. Any person appointed to fill a vacancy
37 shall serve only for the unexpired term. Any member is eligible
38 for reappointment. In cases of any vacancy in the office of a
39 member, the vacancy shall be filled by the governor in the same
40 manner as the original appointment.

41 (c) Members of the council are not entitled to compensation
42 for services performed as members, but are entitled to reim-
43 bursement for all reasonable and necessary expenses actually
44 incurred in the performance of their duties. A majority of the
45 voting members constitute a quorum for the purpose of con-
46 ducting business. The council shall elect its chair for a term to
47 run concurrent with the term of office of the member elected as
48 chair. The chair is eligible for successive terms in that position.

49 (d) The council shall employ an executive director of the
50 West Virginia development office who is qualified for the
51 position by reason of his or her extensive education and
52 experience in the field of professional economic development.
53 The executive director shall serve at the will and pleasure of the
54 council. The salary of the director shall be fixed by the council.
55 The director shall have overall management responsibility and
56 administrative control and supervision within the West Virginia
57 development office. It is the intention of the Legislature that the
58 director provide professional and technical expertise in the field
59 of professional economic and tourism development in order to
60 support the policy-making functions of the council, but that the
61 director not be a public officer, agent, servant or contractor
62 within the meaning of section thirty-eight, article VI of the
63 constitution of West Virginia and not be a statutory officer
64 within the meaning of section one, article two, chapter five-f of
65 this code. Subject to the provisions of the contract provided for
66 in section four of this article, the director may hire and fire
67 economic development representatives employed pursuant to
68 the provisions of section five of this article.

CHAPTER 99

**(S. B. 716 — By Senators Unger, Craig, Bowman, Fanning, Sprouse,
McCabe, Jackson, Kessler, Helmick and Plymale)**

[Passed April 14, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article two, chapter five-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said chapter by adding thereto a new article, designated article three, all relating to

establishing the joint commission; indicating economic development vision and goals for the state; establishing the joint commission on economic development; specifying the duties of the commission; requiring the commission examine the vision and goals every four years; requiring certain agencies to provide copies of rules to the commission; requiring the development office to collect information and present it to the joint commission; requiring the legislative auditor to provide information to the joint commission; and directing the commission to undertake various studies.

Be it enacted by the Legislature of West Virginia:

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

Article

2. **West Virginia Development Office.**
3. **West Virginia Economic Development Strategy: A Vision Shared.**

ARTICLE 2. WEST VIRGINIA DEVELOPMENT OFFICE.

§5B-2-3. Powers and duties of council for community and economic development.

- 1 (a) The council for community and economic development
- 2 shall enhance economic growth and development through the
- 3 development of a comprehensive economic development
- 4 strategy for West Virginia. "Comprehensive economic develop-
- 5 ment strategy" means a plan that outlines strategies and
- 6 activities designed to continue, diversify or expand the eco-
- 7 nomic base of the state as a whole; create jobs; develop a highly
- 8 skilled work force; facilitate business access to capital, includ-
- 9 ing venture capital; advertise and market the resources offered
- 10 by the state with respect to the needs of business and industry;

11 facilitate cooperation among local, regional and private
12 economic development enterprises; improve infrastructure on
13 a state, regional and community level; improve the business
14 climate generally; and leverage funding from sources other than
15 the state, including federal and private sources.

16 (b) The council shall develop a certified development
17 community program and provide funding assistance to the
18 participating economic development corporations or authorities
19 through a matching grant program. The council shall establish
20 criteria for awarding matching grants to the corporations or
21 authorities within the limits of funds appropriated by the
22 Legislature for the program. The matching grants to corpora-
23 tions or authorities eligible under the criteria shall be in the
24 amount of thirty thousand dollars for each fiscal year, if
25 sufficient funds are appropriated by the Legislature. The West
26 Virginia development office shall recognize existing county,
27 regional or multicounty corporations or authorities where
28 appropriate.

29 In developing its plan, the West Virginia development
30 office shall consider resources and technical support available
31 through other agencies, both public and private, including, but
32 not limited to, the state college and university systems; the
33 West Virginia housing development fund; the West Virginia
34 economic development authority; the West Virginia parkways,
35 economic development and tourism authority; the West
36 Virginia round table; the West Virginia chamber of commerce;
37 regional planning and development councils; regional partner-
38 ship for progress councils; and state appropriations.

39 (c) The council shall promulgate rules to carry out the
40 purposes and programs of the West Virginia development office
41 to include generally the programs available, and the procedure
42 and eligibility of applications relating to assistance under the
43 programs. These rules are not subject to the provisions of

44 chapter twenty-nine-a of this code, but shall be filed with the
45 secretary of state. Any new rules promulgated by the council
46 shall be promptly submitted to the joint commission created in
47 article three of this chapter. The current rules shall be submitted
48 to the joint commission within thirty days of the effective date
49 of this section.

**ARTICLE 3. WEST VIRGINIA ECONOMIC DEVELOPMENT STRATEGY:
A VISION SHARED.**

§5B-3-1. Legislative intent.

§5B-3-2. Creation of the joint commission on economic development.

§5B-3-3. Reexamination of vision and goals.

§5B-3-4. Commission review of procedural rules, interpretive rules and existing
legislative rules.

§5B-3-5. Joint commission on economic development studies.

§5B-3-1. Legislative intent.

1 (a) *West Virginia: A shared vision statement.* — West
2 Virginia's strong commitment to future generations has created
3 a vibrant and diverse economy balancing quality jobs and the
4 state's irreplaceable natural beauty. West Virginia has a highly
5 skilled and educated workforce, is a leader in innovation and
6 offers an excellent quality of life for all residents.

7 (b) "West Virginia: A vision shared" vision statement is
8 meant to be used as a touchstone to ensure that actions being
9 undertaken are in line and on course.

10 (c) It is the intent of the Legislature to set economic
11 development goals for the state and that the joint commission
12 on economic development, created in this article, use the goals
13 in bringing all agencies performing economic development and
14 workforce investment activities together to improve the
15 economic situation in this state.

16 (d) Furthermore, it is the intent of the Legislature that the
17 state work toward accomplishing three overall goals:

18 (1) The development of a comprehensive statewide
19 economic development strategy;

20 (2) The effective statewide coordination of economic
21 development programs; and

22 (3) The development of meaningful agency and program
23 benchmarks and performance-based evaluations.

**§5B-3-2. Creation of the joint commission on economic develop-
ment.**

1 (a) The joint commission on economic development is
2 hereby established. The commission shall be composed of
3 sixteen members as follows:

4 (1) The chairs of the Senate and House of Delegates finance
5 committees;

6 (2) The chairs of the Senate and House of Delegates
7 judiciary committees;

8 (3) The chairs of the Senate and House of Delegates
9 education committees;

10 (4) Five additional members of the Senate appointed by the
11 president of the Senate; and

12 (5) Five additional members of the House of Delegates
13 appointed by the speaker of the House of Delegates.

14 No more than four of the five additional members ap-
15 pointed by the president of the Senate and the speaker of the
16 House of Delegates, respectively, may be members of the same
17 political party. In addition, the president of the Senate and the

18 speaker of the House of Delegates shall be ex officio nonvoting
19 members of the commission and shall designate the co-chair-
20 persons of the commission.

21 (b) Any vacancies occurring in the membership of the
22 commission shall be filled in the same manner as the original
23 appointment for the position being vacated. The vacancy shall
24 not affect the power of the remaining members to perform the
25 duties of the commission.

26 (c) The commission may explore how West Virginia can:

27 (1) Invest in systems that build workforce skills and
28 promote lifelong learning to ensure a competitive workforce;

29 (2) Enhance the infrastructure, communications and
30 transportation needed to support the knowledge-based indus-
31 tries and electronic commerce;

32 (3) Reorganize government to deliver services more
33 efficiently, using technology, privatization and partnerships
34 with the private sector;

35 (4) Align state tax systems to meet the demands of the
36 twenty-first century economy;

37 (5) Develop more uniform regulatory and tax systems to
38 reduce complexity, eliminate market distortions and better
39 protect consumers;

40 (6) Support entrepreneurs by streamlining business regula-
41 tions, providing timely decisions and assisting firm in their
42 search for venture capital;

43 (7) Promote university policies that encourage research and
44 development and build intellectual infrastructure;

45 (8) Address quality-of-life concerns to attract new busi-
46 nesses and workers; and

47 (9) Accomplish the goals set forth in this article and any
48 other goal related to economic development or workforce
49 investment that the commission considers important.

50 (d) The commission may propose legislation necessary to
51 accomplish its goals.

§5B-3-3. Reexamination of vision and goals.

1 Every fourth year after the first day of January, two
2 thousand one, the joint commission on economic development,
3 established pursuant to this article, shall conduct a thorough
4 examination of the vision and goals set forth in this article and
5 may recommend legislation relating to the vision and goals to
6 the Legislature.

**§5B-3-4. Commission review of procedural rules, interpretive
rules and existing legislative rules.**

1 (a) The joint commission on economic development may
2 review any procedural rules, interpretive rules or existing
3 legislative rules and make recommendations concerning such
4 rules to the Legislature.

5 (b) The development office and the tourism commission
6 established pursuant to article two, chapter five-b of this code,
7 the economic development authority established pursuant to
8 article fifteen, chapter thirty-one of this code, the bureau of
9 employment programs established pursuant to article four,
10 chapter twenty-one-a of this code, the workforce investment
11 commission established pursuant to article two-c, chapter five-
12 b, West Virginia jobs investment trust, regional planning and
13 development councils, West Virginia rural development
14 council, governor's office of technology and West Virginia

15 clearinghouse for workforce education shall each file a copy of
16 its legislative rules with the commission as provided for herein.
17 Each agency that proposes legislative rules in accordance to the
18 provisions of article three, three-a or three-b, chapter twenty-
19 nine-a of this code relating to economic development or
20 workforce development shall file the rules with the joint
21 commission at the time the rules are filed with the secretary of
22 state prior to the public comment period or public hearing
23 required in chapter twenty-nine-a of this code.

§5B-3-5. Joint commission on economic development studies.

1 (a) The joint commission on economic development shall
2 study the following:

3 (1) The feasibility of establishing common regional
4 configurations for such purposes as local workforce investment
5 areas, regional educational service agencies and for all other
6 purposes the commission considers feasible. The study should
7 review the existing levels of cooperation between state and
8 local economic developers; complete an analysis of possible
9 regional configurations and outline examples of other success-
10 ful regional systems or networks found throughout the world.
11 If the study determines that the common regional configura-
12 tions are feasible, the commission shall recommend legislation
13 establishing common regional designations for all purposes the
14 commission considers feasible. In making the designation of
15 regional areas, the study shall take into consideration, but not
16 be limited to, the following:

17 (A) Geographic areas served by local educational agencies
18 and intermediate educational agencies;

19 (B) Geographic areas served by post-secondary educational
20 institutions and area vocational education schools;

21 (C) The extent to which such local areas are consistent with
22 labor market areas;

23 (D) The distance that individuals will need to travel to
24 receive services provided in such local areas; and

25 (E) The resources of such local areas that are available to
26 effectively administer the activities or programs;

27 (2) The effectiveness and fiscal impact of incentives for
28 attracting and growing businesses, especially technology-
29 intensive companies; and

30 (3) A comprehensive review of West Virginia's existing
31 economic and community development resources and the
32 recommendation of an organizational structure, including, but
33 not limited to, the reorganization of the bureau of commerce
34 and the development office, that would allow the state to
35 successfully compete in the new global economy.

36 (b) In order to effectuate in the most cost-effective and
37 efficient manner the studies required in this article, it is
38 necessary for the joint commission to assemble and compile a
39 tremendous amount of information. The development office
40 will assist the joint commission in the collection and analysis of
41 this information. The tourism commission established pursuant
42 to article two, chapter five-b of this code, the economic
43 development authority established pursuant to article fifteen,
44 chapter thirty-one of this code, the bureau of employment
45 programs established pursuant to article four, chapter twenty-
46 one-a of this code, the workforce investment commission
47 established pursuant to article two-c, chapter five-b, West
48 Virginia jobs investment trust, regional planning and develop-
49 ment councils, West Virginia rural development council,
50 governor's office of technology and West Virginia clearing-
51 house for workforce education all shall provide a copy of the
52 agency's annual report as submitted to the governor in accor-

53 dance with the requirements set forth in section twenty, article
54 one, chapter five of this code to the West Virginia development
55 office. The development office shall review, analyze and
56 summarize the data contained in the reports, including its own
57 annual report, and annually submit its findings to the joint
58 commission on or before the thirty-first day of December.

59 (c) The legislative auditor shall provide to the joint com-
60 mission a copy of any and all reports on agencies listed in
61 subsection (b) of this section, which are required under article
62 ten, chapter four of this code.

63 (d) The joint commission shall complete the studies set
64 forth in this section and any other studies it determines to
65 undertake prior to the first day of December of each year and
66 may make recommendations, including recommended legisla-
67 tion for introduction during the regular session of the Legisla-
68 ture.

CHAPTER 100

**(Com. Sub. for S. B. 123 — By Senators Tomblin,
Mr. President, and Sprouse)
[By Request of the Executive]**

[Passed April 14, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections four, six, seven, eight, ten, twelve, thirteen and twenty, article one, chapter five-e of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said chapter by adding thereto a new article, designated article two, all relating to the West Virginia economic development authority; defining terms;

qualifications and minimum standards of West Virginia capital companies; submission of small business administration capital certificates; authorizing tax credits; application requirements; qualified investments; restrictions on investments; limitations on financial institutions; creating West Virginia venture capital act; defining terms; rule-making authority; and authorizing tax credits.

Be it enacted by the Legislature of West Virginia:

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

Article

1. **West Virginia Capital Company Act.**
2. **West Virginia Venture Capital Act.**

ARTICLE 1. WEST VIRGINIA CAPITAL COMPANY ACT.

- §5E-1-4. Definitions.
- §5E-1-6. Qualification of West Virginia capital companies.
- §5E-1-7. Minimum standards of qualified West Virginia capital companies.
- §5E-1-8. Tax credits.
- §5E-1-10. Application requirements.
- §5E-1-12. Qualified investments; liquidation or dissolution.
- §5E-1-13. Restrictions on investment.
- §5E-1-20. Limitation on financial institutions.

§5E-1-4. Definitions.

- 1 As used in this article, the following terms have the
- 2 meanings ascribed to them in this section, unless the context in
- 3 which the term is used clearly requires another meaning or a
- 4 specific different definition is provided:

5 (a) "Authority" means the West Virginia economic devel-
6 opment authority, provided for in article fifteen, chapter
7 thirty-one of this code.

8 (b) "Capital base" means equity capital or net worth.

9 (c) "Certified West Virginia capital company" means:

10 (1) A West Virginia business development corporation
11 created pursuant to article fourteen, chapter thirty-one of this
12 code; or

13 (2) A profit or nonprofit entity organized and existing under
14 the laws of this state, created for the purpose of making venture
15 or risk capital available to qualified investments that has been
16 certified by the authority.

17 (d) "Qualified investment" means a debt or equity financing
18 of a West Virginia business, but only if the business is engaged
19 in one or more of the following activities: Manufacturing;
20 agricultural production or processing; forestry production or
21 processing; mineral production or processing, except for
22 conventional oil and gas exploration; service industry; transpor-
23 tation; research and development of products or processes
24 associated with any of the activities previously enumerated
25 above; tourism; computer software development companies
26 engaged in the creation of computer software; and wholesale or
27 retail distribution activities within the state. The investment by
28 a West Virginia capital company in purchases of property to be
29 leased by it, as lessor, through a capital lease to a West Virginia
30 business lessee engaged in one of the above enumerated
31 activities is a qualified investment.

32 (e) "Qualified West Virginia capital company" means a
33 West Virginia capital company that has been designated by the
34 authority as a qualified capital company under the provisions of
35 section six of this article.

36 (f) "Small business investment company" means a small
37 business investment company licensed by the United States
38 small business investment administration under the federal
39 small business investment act of 1958, 15 U.S.C. SS 661 et
40 seq., as amended.

41 (g) "State" means the state of West Virginia.

42 (h) "Capital lease" means a lease meeting one or more of
43 the following criteria:

44 (1) The lease transfers ownership of the property to the
45 lessee at the end of the lease term by the lessee's exercise of a
46 purchase option which is de minimis in amount; or

47 (2) The lease term is equal to seventy-five percent or more
48 of the estimated economic life of the leased property. However,
49 if the beginning of the lease term falls within the last twenty-
50 five percent of the total estimated economic life of the leased
51 property, including earlier years of use, this criterion shall not
52 be used; or

53 (3) Under generally accepted accounting principles, the
54 lessee cannot treat payments to the capital company as pay-
55 ments under an operating lease; or

56 (4) For federal income tax purposes, the parties are required
57 to treat payments as amortization of principal and interest.

§5E-1-6. Qualification of West Virginia capital companies.

1 (a) The authority shall qualify West Virginia capital
2 companies commencing after the effective date of this article.
3 A company seeking to be qualified as a West Virginia capital
4 company shall make written application to the authority on
5 forms provided by the authority. The application shall contain
6 the information required by section ten of this article. Further,

7 the application shall specify the level of capitalization of the
8 company.

9 (b) The application shall set forth the applicant's purpose.

10 (c) The authority may certify West Virginia capital compa-
11 nies in existence after the first day of July, one thousand nine
12 hundred eighty-six.

13 (d) An applicant which is not a small business investment
14 company shall establish an escrow account located in West
15 Virginia, into which funds invested in the applicant shall be
16 deposited and held for the period of time between their receipt
17 by the applicant and the designation of the applicant as a
18 qualified company. Small business investment company
19 applicants shall submit small business administration capital
20 certificates totaling the funds to be invested. The funds shall not
21 be invested by the applicant until it is designated by the
22 authority as a qualified company. In the case of companies
23 which are not small business investment companies, where the
24 authority does not designate the applicant a qualified company,
25 the funds shall be returned to the investors, if requested by the
26 investors.

27 (e) A West Virginia capital company may not qualify or be
28 issued a certification under this article unless the company
29 holds a valid business registration certificate issued pursuant to
30 article twelve, chapter eleven of this code. A company exempt
31 from registration under article twelve may qualify and be
32 certified under this article upon proof of its exemption.

**§5E-1-7. Minimum standards of qualified West Virginia capital
companies.**

1 The following requirements apply to all qualified compa-
2 nies:

3 (a) A qualified company shall be a certified West Virginia
4 capital company.

5 (b) A qualified company shall have a reasonably accessible
6 business office located within the state of West Virginia, which
7 office has a listed telephone number and is open to the public
8 during normal business hours.

9 (c) A qualified company which is not a small business
10 investment company shall maintain all of its capital base,
11 except that which has been invested to meet the purposes of this
12 article, in bank accounts and financial institutions which are
13 located in the state of West Virginia or in any other interest
14 bearing instruments with a maturity of less than one year which
15 are obtained from and managed by a West Virginia corporation.

16 (d) A qualified company shall have a capital base of at least
17 one million dollars, but not greater than four million dollars,
18 which must be raised after the first day of July, one thousand
19 nine hundred eighty-six. If the amount of the investment in a
20 qualified company in any fiscal year exceeds four million
21 dollars, the amount in excess of four million dollars is not
22 eligible for tax credits under this article.

23 (e) No more than twenty-five percent of each separate
24 capital base of a qualified company which is not a small
25 business investment company shall be in the form of full
26 recourse, interest bearing demand notes, backed by an irrevoca-
27 ble letter of credit or bond from a reputable source, as deter-
28 mined by the authority.

29 (f) A qualified company's stated purpose shall be to
30 encourage and assist in the creation, development or expansion
31 of West Virginia businesses.

32 (g) A qualified company which is not a small business
33 investment company, seeking to establish a separate capital

34 base or increase its capital base, shall establish an escrow
35 account located in West Virginia, into which funds invested in
36 the qualified company shall be deposited and held for the period
37 of time between their receipt by the qualified company and the
38 designation as qualified of a separate capital base or an increase
39 to capital base. A small business investment company qualified
40 company, seeking to establish a separate capital base or
41 increase its capital base, shall submit small business administra-
42 tion capital certificates totaling the amount of the separate
43 capital base or increased capital base. The funds may not be
44 invested by the qualified company until the designation by the
45 authority. In the case of companies which are not small
46 business investment companies, where the authority does not
47 designate as qualified a separate capital base or an increase to
48 capital base, the funds shall be returned to the investors, if
49 requested by the investors.

50 (h) A qualified company, when soliciting funds for its
51 capital base, shall disclose that no tax credit for the investor's
52 investment will be available until the authority designates as
53 qualified a capital base or an increase to capital base and issues
54 to the qualified company notice of such qualification and a
55 certificate of tax credit.

§5E-1-8. Tax credits.

1 (a) The total amount of tax credits authorized for a single
2 qualified company may not exceed two million dollars.
3 Capitalization of the company may be increased pursuant to
4 rule of the authority.

5 (b) (1) The total credits authorized by the authority for all
6 companies may not exceed a total of ten million dollars each
7 fiscal year: *Provided*, That for the fiscal year beginning on the
8 first day of July, one thousand nine hundred ninety-nine, the
9 total credits authorized for all companies may not exceed a total

10 of six million dollars: *Provided, however*, That for the fiscal
11 year beginning on the first day of July, two thousand, the total
12 credits authorized for all companies may not exceed a total of
13 four million dollars: *Provided further*, That for the fiscal year
14 beginning on the first day of July, two thousand one, the total
15 credits authorized for all companies may not exceed a total of
16 four million dollars: *And provided further*, That the capital base
17 of any qualified company shall be invested in accordance with
18 the provisions of this article. The authority shall allocate these
19 credits to qualified companies in the order that the companies
20 are qualified.

21 (2) Not more than two million dollars of the credits allowed
22 under subdivision (1) of this subsection may be allocated by the
23 authority during each fiscal year to one or more small business
24 investment companies described in this subdivision. The
25 remainder of the tax credits allowed during the fiscal year shall
26 be allocated by the authority under the provisions of section
27 four, article two of this chapter. The portion of the tax credits
28 allowed for small business investment companies described in
29 this subdivision shall be allowed only if allocated by the
30 authority during the first thirty days of the fiscal year, and may
31 only be allocated to companies that: (A) Were organized on or
32 after the first day of January, one thousand nine hundred ninety-
33 nine; (B) are licensed by the small business administration as a
34 small business investment company under the small business
35 investment act; and (C) have certified in writing to the authority
36 on the application for credits under this act that the company
37 will diligently seek to obtain and thereafter diligently seek to
38 invest leverage available to the small business investment
39 companies under the small business investment act. These
40 credits shall be allocated by the authority in the order that the
41 companies are qualified. Any credits which have not been
42 allocated to qualified companies meeting the requirements of
43 this subdivision relating to small business investment compa-
44 nies during the first thirty days of the fiscal year shall be made

45 available and allocated by the authority under the provisions of
46 section four, article two of this chapter.

47 (c) Any investor, including an individual, partnership,
48 limited liability company, corporation or other entity who
49 makes a capital investment in a qualified West Virginia capital
50 company, is entitled to a tax credit equal to fifty percent of the
51 investment, except as otherwise provided in this section or in
52 this article. The credit allowed by this article shall be taken
53 after all other credits allowed by chapter eleven of this code. It
54 shall be taken against the same taxes and in the same order as
55 set forth in subsections (c) through (i), inclusive, section five,
56 article thirteen-c, chapter eleven of this code. The credit for
57 investments by a partnership, limited liability company, a
58 corporation electing to be treated as a subchapter S corporation
59 or any other entity which is treated as a pass through entity
60 under federal and state income tax laws may be divided
61 pursuant to election of the entity's partners, members, share-
62 holders or owners.

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 are 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; and

91 (6) More than \$1,000,000.

§5E-1-10. Application requirements.

1 (a) Each company shall make application to the authority
2 on forms provided by the authority, which shall set forth:

3 (1) The capitalization level of capital company;

4 (2) The purpose of the company;

5 (3) The names of investors;

6 (4) A process for disclosing to investors the tax credit
7 available pursuant to this article. The disclosure shall clearly set
8 forth that no tax credit will be available until the qualification
9 of the company is granted by the authority and the disclosure of
10 immunity of the state for damages is provided to the investors;

11 (5) The location of the escrow account, if applicable, which
12 has been established for investors for the period of time
13 between the investment and the qualification of the capital
14 company by the authority;

15 (6) If applicable, evidence that the company is licensed as
16 a small business investment company; and

17 (7) That the capital company will diligently seek to obtain
18 and thereafter diligently seek to invest leverage available to the
19 small business investment companies.

20 (b) An applicant submitting an application pursuant to this
21 section shall continually supplement the application if any
22 material fact contained in the application changes. The author-
23 ity shall determine if the change constitutes an amendment
24 requiring the consent of the authority pursuant to subdivision
25 (c) of this section.

26 (c) An applicant may not amend an application submitted
27 pursuant to this section without the written consent of the
28 authority for good cause shown.

§5E-1-12. Qualified investments; liquidation or dissolution.

1 (a) A qualified West Virginia capital company shall use its
2 capital base to make qualified investments according to the
3 following schedule:

4 (1) At least thirty-five percent of its capital base within the
5 first year of the date on which the capital company which is not
6 a small business investment company was designated as
7 qualified by the authority;

8 (2) At least fifty-five percent of its capital base within two
9 years of the date on which the capital company which is not a

10 small business investment company was designated as qualified
11 by the authority; and

12 (3) At least seventy-five percent of its capital base within
13 three years of the date on which the capital company which is
14 not a small business investment company was designated as
15 qualified by the authority.

16 (b) A qualified West Virginia capital company which is not
17 a small business investment company shall maintain its
18 qualified investments for a period of at least five years, except
19 that a qualified West Virginia capital company receiving
20 repayment or return of a qualified investment (exclusive of
21 interest, dividends or other earnings on the investment) shall
22 reinvest the company's repaid or returned cost basis in the
23 investment in a qualified investment which remains outstanding
24 for a period of time at least equal to the remainder of the initial
25 five-year term, the reinvestment to be made within twenty-four
26 months from the date of repayment or return, unless a waiver is
27 obtained from the authority prior to the end of the twenty-four
28 month period: *Provided*, That the returned amounts may be
29 accumulated for six months before the twenty-four month
30 period commences.

31 (c) A qualified West Virginia capital company which is not
32 a small business investment company may be dissolved or
33 liquidated only after notice and approval of the dissolution or
34 liquidation by the authority. The authority shall provide by rule
35 a procedure for application for approval to dissolve or liquidate
36 a capital company and the approval shall not be unreasonably
37 withheld, the intention of this subsection being to ensure
38 compliance with subsection (b) of this section. Unless waived
39 by the authority, no dissolution or liquidation of any qualified
40 West Virginia capital company may be made if the dissolution
41 or liquidation would cause the provisions of subsection (b) of
42 this section to be violated.

43 (d) The authority shall annually audit the certified audit of
44 each qualified company, as required by section sixteen of this
45 article, and the results of the audit shall be used to notify the tax
46 commissioner of any companies that are not in compliance with
47 this section.

48 (e) A qualified West Virginia capital company that fails to
49 make or maintain qualified investments pursuant to this section
50 shall pay to the tax commissioner a penalty equal to all of the
51 tax credits allowed to the taxpayers investing in the company
52 with interest at the rate of one and one-half percent per month,
53 compounded monthly, from the date the tax credits were
54 certified as allocated to the qualified West Virginia capital
55 company. The tax commissioner shall give notice to the
56 company of any penalties under this section. The tax commis-
57 sioner may abate the penalty upon written request if the capital
58 company establishes reasonable cause for the failure to make
59 qualified investments. The tax commissioner shall deposit any
60 amounts received under this subsection in the state general
61 revenue fund.

§5E-1-13. Restrictions on investment.

1 (a) No more than thirty percent of the equity raised by a
2 West Virginia capital company under this article may be
3 invested in any one West Virginia business.

4 (b) No portion of the capital base of a West Virginia capital
5 company may be invested in a business that is the “alter ego”
6 of that West Virginia capital company. Furthermore, after the
7 effective date of this article no investments shall be made by a
8 West Virginia capital company to a business that is an “alter
9 ego” of the West Virginia capital company: *Provided*, That this
10 restriction on investments shall not effect any contracts entered
11 into prior to the effective date of this article. For purposes of
12 this subsection, a business is an “alter ego” of the West Virginia

13 capital company if any one or more of the following criteria are
14 satisfied:

15 (1) The ownership of the business is substantially related to
16 the ownership of the capital company; or

17 (2) The board of directors of the business is controlled by
18 the capital company: *Provided*, That a capital company may
19 control the board of directors of a business if control consists of
20 no more than a simple majority of the board.

21 (c) No owner, director, officer or employee of a West
22 Virginia capital company may occupy any management
23 position in any business in which that capital company has
24 invested, unless that person is filling that management position
25 in an effort to remedy problems arising from a lack of profit-
26 ability of the business or from dishonesty of the persons
27 otherwise managing the business.

28 (d) West Virginia capital companies that are small business
29 investment companies are not governed by the restrictions
30 described in subsections (b) and (c) of this section but shall
31 conform the rules and regulations promulgated by the small
32 business administration.

33 (e) Each qualified West Virginia capital company may not
34 invest any of its capital base in any of the following businesses:

35 (1) Banks;

36 (2) Savings and loan associations;

37 (3) Credit companies;

38 (4) Financial or investment advisors;

39 (5) Brokerage or financial firms;

- 40 (6) Other capital companies;
- 41 (7) Charitable and religious institutions;
- 42 (8) Conventional oil and gas exploration;
- 43 (9) Insurance companies;
- 44 (10) Residential housing or development; or
- 45 (11) Any other business which the authority determines to
46 be against the public interest, the purposes of this article or in
47 violation of any law.

48 The authority, by the promulgation of rules in accordance
49 with section five of this article, may designate, in addition to
50 those listed in this subsection, other businesses in which capital
51 companies may not invest any of their capital base.

§5E-1-20. Limitation on financial institutions.

1 Not more than forty-nine percent of the total capital base of
2 any capital company which is not a small business investment
3 company may be owned by banks, savings and loan associa-
4 tions, savings banks or other financial institutions, or any
5 affiliate thereof, as investors. No officer, employee or director
6 of any such financial institution may vote as a member of the
7 board of any capital company formed under the provisions of
8 this article if the matter being voted upon affects the financial
9 institution for which the board member serves as an officer,
10 employee or director.

ARTICLE 2. WEST VIRGINIA VENTURE CAPITAL ACT.

§5E-2-1. Short title.

§5E-2-2. Definitions.

§5E-2-3. Rules.

§5E-2-4. Tax credits.

§5E-2-1. Short title.

1 The article may be cited as the “West Virginia Venture
2 Capital Act”.

§5E-2-2. Definitions.

1 As used in this article, the following terms have the
2 meanings ascribed to them in this section, unless the context in
3 which the term is used clearly requires another meaning or a
4 specific different definition is provided:

5 (a) “Authority” means the West Virginia economic devel-
6 opment authority, provided for in article fifteen, chapter thirty-
7 one of this code.

8 (b) “State” means the state of West Virginia.

§5E-2-3. Rules.

1 The authority shall propose rules for promulgation in
2 accordance with article three, chapter twenty-nine-a of this code
3 to carry out the policy and purposes of this article, to provide
4 any necessary clarification of the provisions of this article and
5 to efficiently provide for the general administration of this
6 article.

§5E-2-4. Tax credits.

1 (a) The total amount of tax credits which may be allocated
2 by the authority pursuant to this article during any fiscal year is
3 equal to the tax credits authorized by section eight, article one
4 of this chapter but unallocated by the authority to qualified
5 West Virginia capital companies during the first thirty days of
6 the fiscal year.

7 (b) Any investor, including an individual, partnership,
8 limited liability company, corporation or other entity, who

9 makes an investment in a fund authorized by the authority for
10 the investment of capital in the West Virginia economy, which
11 is independently operated by qualified managers and is not
12 directly or indirectly operated or managed by the investors, is
13 entitled to a tax credit equal to no more than fifty percent of the
14 investment in the fund. The percentage and other terms and
15 conditions of the credit shall be established by the authority
16 pursuant to rules promulgated in accordance with section three
17 of this article.

18 (c) The tax credits allowed by this article shall be taken
19 after all other credits allowed by chapter eleven of this code.
20 They shall be taken against the same taxes and in the same
21 order as set forth in subsections (c) through (i), inclusive,
22 section five, article thirteen-c, chapter eleven of this code. The
23 credit for investments by a partnership, a limited liability
24 company, a corporation electing to be treated as a subchapter S
25 corporation or any other entity which is treated as a pass
26 through entity under federal and state income tax laws may be
27 divided pursuant to election of the partners, members, share-
28 holders or owners.

29 (d) The tax credit allowed under this section is to be
30 credited against the taxpayer's tax liability for the taxable year
31 in which the investment is made. If the amount of the tax credit
32 exceeds the taxpayer's tax liability for the taxable year, the
33 amount of the credit which exceeds the tax liability for the
34 taxable year may be carried to succeeding taxable years until
35 used in full, or until forfeited: *Provided*, That: (i) Tax credits
36 may not be carried forward beyond fifteen years; and (ii) tax
37 credits may not be carried back to prior taxable years. Any tax
38 credit remaining after the fifteenth taxable year is forfeited.

39 (e) The tax credit provided for in this section is available
40 only to those taxpayers whose investment occurs after the first
41 day of July, two thousand one.

42 (f) The tax credit allowed under this section may not be
43 used against any liability the taxpayer may have for interest,
44 penalties or additions to tax.

45 (g) Notwithstanding any provision in this code to the
46 contrary, the tax commissioner shall publish in the state register
47 the name and address of every taxpayer and the amount, by
48 category, of any credit asserted under this article. The catego-
49 ries by dollar amount of credit received are as follows:

50 (1) More than \$1.00, but no more than \$50,000;

51 (2) More than \$50,000, but no more than \$100,000;

52 (3) More than \$100,000, but no more than \$250,000;

53 (4) More than \$250,000, but no more than \$500,000;

54 (5) More than \$500,000, but no more than \$1,000,000; and

55 (6) More than \$1,000,000.

CHAPTER 101

(H. B. 3238 — By Delegate Mezzatesta)

[Passed April 14, 2001; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-one, article one-b, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections two, three, four, five, six, seven and eight, article seven, chapter eighteen-c of said code; and to further amend said article by

adding thereto a new section, designated section nine, all relating to the PROMISE scholarship program; providing that the adjutant general may, in lieu of the tuition payment, pay an amount directly to members of the West Virginia National Guard who are participating in the PROMISE scholarship program; making additional findings with respect to the PROMISE scholarship program; changing definitions; abolishing the board and establishing a board of control; specifying certain elements for inclusion in residency requirements; providing for legislative rules and authorizing emergency rules; requiring submission federal student aid application/needs analysis form and an application for the PROMISE scholarship; providing for coordination of aid programs from all sources; providing that the restriction that the PROMISE scholarship in combination with aid from all other sources does not apply to members of the West Virginia National Guard, and recipients of the Underwood-Smith and engineering, science and technology scholarship programs; clarifying that advanced placement and dual credit course work are not included in the credit hour categories for determining eligibility; replacing "B" average with at least a 3.0 grade point average in required core and electives and other criteria as established by the board; replacing "B" average with appropriate academic progress toward completion of a degree as defined by the board at the undergraduate level; requiring determination and clarification of relationship with other financial aid; allocations to scholarship fund subject to legislative appropriation; providing that nothing requires specific appropriations or guarantees or entitles individuals to awards; and providing for scope and breadth of study of statewide task force on student financial aid to be expanded.

Be it enacted by the Legislature of West Virginia:

That section twenty-one, article one-b, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that sections two, three, four, five, six,

seven and eight, article seven, chapter eighteen-c of said code be amended and reenacted; and that said article be further amended by adding thereto a new section, designated section nine, all to read as follows:

Chapter

15. Public Safety.

18C. Student Loans; Scholarships and State Aid.

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 1B. NATIONAL GUARD.

§15-1B-21. Tuition and fees for guard members at institutions of higher education.

1 (a) Any member of the national guard who is enrolled in a
2 course of undergraduate study and is attending any accredited
3 college, university, business or trade school located in West
4 Virginia or is attending any aviation school located in West
5 Virginia for the purpose of taking college-credit courses, may
6 be entitled to payment of tuitions and fees at that college,
7 university, business or trade school or aviation school during
8 the period of his or her service in the national guard: *Provided,*
9 That the adjutant general may prescribe criteria of eligibility for
10 payment of tuition and fees at the college, university, business
11 or trade school or aviation school: *Provided, however,* That
12 such payment is contingent upon appropriations being made by
13 the Legislature for this express purpose.

14 (b) The amount of the payment for members attending a
15 state-supported school shall be determined by the adjutant
16 general and may not exceed the actual amount of tuition and
17 fees at the school. The amount of such payment for members
18 attending a private school shall be determined by the adjutant
19 general, but in no event may exceed the highest amounts
20 payable at any state-supported school.

21 (c) Any member of the national guard who is enrolled in a
22 course of postgraduate study and is attending any accredited
23 college or university located in West Virginia, and is receiving
24 payments under the army continuing education system, may be
25 entitled to payment of tuition and fees at that college or
26 university during his or her period of service in the national
27 guard: *Provided*, That the sum of payments received under this
28 subsection and the army continuing education system may not
29 exceed the actual amount of tuition and fees at the school and
30 in no event may exceed the highest amounts payable at any
31 state-supported school. Such payments are contingent upon
32 appropriations being made by the Legislature for this express
33 purpose.

34 (d) The adjutant general may, in lieu of the tuition payment
35 authorized by this section, pay an amount equal to the amount
36 of tuition which otherwise would have been paid, directly to
37 members of the West Virginia National Guard who are partici-
38 pating in the PROMISE scholarship program provided for in
39 article seven, chapter eighteen-c of this code.

40 (e) The adjutant general shall administer the tuition and fee
41 payments authorized under this section and shall propose
42 policies to implement the provisions of this section.

CHAPTER 18C. STUDENT LOANS; SCHOLARSHIPS AND STATE AID.

ARTICLE 7. WEST VIRGINIA PROVIDING REAL OPPORTUNITIES FOR MAXIMIZING IN-STATE STUDENT EXCELLENCE SCHOLARSHIP PROGRAM.

§18C-7-2. Legislative findings and purpose.

§18C-7-3. Definitions.

§18C-7-4. Appointment of the PROMISE scholarship board of control; compensa -
tion; proceedings generally.

§18C-7-5. Powers of the West Virginia PROMISE scholarship board of control.

- §18C-7-6. Requirements for rules on PROMISE scholarship program; recommendations by PROMISE scholarship board of control; promulgation by higher education policy commission.
- §18C-7-7. West Virginia PROMISE scholarship fund created.
- §18C-7-8. PROMISE scholarship supplemental fund recreated, and promulgation of rules.
- §18C-7-9. Legislative review and determination of the scope and breadth of the charge of the statewide task force on student financial aid; legislative findings.

§18C-7-2. Legislative findings and purpose.

1 The Legislature hereby finds and declares that:

2 (a) The state's college-going rate does not compare
3 favorably with the member states of the southern regional
4 education board average, nor with the national average;

5 (b) West Virginia must have an educated work force in
6 order to attract and retain the high wage, high skill jobs of the
7 next century;

8 (c) A large percentage of West Virginia residents who
9 graduate from the state's colleges and universities do not work
10 in the state following graduation;

11 (d) The percentage of West Virginia's adult population over
12 the age of twenty-five with at least a bachelor's degree is only
13 fourteen percent and does not compare favorably with the
14 member states of the southern regional education board average
15 or with the national average;

16 (e) Increases in the level of education increases the income
17 earned by an individual which enhances his or her quality of
18 life;

19 (f) During the year one thousand nine hundred ninety-
20 seven, an individual holding a bachelor's degree had an average
21 earned income which was one hundred seventy-seven percent
22 of the average income earned by a high school graduate;

23 (g) Students at all levels should have an incentive to
24 perform at a high academic level;

25 (h) There is a need to provide parents with all tools possible
26 to aid them in helping their children understand the importance
27 of high achievement in high school and college;

28 (i) There is a financial need for many students who wish to
29 attend state institutions of higher education within the state;

30 (j) The West Virginia higher education grant program is a
31 vitally important source of financial assistance for needy
32 residents of the state and should continue to receive strong
33 financial support; and

34 (k) It is the intent of this article to establish a West Virginia
35 PROMISE scholarship program to deal effectively with the
36 findings set forth in this section.

§18C-7-3. Definitions.

1 (a) "Eligible institution" means:

2 (1) A state institution of higher education as is defined in
3 section two, article one, chapter eighteen-b of this code;

4 (2) Alderson-Broadus College, Appalachian Bible
5 College, Bethany College, the College of West Virginia, Davis
6 and Elkins College, Ohio Valley College, Salem International
7 University, the University of Charleston, West Virginia
8 Wesleyan College and Wheeling Jesuit University, all in West
9 Virginia: *Provided*, That if any institution listed in this
10 subdivision is not regionally accredited, it shall not be included
11 as an eligible institution; or

12 (3) Any other regionally accredited institution in this state,
13 public or private, approved by the board.

14 (b) "Board" means the West Virginia PROMISE scholar-
15 ship board of control of the West Virginia PROMISE scholar-
16 ship program as provided for in section four of this article.

17 (c) "Tuition" means the quarter, semester or term charges
18 imposed by a state institution of higher education and all
19 mandatory fees required as a condition of enrollment by all
20 students.

**§18C-7-4. Appointment of the PROMISE scholarship board of
control; compensation; proceedings generally.**

1 (a) On the effective date of this section, the board of the
2 PROMISE scholarship program is abolished.

3 As soon as practical after the effective date of this section,
4 the governor shall appoint the West Virginia PROMISE
5 scholarship board of control comprised of fifteen members as
6 follows:

7 (1) The chairperson of the higher education policy commis-
8 sion or a designee who is a member of the commission;

9 (2) The chancellor of the higher education policy commis-
10 sion or his or her designee;

11 (3) The state superintendent of schools or his or her
12 designee;

13 (4) The secretary of education and the arts;

14 (5) The state treasurer or his or her designee;

15 (6) Two members appointed by the governor from a list of
16 six persons nominated by the president of the Senate: *Provided,*
17 That no more than two nominees may be from the same
18 congressional district;

19 (7) Two members appointed by the governor from a list of
20 six persons nominated by the speaker of the House of Dele-
21 gates: *Provided*, That no more than two nominees may be from
22 the same congressional district; and

23 (8) Six at-large private sector members representative of the
24 state's business and economic community who have knowl-
25 edge, skill and experience in an academic, business or financial
26 field.

27 The ten appointed members shall be residents of the state.
28 The ten appointed members shall be appointed by the governor
29 with the advice and consent of the Senate. No more than six of
30 the ten appointed members may be from the same political
31 party. No more than four of the ten appointed members may be
32 from the same congressional district.

33 (b) Appointed members shall serve a term of four years and
34 may be reappointed at the expiration of their terms. In the event
35 of a vacancy among appointed members, the governor shall
36 appoint a person representing the same interests to fill the
37 unexpired term. A person appointed to fill a vacancy shall be
38 appointed only for the remainder of that term and is eligible for
39 reappointment. Unless a vacancy occurs due to death, resigna-
40 tion or removal pursuant to subsection (e) of this section, an
41 appointed member of the board shall continue to serve until a
42 successor has been appointed and qualified as provided for in
43 subsection (a) of this section. Of the initial appointments, the
44 governor shall appoint three members to a one-year term, two
45 members to a two-year term, three members to a three-year
46 term and two members to a four-year term. Thereafter, all terms
47 shall be for four years.

48 (c) Members of the board shall serve without compensation,
49 but shall be reimbursed by the office of the secretary of
50 education and the arts for expenses, including travel expenses,
51 actually incurred by a member in the official conduct of the

52 business of the board at the same rate as is paid the employees
53 of the state.

54 (d) The secretary of education and the arts is the chairper-
55 son and presiding officer of the board. A majority of the
56 members of the board constitute a quorum for the transaction of
57 business.

58 (e) The members appointed by the governor may be
59 removed by the governor for official misconduct, incompe-
60 tence, neglect of duty or gross immorality, and then only in the
61 manner prescribed by law for the removal by the governor of
62 the state elective officers in accordance with section five, article
63 six, chapter six of this code.

**§18C-7-5. Powers of the West Virginia PROMISE scholarship
board of control.**

1 In addition to the powers granted by any other provision of
2 this article, the board has the powers necessary or convenient to
3 carry out the purposes and provisions of this article including,
4 but not limited to, the following express powers:

5 (a) To adopt and amend bylaws;

6 (b) To propose legislative rules for promulgation in
7 accordance with the provisions of article three-a, chapter
8 twenty-nine-a of this code to effectuate the purposes of this
9 article;

10 (c) To invest any of its funds at the board's discretion, with
11 the West Virginia investment management board in accordance
12 with the provisions of article six, chapter twelve of this code.
13 Any investments made under this article shall be made with the
14 care, skill, prudence and diligence under the circumstances then
15 prevailing that a prudent person acting in a like capacity and
16 familiar with such matters would use in the conduct of an

17 enterprise of a like character and with like aims. Fiduciaries
18 shall diversify plan investments to the extent permitted by law
19 so as to minimize the risk of large losses, unless under the
20 circumstances it is clearly prudent not to do so;

21 (d) To execute contracts and other necessary instruments;

22 (e) To impose reasonable requirements for residency for
23 students applying for the PROMISE scholarship which shall
24 include that an eligible student must have completed at least
25 one half of the credits required for high school graduation in a
26 public or private high school in this state or have been provided
27 instruction in the home or other approved place under Exemp-
28 tion B, section one, article eight, chapter eighteen of this code
29 for the two years immediately preceding application. However,
30 nothing in this subdivision may be construed to establish
31 residency requirements for matriculation or fee payment
32 purposes at state institutions of higher education;

33 (f) To contract for necessary goods and services, to employ
34 necessary personnel and to engage the services of private
35 persons for administrative and technical assistance in carrying
36 out the responsibilities of the scholarship program;

37 (g) To solicit and accept gifts, including bequests or other
38 testamentary gifts made by will, trust or other disposition,
39 grants, loans and other aids from any source or to participate in
40 any other way in any federal, state or local governmental
41 programs in carrying out the purposes of this article;

42 (h) To define the terms and conditions under which
43 scholarships shall be awarded with the minimum requirements
44 being set forth in section six of this article; and

45 (i) To establish other policies, procedures and criteria
46 necessary to implement and administer the provisions of this
47 article.

§18C-7-6. Requirements for rules on PROMISE scholarship program; recommendations by PROMISE scholarship board of control; promulgation by higher education policy commission.

1 (a) The board shall recommend a legislative rule to the
2 higher education policy commission to implement the provi-
3 sions of this article. The higher education policy commission
4 shall promulgate a legislative rule in accordance with the
5 provisions of article three-a, chapter twenty-nine-a of this code
6 which shall include at least the following provisions:

7 (1) A requirement that a scholarship will not pay an amount
8 that exceeds the cost of tuition at state institutions of higher
9 education and may include an allowance for books and sup-
10 plies;

11 (2) A requirement that the student shall first submit the
12 application/needs analysis form used to apply for federal
13 student aid programs along with an application for the PROM-
14 ISE scholarship.

15 (3) The amount of the PROMISE scholarship awarded in
16 combination with aid from all other sources shall not exceed the
17 cost of education at the institution the recipient is attending:
18 *Provided*, That this restriction does not apply to members of the
19 West Virginia National Guard, recipients of an Underwood-
20 Smith teacher scholarship, and recipients of a West Virginia
21 engineering, science and technology scholarship;

22 (4) Minimum requirements for eligibility for the scholar-
23 ship which include:

24 (A) A provision that a student is only eligible to apply for
25 a scholarship within two years of the time he or she graduates
26 from high school or, in the case of home school students, passes
27 the GED examination: *Provided*, That if a student has entered

28 the United States armed services within two years after he or
29 she graduates from high school, the student is eligible to apply
30 for a scholarship within seven years of the time he or she enters
31 military service: *Provided, however,* That once discharged from
32 the military, the student is only eligible to apply for one year
33 from the date of discharge;

34 (B) For individuals with zero to fifteen credits from an
35 institution of higher education, excluding credits earned in
36 advanced placement and dual credit courses while the student
37 is enrolled in high school, that the individual: (i) Maintain at
38 least a 3.0 grade point average in the required core and elective
39 course work necessary to prepare students for success in post-
40 secondary education at the two-year and baccalaureate levels as
41 determined by the board; and (ii) meet other criteria as estab-
42 lished by the board;

43 (C) For individuals with more than fifteen credits from an
44 institution of higher education, excluding credits earned in
45 advanced placement and dual credit courses while the student
46 is enrolled in high school, that the individual attain and main-
47 tain appropriate academic progress toward the completion of a
48 degree at the undergraduate education level as defined by the
49 board; and

50 (D) For all individuals, additional objective standards as the
51 board considers necessary to promote academic excellence and
52 to maintain the financial stability of the fund;

53 (5) A provision requiring the student to be enrolled in or in
54 the process of enrolling in an eligible institution as defined in
55 section three of this article;

56 (6) Provisions for making the highest and best use of the
57 PROMISE scholarship program in conjunction with the West
58 Virginia prepaid tuition trust act set forth in article thirty,
59 chapter eighteen of this code;

60 (7) A determination of whether to require scholarship
61 recipients to repay the amount of their scholarship, in whole or
62 in part, if they choose to work outside the state after graduation;

63 (8) A determination of whether to set aside a portion of the
64 scholarship funds for targeted scholarships for applicants
65 accepted or enrolled in an engineering program, science
66 program, technology program or other designated programs;

67 (9) A determination of what other sources of funding for
68 higher education, if any, should be deducted from the PROM-
69 ISE scholarship award;

70 (10) A determination and clarification of the relationship of
71 PROMISE scholarship awards to all other aid a student may
72 receive to provide maximum coordination. The determination
73 shall consider the following:

74 (A) Methods to maximize student eligibility for federal
75 student aid dollars;

76 (B) A requirement that PROMISE scholarship awards not
77 supplant tuition and fee waivers; and

78 (C) Clarification of the relationship between the PROMISE
79 scholarship program, tuition savings plans and other state
80 student aid and loan programs;

81 (11) A method for the award of scholarships within the
82 limits of available appropriations; and

83 (12) A method for applicants to appeal determinations of
84 eligibility and continuation.

85 (b) The Legislature hereby declares that an emergency
86 situation exists and, therefore, the policy commission may
87 establish by emergency rule, under the procedures of article
88 three-a, chapter twenty-nine-a of this code, a rule to implement
89 the provisions of this section. If established, the rules shall be

90 filed with the legislative oversight commission on education
91 accountability and with the office of the secretary of state on or
92 before the first day of September, two thousand one.

§18C-7-7. West Virginia PROMISE scholarship fund created.

1 (a) There is hereby created a special revenue fund in the
2 state treasury which shall be designated and known as the
3 “PROMISE scholarship fund”. The fund shall consist of all
4 appropriations to the fund from the West Virginia lottery, video
5 lottery, taxes on amusement devices, and any other legislative
6 appropriations, and all interest earned from investment of the
7 fund and any gifts, grants or contributions received by the fund.
8 The allocations to the fund shall be subject to appropriation by
9 the Legislature. Nothing in this article shall require any specific
10 level of funding by the Legislature nor guarantee or entitle any
11 individual to any benefit or grant of funds.

12 (b) The board may expend the moneys in the fund to
13 implement the provisions of this article.

**§18C-7-8. PROMISE scholarship supplemental fund recreated,
and promulgation of rules.**

1 (a) The Legislature recognizes that the PROMISE scholar-
2 ship program may lead to an increased number of individuals
3 attending the state institutions of higher education, and there-
4 fore, it may contribute to increases in expenses greater than the
5 additional tuition income generated by increased enrollment.
6 Therefore, there is hereby created a special revenue fund in the
7 state treasury which shall be designated and known as the
8 “PROMISE scholarship supplemental fund”. The fund shall
9 consist of all appropriations to the fund and all interest earned
10 from the investment of the fund and any gifts, grants or
11 contributions received by the fund. The board shall expend the
12 moneys in this fund to implement the provisions of this article

13 and may only expend the moneys for state institutions of higher
14 education.

15 (b) The board shall promulgate rules for administering the
16 fund in accordance with article three-a, chapter twenty-nine-a
17 of this code. The rules shall include the following:

18 (1) Provisions for distributing the moneys from the fund to
19 state institutions of higher education: *Provided*, That the funds
20 shall be divided among the state institutions of higher education
21 in a reasonable manner to reflect the actual distribution of
22 PROMISE scholarship students among the institutions; and

23 (2) A procedure for submitting a budget request to the
24 governor: *Provided*, That nothing in this article shall require
25 any appropriation by the Legislature.

**§18C-7-9. Legislative review and determination of the scope and
breadth of the charge of the statewide task force
on student financial aid; legislative findings.**

1 (a) The Legislature made findings and established goals for
2 post-secondary education as set forth in section one-a, article
3 one, chapter eighteen-b of this code which were enacted
4 following an in-depth study of the needs of the state for a strong
5 system of post-secondary education at the regular session of the
6 Legislature, two thousand. For the state to realize its consider-
7 able potential in the twenty-first century, it must have a system
8 for the delivery of post-secondary education which is competi-
9 tive in the changing national and global environment, is
10 affordable within the fiscal constraints of the state and for the
11 state's residents to participate and has the capacity to deliver
12 the programs and services necessary to meet regional and
13 statewide needs. Among the greatest needs identified were to
14 improve the levels of adult functional literacy, increase degree
15 production, develop a system of comprehensive community and
16 technical college education, expand access to graduate educa-

17 tion and increase funding for the system of higher education
18 generally so it has the needed capacity to pursue the state's
19 public policy agenda.

20 (b) The Legislature finds that the many various programs
21 for student financial aid, state and federal, are vital parts of a
22 system that will enable the state to meet its objectives to expand
23 and diversify the state's economy, increase the competitiveness
24 of the state's workforce and the availability of professional
25 expertise, improve the levels of post-secondary educational
26 attainment of the state's residents and significantly improve the
27 level of adult functional literacy in the state. Therefore, the
28 Legislature hereby directs the statewide task force on student
29 financial aid pursuant to section nine, article fourteen, chapter
30 eighteen-b of this code to amend the scope and breadth of its
31 study to adequately consider issues relevant to implementation
32 of the PROMISE scholarship program.

CHAPTER 102

**(Com. Sub. for H. B. 2208 — By Mr. Speaker,
Mr. Kiss, and Delegate Trump)
[By Request of the Executive]**

[Passed April 14, 2001; in effect from passage. Approved by the Governor.]

AN ACT to amend article two, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section thirteen, relating to public education; state board of education; integrating character education into the public school curriculum; evaluation and report; and funding.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-13. Character education integration.

1 (a) The state board shall establish a comprehensive ap-
2 proach to integrate character education into all aspects of school
3 culture, school functions and existing curriculum.

4 (b) The state board shall require all public schools that
5 operate from preschool to grade twelve to develop and integrate
6 components of character development into their existing
7 curriculum. The schools may incorporate such programs as “life
8 skills”, “responsible students”, or any other program encom-
9 passing any of the following components:

10 (1) Honesty;

11 (2) Caring;

12 (3) Citizenship;

13 (4) Justice;

14 (5) Fairness;

15 (6) Respect;

16 (7) Responsibility;

17 (8) Voting;

18 (9) Academic achievement;

- 19 (10) Completing homework assignments;
- 20 (11) Improving daily attendance;
- 21 (12) Avoiding and resolving conflicts;
- 22 (13) Alternatives to violence;
- 23 (14) Contributing to an orderly positive school environ-
24 ment;
- 25 (15) Participating in class;
- 26 (16) Resisting social peer pressures to smoke, drink and use
27 drugs;
- 28 (17) Developing greater self-esteem and self-confidence;
- 29 (18) Effectively coping with social anxiety;
- 30 (19) Increasing knowledge of the immediate consequences
31 of substance abuse;
- 32 (20) Increasing knowledge of the consequences of ones
33 actions;
- 34 (21) The corrupting influence and chance nature of gam-
35 bling; and
- 36 (22) The value of decent, honest work.
- 37 (c) Character education shall be integrated into each public
38 school curriculum by the first day of September, two thousand
39 one.
- 40 (d) The state board shall assist county boards in developing
41 in-service training regarding integrated character education as
42 provided in this section.

43 (e) The state board shall contract with an independent
44 agency to evaluate the results of the character education as
45 defined in this section, and report the results to the legislative
46 oversight commission on education accountability during the
47 September, two thousand three interim meeting period, and
48 every two years thereafter.

49 (f) The state department of education is encouraged to
50 utilize any existing moneys available to the department for
51 existing character development programs, along with any new
52 funds appropriated for the purposes of this section, to secure the
53 maximum amount of any federal funding available for which
54 the state department is eligible to receive for implementing
55 character development in the schools.

56 (g) Funding for this initiative shall be derived from the
57 0313 unclassified account within the state department of
58 education budget.

CHAPTER 103

**(H. B. 3023 — By Delegates Stemple, Williams, L. Smith, Mathews,
Louisos, Swartzmiller and Fahey)**

[Passed April 14, 2001; in effect from passage. Approved by the Governor.]

AN ACT to amend chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article two-c; and to amend and reenact section five, article six, chapter eighteen of said code, all relating to education; county boards of education; legislative findings;

definitions; policy prohibiting harassment, intimidation or bullying; liability; immunity; policy training, education and task force; driver education; and allowing certain students to operate a motor vehicle while accompanied by a certified driver education teacher.

Be it enacted by the Legislature of West Virginia:

That chapter eighteen 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-c; and that section five, article six, chapter eighteen be amended and reenacted, all to read as follows:

Article

2C. Harassment, Intimidation or Bullying Prohibition.

6. Driver Education.

ARTICLE 2C. HARASSMENT, INTIMIDATION OR BULLYING PROHIBITION.

§18-2C-1. Legislative findings.

§18-2C-2. Definitions.

§18-2C-3. Policy prohibiting harassment, intimidation or bullying.

§18-2C-4. Immunity.

§18-2C-5. Policy training and education.

§18-2C-6. Liability.

§18-2C-1. Legislative findings.

1 The Legislature finds that a safe and civil environment in
2 school is necessary for students to learn and achieve high
3 academic standards. The Legislature finds that harassment,
4 intimidation or bullying, like other disruptive or violent
5 behavior, is conduct that disrupts both a student's ability to
6 learn and a school's ability to educate its students in a safe,
7 nonthreatening environment.

8 The Legislature further finds that students learn by exam-
9 ple. The Legislature charges school administrators, faculty,

- 10 staff and volunteers with demonstrating appropriate behavior,
- 11 treating others with civility and respect, and refusing to tolerate
- 12 harassment, intimidation or bullying.

§18-2C-2. Definitions.

1 As used in this article, “harassment, intimidation or
2 bullying” means any intentional gesture, or any intentional
3 written, verbal or physical act or threat that:

4 (a) A reasonable person under the circumstances should
5 know will have the effect of:

6 (1) Harming a student;

7 (2) Damaging a student’s property;

8 (3) Placing a student in reasonable fear of harm to his or her
9 person; or

10 (4) Placing a student in reasonable fear of damage to his or
11 her property; or

12 (b) Is sufficiently severe, persistent or pervasive that it
13 creates an intimidating, threatening or abusive educational
14 environment for a student.

§18-2C-3. Policy prohibiting harassment, intimidation or bullying.

1 (a) Each county board of education shall establish a policy
2 prohibiting harassment, intimidation or bullying. Each county
3 board has control over the content of its policy as long as the
4 policy contains, at a minimum, the requirements of subdivision
5 (b) of this section. The policy shall be adopted through a
6 process that includes representation of parents or guardians,
7 school employees, school volunteers, students and community
8 members.

9 (b) Each county board policy shall, at a minimum, include
10 the following components:

11 (1) A statement prohibiting harassment, intimidation or
12 bullying of any student on school property or at school spon-
13 sored events;

14 (2) A definition of harassment, intimidation or bullying no
15 less inclusive than that in section two of this article;

16 (3) A procedure for reporting prohibited incidents;

17 (4) A requirement that school personnel report prohibited
18 incidents of which they are aware;

19 (5) A requirement that parents or guardians of any student
20 involved in an incident prohibited pursuant to this article be
21 notified;

22 (6) A procedure for documenting any prohibited incident
23 that is reported;

24 (7) A procedure for responding to and investigating any
25 reported incident;

26 (8) A strategy for protecting a victim from additional
27 harassment, intimidation or bullying, and from retaliation
28 following a report;

29 (9) A disciplinary procedure for any student guilty of
30 harassment, intimidation or bullying; and

31 (10) A requirement that any information relating to a
32 reported incident is confidential, and exempt from disclosure
33 under the provisions of chapter twenty-nine-b of this code.

34 (c) Each county board shall adopt the policy and submit a
35 copy to the state superintendent of schools by the first day of
36 December, two thousand one.

37 (d) To assist county boards in developing their policies, the
38 West Virginia department of education shall develop a model
39 policy applicable to grades kindergarten through twelfth. The
40 model policy shall be issued by the first day of September, two
41 thousand one.

42 (e) Notice of the county board's policy shall appear in any
43 student handbook, and in any county board publication that sets
44 forth the comprehensive rules, procedures and standards of
45 conduct for the school.

§18-2C-4. Immunity.

1 A school employee, student or volunteer is individually
2 immune from a cause of action for damages arising from
3 reporting said incident, if that person:

4 (1) In good faith promptly reports an incident of harass-
5 ment, intimidation or bullying;

6 (2) Makes the report to the appropriate school official as
7 designated by policy; and

8 (3) Makes the report in compliance with the procedures as
9 specified in policy.

§18-2C-5. Policy training and education.

1 (a) Schools and county boards are encouraged, but not
2 required, to form bullying prevention task forces, programs and
3 other initiatives involving school staff, students, teachers,
4 administrators, volunteers, parents, law enforcement and
5 community members.

6 (b) To the extent state or federal funds are appropriated for
7 these purposes, each school district shall:

8 (1) Provide training on the harassment, intimidation or
9 bullying policy to school employees and volunteers who have
10 direct contact with students; and

11 (2) Develop a process for educating students on the
12 harassment, intimidation or bullying policy.

13 (c) Information regarding the county board policy against
14 harassment, intimidation or bullying shall be incorporated into
15 each school's current employee training program.

§18-2C-6. Liability.

1 Except as provided in section four of this article, nothing in
2 this article prohibits a victim from seeking redress under any
3 other provision of civil or criminal law.

ARTICLE 6. DRIVER EDUCATION.

§18-6-5. Establishment and maintenance of driver education course; who may enroll; exemption from learner's permit requirement; non-permit student drivers.

1 The state superintendent shall promote and direct the
2 establishment and maintenance of courses of instruction in
3 driver education in secondary schools in accordance with the
4 provisions of this article and the rules that the state board
5 adopts pursuant to section four of this article. Directors, trustees
6 or other persons having control or authority over private,
7 parochial or denominational secondary schools, who establish
8 and maintain the courses in the schools under their control or
9 supervision, shall comply with the rules that the state board
10 adopts pursuant to section four of this article.

11 In the case of a pupil who will not reach the age of fifteen
12 years before completion of the driver education course in which

13 enrolled, instruction shall be limited to the classroom. Pupils
14 who are fifteen years of age and older shall receive instruction
15 and practical training in the operation of motor vehicles on the
16 public streets and highways.

17 Notwithstanding section three-a, article two, chapter
18 seventeen-b of this code, any student who is at least fifteen
19 years of age and is enrolled in a driver education course in
20 accordance with the provisions of this article and the rules that
21 the state board adopts pursuant to section four of this article,
22 may operate a motor vehicle on the roadways of West Virginia
23 while accompanied by a certified driver education teacher.

CHAPTER 104

**(Com. Sub. for H. B. 2934 — By Delegates Mezzatesta,
Williams, Perry, Shaver and Beach)**

[Passed April 14, 2001; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article two-e, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto two new sections, designated sections five-a and five-b, all relating to the process for improving education; authorizing the state board to appoint a monitor at county expense to cause improvements at seriously impaired school; providing process for targeting state board and county board resources to correct deficiencies; providing effect of intervention in school system on superintendent's contract; and review of the system of education performance audits.

Be it enacted by the Legislature of West Virginia:

That section five, article two-e, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; 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 2E. HIGH QUALITY EDUCATIONAL PROGRAMS.

§18-2E-5. Process for improving education; office of education performance audits; education standards; school accreditation and school system approval; intervention to correct impairments.

§18-2E-5a. County superintendent employment contract.

§18-2E-5b. Review of system of education performance audits by the state board; reports to legislative oversight commission on education accountability.

§18-2E-5. Process for improving education; office of education performance audits; education standards; school accreditation and school system approval; intervention to correct impairments.

1 (a) *Legislative intent.* — The purpose of this section is to
2 establish a process for improving education that includes
3 standards, assessment, accountability and capacity building to
4 provide assurances that a thorough and efficient system of
5 schools is being provided for all West Virginia public school
6 students on an equal education opportunity basis and that the
7 high quality standards are, at a minimum, being met.

8 (b) *State board rules.* — The state board shall promulgate
9 rules in accordance with article three-b, chapter twenty-nine-a
10 of this code establishing a unified county improvement plan for
11 each county board and a unified school improvement plan for
12 each public school in this state. The state board is not required
13 to promulgate new rules if legislative rules meeting the
14 requirements of article three-b, chapter twenty-nine-a of this

15 code have been filed with the office of the secretary of state
16 before the effective date of this section.

17 (c) *High quality education standards and efficiency*
18 *standards.* — The state board shall, in accordance with the
19 provisions of article three-b, chapter twenty-nine-a of this code,
20 adopt and periodically review and update high quality education
21 standards for student, school and school system performance
22 and processes in the following areas:

- 23 (1) Curriculum;
- 24 (2) Workplace readiness skills;
- 25 (3) Finance;
- 26 (4) Transportation;
- 27 (5) Special education;
- 28 (6) Facilities;
- 29 (7) Administrative practices;
- 30 (8) Training of county board members and administrators;
- 31 (9) Personnel qualifications;
- 32 (10) Professional development and evaluation;
- 33 (11) Student and school performance;
- 34 (12) A code of conduct for students and employees;
- 35 (13) Indicators of efficiency; and
- 36 (14) Any other areas determined by the state board.

37 (d) *Performance measures.* — The standards shall assure
38 that all graduates are prepared for gainful employment or for
39 continuing postsecondary education and training and that
40 schools and school districts are making progress in achieving
41 the education goals of the state.

42 The standards shall include measures of student
43 performance to indicate when a thorough and efficient system
44 of schools is being provided and of school and school system
45 performance and processes that enable student performance.
46 The measures of student performance and school and school
47 system performance and processes shall include, but are not
48 limited to, the following:

49 (1) The acquisition of student proficiencies as indicated by
50 student performance by grade level measured, where possible,
51 by a uniform statewide assessment program;

52 (2) School attendance rates;

53 (3) Student dropout rate;

54 (4) Percent of students promoted to the next grade;

55 (5) Graduation rate;

56 (6) Average class size;

57 (7) Pupil-teacher ratio and number of exceptions to ratio
58 requested by county boards and the number granted;

59 (8) Number of split-grade classrooms;

60 (9) Percentage of graduates who enrolled in college; the
61 percentage of graduates who enrolled in other postsecondary
62 education; and the percentage of graduates who become fully
63 employed within one year of high school graduation all as
64 reported by the graduates on the assessment form attached to

65 their individualized student transition plan, pursuant to section
66 eight of this article and the percentage of graduates reporting;

67 (10) Pupil-administrator ratio;

68 (11) Parent involvement;

69 (12) Parent, teacher and student satisfaction;

70 (13) Operating expenditures per pupil;

71 (14) Percentage of graduates who attain the minimum level
72 of performance in the basic skills recognized by the state board
73 as laying the foundation for further learning and skill
74 development for success in college, other postsecondary
75 education and gainful employment and the grade level
76 distribution in which the minimum level of performance was
77 met;

78 (15) Percentage of graduates who received additional
79 certification of their skills, competence and readiness for
80 college, other postsecondary education or employment above
81 the minimum foundation level of basic skills; and

82 (16) Percentage of students in secondary and middle
83 schools who are enrolled in advanced placement or honors
84 classes, respectively.

85 (e) *Indicators of efficiency.* – The state board shall, in
86 accordance with the provisions of article three-b, chapter
87 twenty-nine-a of this code, adopt and periodically review and
88 update indicators of efficiency for student and school system
89 performance and processes in the following areas:

90 (A) Curriculum delivery including, but not limited to, the
91 use of distance learning;

92 (B) Transportation;

93 (C) Facilities;

94 (D) Administrative practices;

95 (E) Personnel;

96 (F) Utilization of regional educational service agency
97 programs and services, including programs and services that
98 may be established by their assigned regional educational
99 service agency, or other regional services that may be initiated
100 between and among participating county boards; and

101 (G) Any other indicators as determined by the state board.

102 (f) *Assessment and accountability of school and school*
103 *system performance and processes.* — The state board shall
104 establish by rule in accordance with the provisions of article
105 three-b, chapter twenty-nine-a of this code, a system of
106 education performance audits which measures the quality of
107 education and the preparation of students based on the
108 standards and measures of student, school and school system
109 performance and processes, including, but not limited to, the
110 standards and measures set forth in subsections (c) and (d) of
111 this section. The system of education performance audits shall
112 assist the state board in ensuring that the standards and
113 measures established pursuant to this section are, at a minimum,
114 being met and that a thorough and efficient system of schools
115 is being provided. The system of education performance audits
116 shall include: (1) The assessment of student, school and school
117 system performance and the processes in place in schools and
118 school systems which enable student performance; (2) the
119 review of school and school system unified improvement plans;
120 and (3) the periodic, random unannounced on-site review of
121 school and school system performance and compliance with the
122 standards.

123 (g) *Uses of school and school system assessment*
124 *information.* — The state board shall use information from the
125 system of education performance audits to assist it in ensuring
126 that a thorough and efficient system of schools is being
127 provided and to improve student, school and school system
128 performance, including, but not limited to, the following: (1)
129 Determining school accreditation and school system approval
130 status; (2) holding schools and school systems accountable for
131 the efficient use of existing resources to meet or exceed the
132 standards; and (3) targeting additional resources when
133 necessary to improve performance. Primary emphasis in
134 determining school accreditation and school system approval
135 status shall be based on student, school and school system
136 performance on measures selected by the state board. The state
137 board shall make accreditation information available to the
138 Legislature; the governor; and to the general public and any
139 individuals who request the information, subject to the
140 provisions of any act or rule restricting the release of
141 information. Based on the assessment of student, school and
142 school system performance, the state board shall establish early
143 detection and intervention programs to assist underachieving
144 schools and school systems in improving performance before
145 conditions become so grave as to warrant more substantive state
146 intervention, including, but not limited to, making additional
147 technical assistance, programmatic, monetary and staffing
148 resources available where appropriate.

149 (h) *Office of education performance audits.* — To assist the
150 state board in the operation of the system of education
151 performance audits and in making determinations regarding the
152 accreditation status of schools and the approval status of school
153 systems, the state board shall establish an office of education
154 performance audits which shall be operated under the direction
155 of the state board independently of the functions and
156 supervision of the state department of education and state
157 superintendent. The office of education performance audits

158 shall report directly to and be responsible to the state board in
159 carrying out its duties under the provisions of this section. The
160 office shall be headed by a director who shall be appointed by
161 the state board and shall serve at the will and pleasure of the
162 state board. The salary of the director shall not exceed the
163 salary of the state superintendent of schools. The state board
164 shall organize and sufficiently staff the office to fulfill the
165 duties assigned to it by this section and the state board.
166 Employees of the state department of education who are
167 transferred to the office of education performance audits shall
168 retain their benefit and seniority status with the department of
169 education. Under the direction of the state board, the office of
170 education performance audits shall receive from the West
171 Virginia education information system staff research and
172 analysis data on the performance of students, schools and
173 school systems, and shall receive assistance from staff at the
174 state department of education and the state school building
175 authority to carry out the duties assigned to the office. In
176 addition to other duties which may be assigned to it by the state
177 board or by statute, the office of education performance audits
178 also shall:

179 (1) Assure that all statewide assessments of student
180 performance are secure as required in section one-a of this
181 article;

182 (2) Administer all accountability measures as assigned by
183 the state board, including, but not limited to, processes for the
184 accreditation of schools and the approval of school systems, and
185 recommend to the state board appropriate action, including, but
186 not limited to, accreditation and approval action;

187 (3) Determine, in conjunction with the assessment and
188 accountability processes, what capacity may be needed by
189 schools and school systems to meet the standards established by
190 the Legislature and the state board, and recommend to the

191 school, school system and state board, plans to establish those
192 needed capacities;

193 (4) Determine, in conjunction with the assessment and
194 accountability processes, whether statewide system deficiencies
195 exist in the capacity to establish and maintain a thorough and
196 efficient system of schools, including the identification of
197 trends and the need for continuing improvements in education,
198 and report those deficiencies and trends to the state board;

199 (5) Determine, in conjunction with the assessment and
200 accountability processes, staff development needs of schools
201 and school systems to meet the standards established by the
202 Legislature and the state board, and make recommendations to
203 the state board, the center for professional development,
204 regional educational service agencies, higher education
205 governing boards and county boards; and

206 (6) Identify, in conjunction with the assessment and
207 accountability processes, exemplary schools and school systems
208 and best practices that improve student, school and school
209 system performance, and make recommendations to the state
210 board for recognizing and rewarding exemplary schools and
211 school systems and promoting the use of best practices. The
212 state board shall provide information on best practices to county
213 school systems and shall use information identified through the
214 assessment and accountability processes to select schools of
215 excellence.

216 (i) *On-site reviews.* — At the direction of the state board or
217 by weighted, random selection by the office of education
218 performance audits, an unannounced on-site review shall be
219 conducted by the office of education performance audits of any
220 school or school system for purposes, including, but not limited
221 to, the following: (1) Verifying data reported by the school or
222 county board; (2) documenting compliance with policies and

223 laws; (3) evaluating the effectiveness and implementation status
224 of school and school system unified improvement plans; (4)
225 investigating official complaints submitted to the state board
226 that allege serious impairments in the quality of education in
227 schools or school systems; and (5) investigating official
228 complaints submitted to the state board that allege that a school
229 or county board is in violation of policies or laws under which
230 schools and county boards operate. The random selection of
231 schools and school systems for an on-site review shall use a
232 weighted random sample so that those with lower performance
233 indicators and those that have not had a recent on-site review
234 have a greater likelihood of being selected. Under the direction
235 of the state board, the office of education performance audits
236 shall appoint an education standards compliance review team
237 to assist it in conducting on-site reviews. The teams shall be
238 composed of an adequate number of persons who possess the
239 necessary knowledge, skills and experience to make an accurate
240 assessment of education programs and who are drawn from a
241 trained cadre established by the office of education performance
242 audits. The state board shall have discretion in determining the
243 number of persons to serve on a standards compliance review
244 team based on the size of the school or school system as
245 applicable. The teams shall be led by a member of the office of
246 education performance audits. The state board shall reimburse
247 a county board for the costs of substitutes required to replace
248 county board employees while they are serving on an education
249 standards compliance review team. The office of education
250 performance audits shall report the findings of the on-site
251 reviews to the state board for inclusion in the evaluation and
252 determination of a school's or county board's accreditation or
253 approval status as applicable.

254 (j) *School accreditation.* — The state board annually shall
255 review the information from the system of education
256 performance audits submitted for each school and shall issue to
257 every school: Exemplary accreditation status, full accreditation

258 status, temporary accreditation status, conditional accreditation
259 status, or shall declare the education programs at the school to
260 be seriously impaired.

261 (1) Full accreditation status shall be given to a school when
262 the school's performance on the standards adopted by the state
263 board pursuant to subsections (c) and (d) of this section is at a
264 level which would be expected when all of the high quality
265 education standards are being met.

266 (2) Temporary accreditation status shall be given to a
267 school when the measure of the school's performance is below
268 the level required for full accreditation status. Whenever a
269 school is given temporary accreditation status, the county board
270 shall ensure that the school's unified improvement plan is
271 revised to increase the performance of the school to a full
272 accreditation status level. The revised unified school
273 improvement plan shall include objectives, a time line, a plan
274 for evaluation of the success of the improvements, cost
275 estimates, and a date certain for achieving full accreditation.
276 The revised plan shall be submitted to the state board for
277 approval.

278 (3) Conditional accreditation status shall be given to a
279 school when the school's performance on the standards adopted
280 by the state board is below the level required for full
281 accreditation, but the school's unified improvement plan has
282 been revised to achieve full accreditation status by a date
283 certain, the plan has been approved by the state board and the
284 school is meeting the objectives and time line specified in the
285 revised plan.

286 (4) Exemplary accreditation status shall be given to a
287 school when the school's performance on the standards adopted
288 by the state board pursuant to subsections (c) and (d) of this
289 section substantially exceeds the minimal level which would be

290 expected when all of the high quality education standards are
291 being met. The state board shall propose legislative rules in
292 accordance with the provisions of article three-b, chapter
293 twenty-nine-a, designated to establish standards of performance
294 to identify exemplary schools.

295 (5) The state board shall establish and adopt standards of
296 performance to identify seriously impaired schools and the state
297 board may declare a school seriously impaired whenever
298 extraordinary circumstances exist as defined by the state board.

299 (A) These circumstances shall include, but are not limited
300 to, (i) the failure of a school on temporary accreditation status
301 to obtain approval of its revised unified school improvement
302 plan within a reasonable time period as defined by the state
303 board; (ii) the failure of a school on conditional accreditation
304 status to meet the objectives and time line of its revised unified
305 school improvement plan; or (iii) the failure to achieve full
306 accreditation by the date specified in the revised plan.

307 (B) Whenever the state board determines that the quality of
308 education in a school is seriously impaired, the state board shall
309 appoint a team of improvement consultants to make
310 recommendations within sixty days of appointment for
311 correction of the impairment. Upon approval of the
312 recommendations by the state board, the recommendations shall
313 be made to the county board. If progress in correcting the
314 impairment as determined by the state board is not made within
315 six months from the time the county board receives the
316 recommendations, the state board shall place the county board
317 on temporary approval status and provide consultation and
318 assistance to the county board to: (i) Improve personnel
319 management; (ii) establish more efficient financial management
320 practices; (iii) improve instructional programs and rules; or (iv)
321 make any other improvements that are necessary to correct the
322 impairment.

323 (C) If the impairment is not corrected by a date certain set
324 by the state board the state board shall appoint a monitor who
325 shall be paid at county expense to cause improvements to be
326 made at the school to bring it to full accreditation status within
327 a reasonable time period as determined by the state board. The
328 monitor's work location shall be at the school and the monitor
329 shall work collaboratively with the principal. The monitor shall,
330 at a minimum, report monthly to the state board on the
331 measures being taken to improve the school's performance and
332 the progress being made. The reports may include requests for
333 additional assistance and recommendations required in the
334 judgment of the monitor to improve the school's performance,
335 including, but not limited to, the need for targeting resources
336 strategically to eliminate deficiencies. If the state board
337 determines that the improvements necessary to provide a
338 thorough and efficient education to the students at the school
339 cannot be made without additional targeted resources, it shall
340 establish a plan in consultation with the county board that
341 includes targeted resources from sources under the control of
342 the state board and the county board to accomplish the needed
343 improvements. Nothing in this section shall be construed to
344 allow a change in personnel at the school to improve school
345 performance, except as provided by law.

346 (k) *Transfers from seriously impaired schools.* —
347 Whenever a school is determined to be seriously impaired and
348 fails to improve its status within one year, any student attending
349 the school may transfer once to the nearest fully accredited
350 school, subject to approval of the fully accredited school and at
351 the expense of the school from which the student transferred.

352 (l) *School system approval.* — The state board annually
353 shall review the information submitted for each school system
354 from the system of education performance audits and issue one
355 of the following approval levels to each county board: Full
356 approval, temporary approval, conditional approval, or
357 nonapproval.

358 (1) Full approval shall be given to a county board whose
359 education system meets or exceeds all of the high quality
360 standards for student, school and school system performance
361 and processes adopted by the state board and whose schools
362 have all been given full, temporary or conditional accreditation
363 status.

364 (2) Temporary approval shall be given to a county board
365 whose education system is below the level required for full
366 approval. Whenever a county board is given temporary
367 approval status, the county board shall revise its unified county
368 improvement plan to increase the performance of the school
369 system to a full approval status level. The revised plan shall
370 include objectives, a time line, a plan for evaluation of the
371 success of the improvements, a cost estimate, and a date certain
372 for achieving full approval. The revised plan shall be submitted
373 to the state board for approval.

374 (3) Conditional approval shall be given to a county board
375 whose education system is below the level required for full
376 approval, but whose unified county improvement plan meets
377 the following criteria: (i) The plan has been revised to achieve
378 full approval status by a date certain; (ii) the plan has been
379 approved by the state board; and (iii) the county board is
380 meeting the objectives and time line specified in the revised
381 plan.

382 (4) Nonapproval status shall be given to a county board
383 which fails to submit and gain approval for its unified county
384 improvement plan or revised unified county improvement plan
385 within a reasonable time period as defined by the state board or
386 fails to meet the objectives and time line of its revised unified
387 county improvement plan or fails to achieve full approval by
388 the date specified in the revised plan. The state board shall
389 establish and adopt additional standards to identify school
390 systems in which the program may be nonapproved and the

391 state board may issue nonapproval status whenever
392 extraordinary circumstances exist as defined by the state board.
393 Furthermore, whenever a county board has more than a casual
394 deficit, as defined in section one, article one of this chapter, the
395 county board shall submit a plan to the state board specifying
396 the county board's strategy for eliminating the casual deficit.
397 The state board either shall approve or reject the plan. If the
398 plan is rejected, the state board shall communicate to the county
399 board the reason or reasons for the rejection of the plan. The
400 county board may resubmit the plan any number of times.
401 However, any county board that fails to submit a plan and gain
402 approval for the plan from the state board before the end of the
403 fiscal year after a deficit greater than a casual deficit occurred
404 or any county board which, in the opinion of the state board,
405 fails to comply with an approved plan may be designated as
406 having nonapproval status. Whenever nonapproval status is
407 given to a school system, the state board shall declare a state of
408 emergency in the school system and shall appoint a team of
409 improvement consultants to make recommendations within
410 sixty days of appointment for correcting the emergency. Upon
411 approval of the recommendations by the state board, the
412 recommendations shall be made to the county board. If progress
413 in correcting the emergency, as determined by the state board,
414 is not made within six months from the time the county board
415 receives the recommendations, the state board shall intervene
416 in the operation of the school system to cause improvements to
417 be made that will provide assurances that a thorough and
418 efficient system of schools will be provided. This intervention
419 may include, but is not limited to, the following: (i) Limiting
420 the authority of the county superintendent and county board as
421 to the expenditure of funds, the employment and dismissal of
422 personnel, the establishment and operation of the school
423 calendar, the establishment of instructional programs and rules
424 and any other areas designated by the state board by rule; (ii)
425 taking any direct action necessary to correct the emergency;

426 and (iii) declaring that the office of the county superintendent
427 is vacant.

428 (m) Notwithstanding any other provision of this section, the
429 state board may intervene immediately in the operation of the
430 county school system with all the powers, duties and
431 responsibilities contained in subsection (l) of this section, if the
432 state board finds the following:

433 (1) That the conditions precedent to intervention exist as
434 provided in this section; and

435 (2) That delaying intervention for any period of time would
436 not be in the best interests of the students of the county school
437 system.

438 (n) *Capacity*. — The process for improving education
439 includes a process for targeting resources strategically to
440 improve the teaching and learning process. Development of
441 unified school and school system improvement plans, pursuant
442 to subsection (b) of this section, is intended, in part, to provide
443 mechanisms to target resources strategically to the teaching and
444 learning process to improve student, school and school system
445 performance. When deficiencies are detected through the
446 assessment and accountability processes, the revision and
447 approval of school and school system unified improvement
448 plans shall ensure that schools and school systems are
449 efficiently using existing resources to correct the deficiencies.
450 When the state board determines that schools and school
451 systems do not have the capacity to correct deficiencies, the
452 state board shall work with the county board to develop or
453 secure the resources necessary to increase the capacity of
454 schools and school systems to meet the standards and, when
455 necessary, seek additional resources in consultation with the
456 Legislature and the governor.

457 The state board shall recommend to the appropriate body
458 including, but not limited to, the Legislature, county boards,
459 schools and communities, methods for targeting resources
460 strategically to eliminate deficiencies identified in the
461 assessment and accountability processes by:

462 (1) Examining reports and unified improvement plans
463 regarding the performance of students, schools and school
464 systems relative to the standards and identifying the areas in
465 which improvement is needed;

466 (2) Determining the areas of weakness and of
467 ineffectiveness that appear to have contributed to the
468 substandard performance of students or the deficiencies of the
469 school or school system;

470 (3) Determining the areas of strength that appear to have
471 contributed to exceptional student, school and school system
472 performance and promoting their emulation throughout the
473 system;

474 (4) Requesting technical assistance from the school
475 building authority in assessing or designing comprehensive
476 educational facilities plans;

477 (5) Recommending priority funding from the school
478 building authority based on identified needs;

479 (6) Requesting special staff development programs from the
480 center for professional development, higher education, regional
481 educational service agencies and county boards based on
482 identified needs;

483 (7) Submitting requests to the Legislature for appropriations
484 to meet the identified needs for improving education;

485 (8) Directing county boards to target their funds
486 strategically toward alleviating deficiencies;

487 (9) Ensuring that the need for facilities in counties with
488 increased enrollment are appropriately reflected and
489 recommended for funding;

490 (10) Ensuring that the appropriate person or entity is held
491 accountable for eliminating deficiencies; and

492 (11) Ensuring that the needed capacity is available from the
493 state and local level to assist the school or school system in
494 achieving the standards and alleviating the deficiencies.

§18-2E-5a. County superintendent employment contract.

1 (a) The Legislature previously granted authority to the state
2 board to intervene in the operation of a county school system in
3 section five, article two-e of this chapter. Part of the authority
4 given is the authority of the state board to declare that the office
5 of the county superintendent is vacant. County boards enter into
6 contracts to employ persons as superintendents for a term of
7 years which creates substantial rights and obligations. Although
8 the statute provides that the state board may declare the office
9 of the county superintendent vacant, the statute did not
10 specifically give the state board authority to void the contract
11 of the county superintendent. The intent of this section is to
12 clarify what contractual obligations continue after removal.

13 (b) Whenever the state board intervenes in the operation of
14 a school system and the office of the county superintendent is
15 declared vacant pursuant to section five, article two-e of this
16 chapter, the state board may, for any intervention which is
17 instituted after the effective date of this section, void any
18 existing employment contract between the county board and the
19 county superintendent.

20 (c) Whenever a county board elects a county superintendent
21 and enters into a written contract of employment with the
22 superintendent, the county board shall include within the
23 contract a conspicuous clause that informs the superintendent
24 that if the state board intervenes in the operation of the county
25 school system pursuant to section five, article two-e of this
26 chapter, the state board may vacate the office and void the
27 employment contract.

**§18-2E-5b. Review of system of education performance audits by
the state board; reports to legislative oversight
commission on education accountability.**

1 (a) The Legislature finds that the system of education
2 performance audits is a valuable tool for determining the
3 quality of education provided in the public schools of our state
4 and for holding schools accountable.

5 (b) Essential goals for a system of education performance
6 audits include the following:

7 (1) To assure that the measures used to evaluate
8 performance are clearly aligned with the education goals and
9 expectations established for student, school and school system
10 performance, including student success in postsecondary
11 education and work;

12 (2) To assure that the measures used reflect a priority for
13 student progress and safety; and

14 (3) To assure that the measures used are limited in number
15 and easily comparable to national performance indicators.

16 (c) The state board shall conduct a review of the system of
17 education performance audits with the objective of achieving
18 the goals set forth in subsection (b) of this section and shall
19 submit progress reports on its work as requested by the

20 legislative oversight commission on education accountability.
21 The state board shall submit a final report including, but not
22 limited to, any necessary revisions of its policy on the system
23 of education performance audits and any recommendations for
24 statutory changes to the legislative oversight commission on
25 education accountability by the first day of December, two
26 thousand one.

27 (d) In conducting its review, the state board shall examine
28 for potential use in the system of education performance audits,
29 any indicators used by various organizations to compare the
30 performance of state education systems.

31 (e) The state board also shall consider methods for
32 assigning accreditation status, such as weighting the attainment
33 of performance standards, so that high performing schools and
34 school systems can be fully accredited while correcting
35 deficiencies on the process standards: *Provided*, That process
36 standards affecting the safety of students are weighted equally
37 with the performance standards.

CHAPTER 105

(Com. Sub. for S. B. 227 — By Senators Hunter, Bowman, Facemyer,
Helmick, Caldwell, Redd and Mitchell)

[Passed April 14, 2001; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article four, chapter
eighteen of the code of West Virginia, one thousand nine
hundred thirty-one, as amended; to amend and reenact section
five, article five-a of said chapter; to amend and reenact

sections one, two, three and seven, article two, chapter eighteen-a of said code; to further amend said article by adding thereto a new section, designated section seven-a; to amend article three of said chapter by adding thereto a new section, designated section one-c; and to amend and reenact sections seven-a, seven-b, eight-b and nineteen, article four of said chapter, all relating generally to school personnel laws; first class permits for superintendents; providing for principals to chair faculty senate process for interviewing prospective professional and paraprofessional employees; requiring superintendent to allow principal opportunity to interview and make recommendations on prospective professional and paraprofessional personnel who may be employed at the school; requiring county board votes on terminations to be on or before the first Monday of April; limiting written notification of dismissal to known or expected circumstances; providing payment for early notice of resignation or retirement at end of school year subject to legislative appropriation; addressing areas of critical need and shortage of professional educators; providing for substitutes continuously assigned to the same classroom for more than one half of a grading period which assignment remains in effect two weeks prior to the end of the grading period to remain in the assignment until the end of the grading period; exceptions; defining teacher and substitute teacher as professional educators for the purposes of the section; providing legislative findings and compelling state interest to expand use of retired teachers as substitutes; providing for county policy to permit expanded use; establishing process to permit retired teacher substitutes to accept employment for unlimited days beginning immediately upon retirement without affecting monthly retirement annuity; prohibiting retired substitute eligibility for additional pension, other benefits and seniority; revising process for employing prospective employable professional personnel; limiting notice of intended or considered transfers to known or expected

circumstances; providing for statewide job bank for professional personnel terminated because of reduction in force and for positions for which counties are seeking applicants; providing for county boards to rescind reductions in force and transfers and restore released employees with certain conditions; limiting transfers within the instructional term beginning five days prior to instructional term and providing certain exceptions; requiring superintendent to report such transfers and making certain legislative findings and intent; requiring postings of openings to be written to ensure largest possible pool of qualified applicants and not require criteria not necessary for successful performance of the job or intended to favor a specific applicant; requiring county boards to compile, update annually and make available a list of professional personnel, areas of certification and seniority; requiring retention of seniority of professional personnel on preferred recall list for purpose of seeking reemployment; providing that reduction or elimination of supplement due to certain circumstances and approved by state board does not require termination of employment contract; directing study and report by state board and secretary of education and the arts to legislative oversight commission on education accountability on policies, programs and statutes relating to the training, certification and licensing of professional educators, including analysis of certain relative to new courses required to be offered in public schools by state board policy; and directing collaboration on funding for additional education and training for reduction in force teachers to gain certification in areas of critical need and shortage.

Be it enacted by the Legislature of West Virginia:

That section two, article four, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section five, article five-a of said chapter be amended and reenacted; that sections one, two, three and seven,

article two, chapter eighteen-a of said code be amended and reenacted; that said article be further amended by adding thereto a new section, designated section seven-a; that article three of said chapter be amended by adding thereto a new section, designated section one-c; and that sections seven-a, seven-b, eight-b and nineteen, article four of said chapter be amended and reenacted, all to read as follows:

Chapter

18. Education.

18A. School Personnel.

CHAPTER 18. EDUCATION.

Article

4. County Superintendent of Schools.

5A. Local School Involvement.

ARTICLE 4. COUNTY SUPERINTENDENT OF SCHOOLS.

§18-4-2. Qualifications; health certificate; disability; acting superintendent.

1 (a) Each superintendent shall hold a professional
2 administrative certificate endorsed for superintendent, or a first
3 class permit endorsed for superintendent: *Provided*, That a
4 superintendent who holds a first class permit may be appointed
5 for only one year, and may be reappointed two times for an
6 additional year each upon an annual evaluation by the board
7 and a determination of satisfactory performance and reasonable
8 progress toward completion of the requirements for a
9 professional administrative certificate endorsed for
10 superintendent: *Provided, however*, That any candidate for
11 superintendent who possesses an earned doctorate from an
12 accredited institution of higher education, has completed three
13 successful years of teaching in public education and has the
14 equivalent of three years of experience in management or
15 supervision, upon employment by the county board of

16 education, shall be granted a permanent administrative
17 certificate and shall be a licensed county superintendent. Any
18 person employed as assistant superintendent or educational
19 administrator prior to the twenty-seventh day of June, one
20 thousand nine hundred eighty-eight, and who was previously
21 employed as superintendent is not required to hold the
22 professional administrative certificate endorsed for
23 superintendent.

24 (b) Before entering upon the discharge of his or her duties
25 the superintendent shall file with the president of the board a
26 health certificate from a reputable physician, on a form
27 prescribed by the state department of education, certifying that
28 he or she is physically fit for the duties of his or her office and
29 that he or she has no infectious or contagious disease; and if the
30 superintendent, due to accident or illness, becomes
31 incapacitated to an extent that could lead to a prolonged
32 absence, the board, upon unanimous vote, may enter an order
33 declaring the incapacity and it shall appoint an acting
34 superintendent until such time as a majority of the members of
35 the board determine that the incapacity no longer exists.
36 However, an acting superintendent shall not serve as such for
37 more than one year, or later than the expiration date of the
38 superintendent's term, whichever is less, without being
39 reappointed by the board of education.

40 (c) Upon finding that the course work needed by a
41 superintendent who holds a first class permit endorsed for
42 superintendent is not available or is not scheduled in a manner
43 at state institutions of higher education which will enable him
44 or her to complete the normal requirements for a professional
45 administrative certificate endorsed for superintendent within the
46 three-year period allowed for appointment and reappointment
47 under the permit, the state board shall adopt a rule in
48 accordance with article three-b, chapter twenty-nine-a of this
49 code, to enable completion of the requirements, or comparable

50 alternative requirements, for a professional administrative
51 certificate endorsed for superintendent.

ARTICLE 5A. LOCAL SCHOOL INVOLVEMENT.

§18-5A-5. Public school faculty senates established; election of officers; powers and duties.

1 (a) There is established at every public school in this state
2 a faculty senate which shall be comprised of all permanent, full-
3 time professional educators employed at the school who shall
4 all be voting members. Professional educators as used in this
5 section means professional educators as defined in chapter
6 eighteen-a of this code. A quorum of more than one half of the
7 voting members of the faculty shall be present at any meeting
8 of the faculty senate at which official business is conducted.
9 Prior to the beginning of the instructional term each year, but
10 within the employment term, the principal shall convene a
11 meeting of the faculty senate to elect a chair, vice chair and
12 secretary and discuss matters relevant to the beginning of the
13 school year. The vice chair shall preside at meetings when the
14 chair is absent. Meetings of the faculty senate shall be held on
15 a regular basis as determined by a schedule approved by the
16 faculty senate and amended from time to time if needed.
17 Emergency meetings may be held at the call of the chair or a
18 majority of the voting members by petition submitted to the
19 chair and vice chair. An agenda of matters to be considered at
20 a scheduled meeting of the faculty senate shall be available to
21 the members at least two employment days prior to the meeting
22 and in the case of emergency meetings, as soon as possible
23 prior to the meeting. The chair of the faculty senate may
24 appoint such committees as may be desirable to study and
25 submit recommendations to the full faculty senate, but the acts
26 of the faculty senate shall be voted upon by the full body.

27 (b) In addition to any other powers and duties conferred by
28 law, or authorized by policies adopted by the state or county

29 board of education or bylaws which may be adopted by the
30 faculty senate not inconsistent with law, the powers and duties
31 listed in this subsection are specifically reserved for the faculty
32 senate. The intent of these provisions is neither to restrict nor to
33 require the activities of every faculty senate to the enumerated
34 items except as otherwise stated. Each faculty senate shall
35 organize its activities as it deems most effective and efficient
36 based on school size, departmental structure and other relevant
37 factors.

38 (1) Each faculty senate shall control funds allocated to the
39 school from legislative appropriations pursuant to section nine,
40 article nine-a of this chapter. From such funds, each classroom
41 teacher and librarian shall be allotted fifty dollars for
42 expenditure during the instructional year for academic
43 materials, supplies or equipment which, in the judgment of the
44 teacher or librarian, will assist him or her in providing
45 instruction in his or her assigned academic subjects or shall be
46 returned to the faculty senate: *Provided*, That nothing contained
47 herein shall prohibit such funds from being used for programs
48 and materials that, in the opinion of the teacher, enhance
49 student behavior, increase academic achievement, improve
50 self-esteem and address the problems of students at-risk. The
51 remainder of funds shall be expended for academic materials,
52 supplies or equipment in accordance with a budget approved by
53 the faculty senate. Notwithstanding any other provisions of the
54 law to the contrary, funds not expended in one school year shall
55 be available for expenditure in the next school year: *Provided*,
56 *however*, That the amount of county funds budgeted in a fiscal
57 year shall not be reduced throughout the year as a result of the
58 faculty appropriations in the same fiscal year for such materials,
59 supplies and equipment. Accounts shall be maintained of the
60 allocations and expenditures of such funds for the purpose of
61 financial audit. Academic materials, supplies or equipment shall
62 be interpreted broadly, but shall not include materials, supplies

63 or equipment which will be used in or connected with
64 interscholastic athletic events.

65 (2) A faculty senate may establish a process for faculty
66 members to interview new prospective professional educators
67 and paraprofessional employees at the school and submit
68 recommendations regarding employment to the principal, who
69 may also make independent recommendations, for submission
70 to the county superintendent: *Provided*, That such process shall
71 be chaired by the school principal and must permit the timely
72 employment of persons to perform necessary duties.

73 (3) A faculty senate may nominate teachers for recognition
74 as outstanding teachers under state and local teacher recognition
75 programs and other personnel at the school, including parents,
76 for recognition under other appropriate recognition programs
77 and may establish such programs for operation at the school.

78 (4) A faculty senate may submit recommendations to the
79 principal regarding the assignment scheduling of secretaries,
80 clerks, aides and paraprofessionals at the school.

81 (5) A faculty senate may submit recommendations to the
82 principal regarding establishment of the master curriculum
83 schedule for the next ensuing school year.

84 (6) A faculty senate may establish a process for the review
85 and comment on sabbatical leave requests submitted by
86 employees at the school pursuant to section eleven, article two
87 of this chapter.

88 (7) Each faculty senate shall elect three faculty
89 representatives to the local school improvement council
90 established pursuant to section two of this article.

91 (8) Each faculty senate may nominate a member for
92 election to the county staff development council pursuant to
93 section eight, article three, chapter eighteen-a of this code.

94 (9) Each faculty senate shall have an opportunity to make
95 recommendations on the selection of faculty to serve as mentors
96 for beginning teachers under beginning teacher internship
97 programs at the school.

98 (10) A faculty senate may solicit, accept and expend any
99 grants, gifts, bequests, donations and any other funds made
100 available to the faculty senate: *Provided*, That the faculty senate
101 shall select a member who shall have the duty of maintaining a
102 record of all funds received and expended by the faculty senate,
103 which record shall be kept in the school office and shall be
104 subject to normal auditing procedures.

105 (11) On or after the first day of January, one thousand nine
106 hundred ninety-two, any faculty senate may review the
107 evaluation procedure as conducted in their school to ascertain
108 whether such evaluations were conducted in accordance with
109 the written system required pursuant to section twelve, article
110 two, chapter eighteen-a of this code and the general intent of
111 this Legislature regarding meaningful performance evaluations
112 of school personnel. If a majority of members of the faculty
113 senate determine that such evaluations were not so conducted,
114 they shall submit a report in writing to the state board of
115 education: *Provided*, That nothing herein shall create any new
116 right of access to or review of any individual's evaluations.

117 (12) Each faculty senate shall be provided by its local board
118 of education at least a two-hour per month block of
119 noninstructional time within the school day: *Provided*, That any
120 such designated day shall constitute a full instructional day.
121 This time may be utilized and determined at the local school
122 level and shall include, but not be limited to, faculty senate
123 meetings.

124 (13) Each faculty senate shall develop a strategic plan to
125 manage the integration of special needs students into the regular
126 classroom at their respective schools and submit said strategic
127 plan to the superintendent of the county board of education by
128 the thirtieth day of June, one thousand nine hundred ninety-five,
129 and periodically thereafter pursuant to guidelines developed by
130 the state department of education. Each faculty senate shall
131 encourage the participation of local school improvement
132 councils, parents and the community at large in the
133 development of the strategic plan for each school.

134 Each strategic plan developed by the faculty senate shall
135 include at least: (A) A mission statement; (B) goals; (C) needs;
136 (D) objectives and activities to implement plans relating to each
137 goal; (E) work in progress to implement the strategic plan; (F)
138 guidelines for the placement of additional staff into integrated
139 classrooms to meet the needs of exceptional needs students
140 without diminishing the services rendered to the other students
141 in integrated classrooms; (G) guidelines for implementation of
142 collaborative planning and instruction; and (H) training for all
143 regular classroom teachers who serve students with exceptional
144 needs in integrated classrooms.

CHAPTER 18A. SCHOOL PERSONNEL.

Article

2. School Personnel.

3. Training, Certification, Licensing, Professional Development.

4. Salaries, Wages and Other Benefits.

ARTICLE 2. SCHOOL PERSONNEL.

§18A-2-1. Employment in general.

§18A-2-2. Employment of teachers; contracts; continuing contract status; how terminated; dismissal for lack of need; released time; failure of teacher to perform contract or violation thereof.

§18A-2-3. Employment of substitute teachers and retired teachers as substitutes in areas of critical need and shortage; employment of prospective employable professional personnel.

§18A-2-7. Assignment, transfer, promotion, demotion, suspension and recommendation of dismissal of school personnel by superintendent; preliminary notice of transfer; hearing on the transfer; proof required.

§18A-2-7a. Statewide job bank.

§18A-2-1. Employment in general.

1 The employment of professional personnel shall be made
2 by the board only upon nomination and recommendation of the
3 superintendent: *Provided*, That the superintendent shall provide
4 the principal at the school at which the professional educator or
5 paraprofessional employee is to be employed an opportunity to
6 interview all qualified applicants and make recommendations
7 to the county superintendent regarding their employment:
8 *Provided, however*, That nothing shall prohibit the timely
9 employment of persons to perform necessary duties. In case the
10 board refuses to employ any or all of the persons nominated, the
11 superintendent shall nominate others and submit the same to the
12 board at such time as the board may direct. All personnel so
13 nominated and recommended for employment and for
14 subsequent assignment shall meet the certification, licensing,
15 training and other eligibility classifications as may be required
16 by provisions of this chapter and by state board regulation. In
17 addition to any other information required, the application for
18 any certification or licensing shall include the applicant's social
19 security number. Professional personnel employed as deputy,
20 associate or assistant superintendents by the board in offices,
21 departments or divisions at locations other than a school and
22 who are directly answerable to the superintendent shall serve at
23 the will and pleasure of the superintendent and may be removed
24 by the superintendent upon approval of the board. Such
25 professional personnel shall retain seniority rights only in the
26 area or areas in which they hold valid certification or licensure.

§18A-2-2. Employment of teachers; contracts; continuing contract status; how terminated; dismissal for

lack of need; released time; failure of teacher to perform contract or violation thereof.

1 (a) Before entering upon their duties, all teachers shall
2 execute a contract with their boards of education, which
3 contract shall state the salary to be paid and shall be in the form
4 prescribed by the state superintendent of schools. Every such
5 contract shall be signed by the teacher and by the president and
6 secretary of the board of education and when so signed shall be
7 filed, together with the certificate of the teacher, by the
8 secretary of the office of the board.

9 (b) A teacher's contract, under this section, shall be for a
10 term of not less than one nor more than three years, one of
11 which shall be for completion of a beginning teacher internship
12 pursuant to the provisions of section two-b, article three of this
13 chapter, if applicable; and if, after three years of such
14 employment, the teacher who holds a professional certificate,
15 based on at least a bachelor's degree, has met the qualifications
16 for the same and the board of education enter into a new
17 contract of employment, it shall be a continuing contract:
18 *Provided*, That any teacher holding a valid certificate with less
19 than a bachelor's degree who is employed in a county beyond
20 the said three-year probationary period shall upon qualifying for
21 said professional certificate based upon a bachelor's degree, if
22 reemployed, be granted continuing contract status: *Provided*,
23 *however*, That a teacher holding continuing contract status with
24 one county shall be granted continuing contract status with any
25 other county upon completion of one year of acceptable
26 employment if such employment is during the next succeeding
27 school year or immediately following an approved leave of
28 absence extending no more than one year.

29 (c) The continuing contract of any teacher shall remain in
30 full force and effect except as modified by mutual consent of
31 the school board and the teacher, unless and until terminated:

32 (1) By a majority vote of the full membership of the board on
33 or before the first Monday of April of the then current year,
34 after written notice, served upon the teacher, return receipt
35 requested, stating cause or causes and an opportunity to be
36 heard at a meeting of the board prior to the board's action
37 thereon; or (2) by written resignation of the teacher before that
38 date, to initiate termination of a continuing contract. Such
39 termination shall take effect at the close of the school year in
40 which the contract is so terminated: *Provided*, That the contract
41 may be terminated at any time by mutual consent of the school
42 board and the teacher and that this section shall not affect the
43 powers of the school board to suspend or dismiss a principal or
44 teacher pursuant to section eight of this article: *Provided*,
45 *however*, That a continuing contract for any teacher holding a
46 certificate valid for more than one year and in full force and
47 effect during the school year one thousand nine hundred eighty-
48 four and one thousand nine hundred eighty-five shall remain in
49 full force and effect: *Provided further*, That a continuing
50 contract shall not operate to prevent a teacher's dismissal based
51 upon the lack of need for the teacher's services pursuant to the
52 provisions of law relating to the allocation to teachers and
53 pupil-teacher ratios. The written notification of teachers being
54 considered for dismissal for lack of need shall be limited to
55 only those teachers whose consideration for dismissal is based
56 upon known or expected circumstances which will require
57 dismissal for lack of need. An employee who was not provided
58 notice and an opportunity for a hearing pursuant to subsection
59 (a) of this section may not be included on the list. In case of
60 such dismissal, the teachers so dismissed shall be placed upon
61 a preferred list in the order of their length of service with that
62 board, and no teacher shall be employed by the board until each
63 qualified teacher upon the preferred list, in order, shall have
64 been offered the opportunity for reemployment in a position for
65 which they are qualified: *And provided further*, That he or she
66 has not accepted a teaching position elsewhere. Such

67 reemployment shall be upon a teacher's preexisting continuing
68 contract and shall have the same effect as though the contract
69 had been suspended during the time the teacher was not
70 employed.

71 (d) In the assignment of position or duties of a teacher
72 under said continuing contract, the board shall have authority
73 to provide for released time of a teacher for any special
74 professional or governmental assignment without jeopardizing
75 the contractual rights of such teacher or any other rights,
76 privileges or benefits under the provisions of this chapter.

77 (e) Any teacher who fails to fulfill his contract with the
78 board, unless prevented from so doing by personal illness or
79 other just cause or unless released from such contract by the
80 board, or who violates any lawful provision thereof, shall be
81 disqualified to teach in any other public school in the state for
82 a period of the next ensuing school year and the state
83 department of education or board may hold all papers and
84 credentials of such teacher on file for a period of one year for
85 such violation: *Provided*, That marriage of a teacher shall not
86 be considered a failure to fulfill, or violation of, the contract.

87 (f) Any classroom teacher, as defined in section one, article
88 one of this chapter, who desires to resign employment with a
89 board of education or request a leave of absence, such
90 resignation or leave of absence to become effective on or before
91 the fifteenth day of July of the same year and after completion
92 of the employment term, may do so at any time during the
93 school year by written notification thereof and any such
94 notification received by a board of education shall
95 automatically extend such teacher's public employee insurance
96 coverage until the thirty-first day of August of the same year.

97 (g) Any classroom teacher who gives written notice to the
98 county board of education on or before the first day of February

99 of the school year of their resignation or retirement from
100 employment with the board at the conclusion of the school year
101 shall be paid five hundred dollars from the “Early Notification
102 of Retirement” line item established for the department of
103 education for this purpose, subject to appropriation by the
104 Legislature. If the appropriations to the department of education
105 for this purpose are insufficient to compensate all applicable
106 teachers, the department of education shall request a
107 supplemental appropriation in an amount sufficient to
108 compensate all such teachers. Additionally, if funds are still
109 insufficient to compensate all applicable teachers, the priority
110 of payment is for teachers who give written notice the earliest.
111 This payment shall not be counted as part of the final average
112 salary for the purpose of calculating retirement.

**§18A-2-3. Employment of substitute teachers and retired teachers
as substitutes in areas of critical need and
shortage; employment of prospective employable
professional personnel.**

1 (a) The county superintendent, subject to approval of the
2 county board, may employ and assign substitute teachers to any
3 of the following duties: (a) To fill the temporary absence of any
4 teacher or an unexpired school term made vacant by
5 resignation, death, suspension or dismissal; (b) to fill a teaching
6 position of a regular teacher on leave of absence; and (c) to
7 perform the instructional services of any teacher who is
8 authorized by law to be absent from class without loss of pay,
9 providing the absence is approved by the board of education in
10 accordance with the law. The substitute shall be a duly certified
11 teacher.

12 (b) Notwithstanding any other provision of this code to the
13 contrary, a substitute teacher who has been assigned as a
14 classroom teacher in the same classroom continuously for more
15 than one half of a grading period and whose assignment
16 remains in effect two weeks prior to the end of the grading

17 period, shall remain in the assignment until the grading period
18 has ended, unless the principal of the school certifies that the
19 regularly employed teacher has communicated with and
20 assisted the substitute with the preparation of lesson plans and
21 monitoring student progress or has been approved to return to
22 work by his or her physician. For the purposes of this section,
23 teacher and substitute teacher, in the singular or plural, mean
24 professional educator as defined in section one, article one, of
25 this chapter.

26 (c) (1) The Legislature hereby finds and declares that due
27 to a shortage of qualified substitute teachers, a compelling state
28 interest exists in expanding the use of retired teachers to
29 provide service as substitute teachers. The Legislature further
30 finds that diverse circumstances exist among the counties for
31 the expanded use of retired teachers as substitutes.

32 (2) A person receiving retirement benefits under the
33 provisions of article seven-a of this chapter or who is entitled to
34 retirement benefits during the fiscal year in which that person
35 retired may accept employment as a substitute teacher for an
36 unlimited number of days each fiscal year without affecting the
37 monthly retirement benefit to which the retirant is otherwise
38 entitled if the following conditions are satisfied:

39 (A) The county board adopts a policy recommended by the
40 superintendent to address areas of critical need and shortage;

41 (B) The policy provides for the employment of retired
42 teachers as substitute teachers during the school year on an
43 expanded basis as provided in this subsection;

44 (C) The policy is effective for one school year only and is
45 subject to annual renewal by the county board;

46 (D) The state board approves the policy and the use of
47 retired teachers as substitute teachers on an expanded basis as
48 provided in this subsection; and

49 (E) Prior to employment of such substitute teacher beyond
50 the post-retirement employment limitations established by the
51 consolidated public retirement board, the superintendent of the
52 affected county submits to the consolidated public retirement
53 board, in a form approved by the retirement board, an affidavit
54 signed by the superintendent stating the name of the county, the
55 fact that the county has adopted a policy to employ retired
56 teachers as substitutes to address areas of critical need and
57 shortage and the name or names of the person or persons to be
58 employed pursuant to the policy.

59 (3) Any person who retires and begins work as a substitute
60 teacher within the same employment term shall lose those
61 retirement benefits attributed to the annuity reserve, effective
62 from the first day of employment as a retiree substitute in such
63 employment term and ending with the month following the date
64 the retiree ceases to perform service as a substitute.

65 (4) With respect to the expanded substitute service provided
66 in this subsection, retired teachers employed as such substitutes
67 are considered day-to-day, temporary, part-time employees.
68 The substitutes are not eligible for additional pension or other
69 benefits paid to regularly employed employees and shall not
70 accrue seniority.

71 (5) Until this subsection is expired pursuant to subdivision
72 (6) of this subsection, the state board, annually, shall report to
73 the joint committee on government and finance prior to the first
74 day of February of each year. Additionally, a copy shall be
75 provided to the legislative oversight commission on education
76 accountability. The report shall contain information indicating
77 the effectiveness of the provisions of this subsection on

78 expanding the use of retired substitute teachers to address areas
79 of critical need and shortage.

80 (6) The provisions of this subsection shall expire on the
81 thirtieth day of June, two thousand three.

82 (d) (1) Notwithstanding any other provision of this code to
83 the contrary, each year a county superintendent may employ
84 prospective employable professional personnel on a reserve list
85 at the county level subject to the following conditions:

86 (A) The county board adopts a policy to address areas of
87 critical need and shortage as identified by the state board. The
88 policy shall include authorization to employ prospective
89 employable professional personnel;

90 (B) The county board posts a notice of the areas of critical
91 need and shortage in the county in a conspicuous place in each
92 school for at least ten working days; and

93 (C) There are not any potentially qualified applicants
94 available and willing to fill the position.

95 (2) Prospective employable professional personnel may
96 only be employed from candidates at a job fair who have or will
97 graduate from college in the current school year or whose
98 employment contract with a county board has or will be
99 terminated due to a reduction in force in the current fiscal year.

100 (3) Prospective employable professional personnel
101 employed are limited to three full-time prospective employable
102 professional personnel per one hundred professional personnel
103 employed in a county or twenty-five full-time prospective
104 employable professional personnel in a county, whichever is
105 less.

106 (4) Prospective employable professional personnel shall be
107 granted benefits at a cost to the county board and as a condition
108 of the employment contract as approved by the county board.

109 (5) Regular employment status for prospective employable
110 professional personnel may be obtained only in accordance with
111 the provisions of section seven-a, article four of this chapter.

112 (e) The state board annually shall review the status of
113 employing personnel under the provisions of subsection (d) of
114 this section and annually shall report to the legislative oversight
115 commission on education accountability on or before the first
116 day of November of each year. The report shall include, but not
117 be limited to, the following:

118 (A) The counties that participated in the program;

119 (B) The number of personnel hired;

120 (C) The teaching fields in which personnel were hired;

121 (D) The venue from which personnel were employed;

122 (E) The place of residency of the individual hired; and

123 (F) The state board's recommendations on the prospective
124 employable professional personnel program.

**§18A-2-7. Assignment, transfer, promotion, demotion, suspension
and recommendation of dismissal of school
personnel by superintendent; preliminary notice
of transfer; hearing on the transfer; proof
required.**

1 (a) The superintendent, subject only to approval of the
2 board, shall have authority to assign, transfer, promote, demote
3 or suspend school personnel and to recommend their dismissal
4 pursuant to provisions of this chapter. However, an employee

5 shall be notified in writing by the superintendent on or before
6 the first Monday in April if he is being considered for transfer
7 or to be transferred. Only those employees whose consideration
8 for transfer or intended transfer is based upon known or
9 expected circumstances which will require the transfer of
10 employees shall be considered for transfer or intended for
11 transfer and the notification shall be limited to only those
12 employees. Any teacher or employee who desires to protest
13 such proposed transfer may request in writing a statement of the
14 reasons for the proposed transfer. Such statement of reasons
15 shall be delivered to the teacher or employee within ten days of
16 the receipt of the request. Within ten days of the receipt of the
17 statement of the reasons, the teacher or employee may make
18 written demand upon the superintendent for a hearing on the
19 proposed transfer before the county board of education. The
20 hearing on the proposed transfer shall be held on or before the
21 first Monday in May. At the hearing, the reasons for the
22 proposed transfer must be shown.

23 (b) The superintendent at a meeting of the board on or
24 before the first Monday in May shall furnish in writing to the
25 board a list of teachers and other employees to be considered
26 for transfer and subsequent assignment for the next ensuing
27 school year. An employee who was not provided notice and an
28 opportunity for a hearing pursuant to subsection (a) of this
29 section may not be included on the list. All other teachers and
30 employees not so listed shall be considered as reassigned to the
31 positions or jobs held at the time of this meeting. The list of
32 those recommended for transfer shall be included in the minute
33 record of such meeting and all those so listed shall be notified
34 in writing, which notice shall be delivered in writing, by
35 certified mail, return receipt requested, to such persons' last
36 known addresses within ten days following said board meeting,
37 of their having been so recommended for transfer and
38 subsequent assignment and the reasons therefor.

39 (c) The superintendent's authority to suspend school
40 personnel shall be temporary only pending a hearing upon
41 charges filed by the superintendent with the board of education
42 and such period of suspension shall not exceed thirty days
43 unless extended by order of the board.

44 (d) The provisions of this section respecting hearing upon
45 notice of transfer shall not be applicable in emergency
46 situations where the school building becomes damaged or
47 destroyed through an unforeseeable act and which act
48 necessitates a transfer of such school personnel because of the
49 aforementioned condition of the building.

§18A-2-7a. Statewide job bank.

1 The state board shall establish and maintain a statewide job
2 bank to assist the recruitment and reemployment of experienced
3 professional personnel whose employment with county boards
4 has been terminated because of a reduction in force. The job
5 bank shall consist of two parts for each county: (1) A list of the
6 names, qualifications and contact information of all
7 professional personnel who have been terminated because of a
8 reduction in force, except personnel who have requested in
9 writing that they not be listed in the job bank; and (2) a list of
10 professional positions for which the county is seeking
11 applicants. The job bank shall be accessible electronically to
12 each county and to individuals on a read only basis, except that
13 each county shall have the capability of editing information for
14 the county and shall be responsible for maintaining current
15 information on the county lists.

**ARTICLE 3. TRAINING, CERTIFICATION, LICENSING, PROFESSIONAL
DEVELOPMENT.**

**§18A-3-1c. Study of training, certification and licensing; report to
legislative oversight commission on education
accountability at December, 2001, interim
meetings; collaboration on sources of funding for**

**education and training for reduction in force;
teacher to gain additional certification in areas of
critical need and shortage.**

1 (a) The Legislature finds that the training, certification and
2 licensing of professional educators is not well coordinated with
3 the employment laws of the state particularly with respect to the
4 middle school grade levels. The Legislature further finds that
5 the statutes place responsibility for the training, certification
6 and licensing of professional educators with the state board of
7 education after consultation with the secretary of education and
8 the arts. Therefore, the Legislature hereby directs the state
9 board and the secretary of education and the arts to undertake
10 a study of the policies, programs and statutes relating to the
11 training, certification and licensing of professional educators
12 and to report their findings, conclusions and recommendations
13 along with any necessary legislation for improving the
14 coordination of the programs, policies and statutes with the
15 needs of the public schools of this state to the legislative
16 oversight commission on education accountability at its
17 December, two thousand one, interim meeting. The study and
18 recommendations shall also include an analysis of the cost and
19 availability of certified teachers, along with recommended
20 solutions, for any new courses required by state board policy to
21 be offered in the public schools.

22 (b) The Legislature finds that there is a need to address
23 areas of critical need and shortage for professional educators
24 and that an expeditious approach for doing so is through the
25 upgrading of the education and training of fully certified
26 teachers who because of declining enrollment can no longer be
27 employed in their area of certification and licensure. Therefore,
28 the state superintendent, the vice chancellor for administration,
29 the chancellor of the higher education policy commission shall
30 collaborate with the governor's workforce development office
31 on other potential sources of funds to assist professional

32 educators whose contract of employment with a county board
33 of education were not renewed due to a reduction in force to
34 gain additional certification in areas of critical need and
35 shortage.

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

§18A-4-7a. Employment, promotion and transfer of professional personnel; seniority.

§18A-4-7b. Calculation of seniority for professional personnel.

§18A-4-8b. Seniority rights for school service personnel.

§18A-4-19. Alteration of contract.

**§18A-4-7a. Employment, promotion and transfer of professional
personnel; seniority.**

1 (a) A county board of education shall make decisions
2 affecting the hiring of professional personnel other than
3 classroom teachers on the basis of the applicant with the highest
4 qualifications.

5 (b) The county board shall make decisions affecting the
6 hiring of new classroom teachers on the basis of the applicant
7 with the highest qualifications.

8 (c) In judging qualifications for hiring employees pursuant
9 to subsections (a) and (b) of this section, consideration shall be
10 given to each of the following:

11 (1) Appropriate certification and/or licensure;

12 (2) Amount of experience relevant to the position; or, in the
13 case of a classroom teaching position, the amount of teaching
14 experience in the subject area;

15 (3) The amount of course work and/or degree level in the
16 relevant field and degree level generally;

17 (4) Academic achievement;

18 (5) Relevant specialized training;

19 (6) Past performance evaluations conducted pursuant to
20 section twelve, article two of this chapter; and

21 (7) Other measures or indicators upon which the relative
22 qualifications of the applicant may fairly be judged.

23 (d) If one or more permanently employed instructional
24 personnel apply for a classroom teaching position and meet the
25 standards set forth in the job posting, the county board of
26 education shall make decisions affecting the filling of such
27 positions on the basis of the following criteria:

28 (1) Appropriate certification and/or licensure;

29 (2) Total amount of teaching experience;

30 (3) The existence of teaching experience in the required
31 certification area;

32 (4) Degree level in the required certification area;

33 (5) Specialized training directly related to the performance
34 of the job as stated in the job description;

35 (6) Receiving an overall rating of satisfactory in evaluations
36 over the previous two years; and

37 (7) Seniority.

38 (e) In filling positions pursuant to subsection (d) of this
39 section, consideration shall be given to each criterion with each
40 criterion being given equal weight. If the applicant with the
41 most seniority is not selected for the position, upon the request
42 of the applicant a written statement of reasons shall be given to
43 the applicant with suggestions for improving the applicant's
44 qualifications.

45 (f) The seniority of classroom teachers, as defined in
46 section one, article one of this chapter, with the exception of
47 guidance counselors, shall be determined on the basis of the
48 length of time the employee has been employed as a regular
49 full-time certified and/or licensed professional educator by the
50 county board of education and shall be granted in all areas that
51 the employee is certified and/or licensed.

52 (g) Upon completion of one hundred thirty-three days of
53 employment in any one school year, substitute teachers, except
54 retired teachers and other retired professional educators
55 employed as substitutes, shall accrue seniority exclusively for
56 the purpose of applying for employment as a permanent, full-
57 time professional employee. One hundred thirty-three days or
58 more of said employment shall be prorated and shall vest as a
59 fraction of the school year worked by the permanent, full-time
60 teacher.

61 (h) Guidance counselors and all other professional
62 employees, as defined in section one, article one of this chapter,
63 except classroom teachers, shall gain seniority in their
64 nonteaching area of professional employment on the basis of
65 the length of time the employee has been employed by the
66 county board of education in that area: *Provided*, That if an
67 employee is certified as a classroom teacher, the employee
68 accrues classroom teaching seniority for the time that that
69 employee is employed in another professional area. For the
70 purposes of accruing seniority under this paragraph,
71 employment as principal, supervisor or central office
72 administrator, as defined in section one, article one of this
73 chapter, shall be considered one area of employment.

74 (i) Employment for a full employment term shall equal one
75 year of seniority, but no employee may accrue more than one
76 year of seniority during any given fiscal year. Employment for
77 less than the full employment term shall be prorated. A random

78 selection system established by the employees and approved by
79 the board shall be used to determine the priority if two or more
80 employees accumulate identical seniority: *Provided*, That when
81 two or more principals have accumulated identical seniority,
82 decisions on reductions in force shall be based on
83 qualifications.

84 (j) Whenever a county board is required to reduce the
85 number of professional personnel in its employment, the
86 employee with the least amount of seniority shall be properly
87 notified and released from employment pursuant to the
88 provisions of section two, article two of this chapter. The
89 provisions of this subsection are subject to the following:

90 (1) All persons employed in a certification area to be
91 reduced who are employed under a temporary permit shall be
92 properly notified and released before a fully certified employee
93 in such a position is subject to release;

94 (2) An employee subject to release shall be employed in
95 any other professional position where such employee is
96 certified and was previously employed or to any lateral area for
97 which such employee is certified and/or licensed, if such
98 employee's seniority is greater than the seniority of any other
99 employee in that area of certification and/or licensure;

100 (3) If an employee subject to release holds certification
101 and/or licensure in more than one lateral area and if such
102 employee's seniority is greater than the seniority of any other
103 employee in one or more of those areas of certification and/or
104 licensure, the employee subject to release shall be employed in
105 the professional position held by the employee with the least
106 seniority in any of those areas of certification and/or licensure;
107 and

108 (4) If, prior to the first day of August of the year a reduction
109 in force is approved, the reason for any particular reduction in
110 force no longer exists as determined by the county board in its
111 sole and exclusive judgment, the board shall rescind the
112 reduction in force and shall notify the released employee in
113 writing of his or her right to be restored to his or her position of
114 employment. Within five days of being so notified, the released
115 employee shall notify the board, in writing, of his or her intent
116 to resume his or her position of employment or the right to be
117 restored shall terminate. Notwithstanding any other provision
118 of this subdivision, if there is another employee on the preferred
119 recall list with proper certification and higher seniority, that
120 person shall be placed in the position restored as a result of the
121 reduction in force being rescinded.

122 (k) For the purpose of this article, all positions which meet
123 the definition of classroom teacher as defined in section one,
124 article one of this chapter shall be lateral positions. For all other
125 professional positions the county board of education shall adopt
126 a policy by the thirty-first day of October, one thousand nine
127 hundred ninety-three, and may modify said policy thereafter as
128 necessary, which defines which positions shall be lateral
129 positions. The board shall submit a copy of its policy to the
130 state board within thirty days of adoption or any modification,
131 and the state board shall compile a report and submit same to
132 the legislative oversight commission on education
133 accountability by the thirty-first day of December, one thousand
134 nine hundred ninety-three, and by such date in any succeeding
135 year in which any county board submits a modification of its
136 policy relating to lateral positions. In adopting such a policy,
137 the board shall give consideration to the rank of each position
138 in terms of title, nature of responsibilities, salary level,
139 certification and/or licensure and days in the period of
140 employment.

141 (l) After the fifth day prior to the beginning of the
142 instructional term, no person employed and assigned to a
143 professional position may transfer to another professional
144 position in the county during that instructional term unless the
145 person holding that position does not have valid certification.
146 The provisions of this subsection are subject to the following:

147 (1) The person may apply for any posted, vacant positions
148 with the successful applicant assuming the position at the
149 beginning of the next instructional term;

150 (2) Professional personnel who have been on an approved
151 leave of absence may fill these vacancies upon their return from
152 the approved leave of absence; and

153 (3) The county board, upon recommendation of the
154 superintendent may fill a position before the next instructional
155 term when it is determined to be in the best interest of the
156 students: *Provided*, That the county superintendent shall notify
157 the state board of each transfer of a person employed in a
158 professional position to another professional position after the
159 fifth day prior to the beginning of the instructional term. The
160 Legislature finds that it is not in the best interest of the students
161 particularly in the elementary grades to have multiple teachers
162 for any one grade level or course during the instructional term.
163 It is the intent of the Legislature that the filling of positions
164 through transfers of personnel from one professional position
165 to another after the fifth day prior to the beginning of the
166 instructional term should be kept to a minimum.

167 (m) All professional personnel whose seniority with the
168 county board is insufficient to allow their retention by the
169 county board during a reduction in work force shall be placed
170 upon a preferred recall list. As to any professional position
171 opening within the area where they had previously been
172 employed or to any lateral area for which they have certification

173 and/or licensure, the employee shall be recalled on the basis of
174 seniority if no regular, full-time professional personnel, or those
175 returning from leaves of absence with greater seniority, are
176 qualified, apply for and accept such position.

177 (n) Before position openings that are known or expected to
178 extend for twenty consecutive employment days or longer for
179 professional personnel may be filled by the board, the board
180 shall be required to notify all qualified professional personnel
181 on the preferred list and give them an opportunity to apply, but
182 failure to apply shall not cause the employee to forfeit any right
183 to recall. The notice shall be sent by certified mail to the last
184 known address of the employee, and it shall be the duty of each
185 professional personnel to notify the board of continued
186 availability annually, of any change in address or of any change
187 in certification and/or licensure.

188 (o) Openings in established, existing or newly created
189 positions shall be processed as follows:

190 (1) Boards shall be required to post and date notices which
191 shall be subject to the following:

192 (A) The notices shall be posted in conspicuous working
193 places for all professional personnel to observe for at least five
194 working days;

195 (B) The notice shall be posted within twenty working days
196 of the position openings and shall include the job description;

197 (C) Any special criteria or skills that are required by the
198 position shall be specifically stated in the job description and
199 directly related to the performance of the job;

200 (D) Postings for vacancies made pursuant to this section
201 shall be written so as to ensure that the largest possible pool of
202 qualified applicants may apply; and

203 (E) Job postings may not require criteria which are not
204 necessary for the successful performance of the job and may not
205 be written with the intent to favor a specific applicant;

206 (2) No vacancy shall be filled until after the five-day
207 minimum posting period;

208 (3) If one or more applicants meets the qualifications listed
209 in the job posting, the successful applicant to fill the vacancy
210 shall be selected by the board within thirty working days of the
211 end of the posting period;

212 (4) A position held by a certified and/or licensed teacher
213 who has been issued a permit for full-time employment and is
214 working toward certification in the permit area shall not be
215 subject to posting if the certificate is awarded within five years;
216 and

217 (5) Nothing provided herein shall prevent the county board
218 of education from eliminating a position due to lack of need.

219 (p) Notwithstanding any other provision of the code to the
220 contrary, where the total number of classroom teaching
221 positions in an elementary school does not increase from one
222 school year to the next, but there exists in that school a need to
223 realign the number of teachers in one or more grade levels,
224 kindergarten through six, teachers at the school may be
225 reassigned to grade levels for which they are certified without
226 that position being posted: *Provided*, That the employee and the
227 county board of education mutually agree to the reassignment.

228 (q) Reductions in classroom teaching positions in
229 elementary schools shall be processed as follows:

230 (1) When the total number of classroom teaching positions
231 in an elementary school needs to be reduced, the reduction shall

232 be made on the basis of seniority with the least senior
233 classroom teacher being recommended for transfer; and

234 (2) When a specified grade level needs to be reduced and
235 the least senior employee in the school is not in that grade level,
236 the least senior classroom teacher in the grade level that needs
237 to be reduced shall be reassigned to the position made vacant by
238 the transfer of the least senior classroom teacher in the school
239 without that position being posted: *Provided*, That the
240 employee is certified and/or licensed and agrees to the
241 reassignment.

242 (r) Any board failing to comply with the provisions of this
243 article may be compelled to do so by mandamus and shall be
244 liable to any party prevailing against the board for court costs
245 and reasonable attorney fees as determined and established by
246 the court. Further, employees denied promotion or employment
247 in violation of this section shall be awarded the job, pay and
248 any applicable benefits retroactive to the date of the violation
249 and payable entirely from local funds. Further, the board shall
250 be liable to any party prevailing against the board for any court
251 reporter costs including copies of transcripts.

252 (s) The county board shall compile, update annually on the
253 first day of July and make available by electronic or other
254 means to all employees a list of all professional personnel
255 employed by the county, their areas of certification and their
256 seniority.

§18A-4-7b. Calculation of seniority for professional personnel.

1 Notwithstanding any other provision of this code to the
2 contrary, seniority for professional personnel as defined in
3 section one, article one, chapter eighteen-a of this code shall be
4 calculated pursuant to the provisions of section seven-a of this
5 article as well as the following: *Provided*, That any
6 recalculation of seniority of a professional personnel employee
7 that may be required in order to remain consistent with the

8 provisions contained herein shall be calculated retroactively,
9 but shall not be utilized for the purposes of reversing any
10 decision that has been made or grievance that has been filed
11 prior to the effective date of this section:

12 (a) A professional employee shall begin to accrue seniority
13 upon commencement of the employee's duties.

14 (b) An employee shall receive seniority credit for each day
15 the employee is professionally employed regardless of whether
16 the employee receives pay for that day: *Provided*, That no
17 employee shall receive seniority credit for any day the
18 employee is suspended without pay pursuant to section eight,
19 article two of this chapter: *Provided, however*, That an
20 employee who is on an approved leave of absence shall accrue
21 seniority during the period of time that the employee is on the
22 approved leave of absence.

23 (c) Any professional employee whose employment with a
24 county board of education is terminated either voluntarily or
25 through a reduction-in-force shall, upon reemployment with the
26 same board of education in a regular full-time position, receive
27 credit for all seniority previously accumulated with the board of
28 education at the date the employee's employment was
29 terminated.

30 (d) Any professional employee whose employment has
31 been terminated through reduction in force and whose name is
32 on the preferred recall list shall retain all accumulated seniority
33 for the purpose of seeking reemployment with the county from
34 which he or she was terminated and nothing in this section may
35 be construed to the contrary.

36 (e) Any professional employee employed for a full
37 employment term but in a part-time position shall receive
38 seniority credit for each day of employment prorated to the
39 proportion of a full employment day the employee is required
40 to work: *Provided*, That nothing herein allows a regular

41 full-time employee to be credited with less than a full day of
42 seniority credit for each day the employee is employed by the
43 board: *Provided, however*, That this calculation of seniority for
44 part-time professional personnel is prospective and does not
45 reduce any seniority credit accumulated by any employee prior
46 to the effective date of this section: *Provided further*, That for
47 the purposes of this section a part-time employee shall be
48 defined as an employee who is employed less than three and
49 one-half hours per day.

§18A-4-8b. Seniority rights for school service personnel.

1 (a) A county board shall make decisions affecting
2 promotions and the filling of any service personnel positions of
3 employment or jobs occurring throughout the school year that
4 are to be performed by service personnel as provided in section
5 eight of this article, on the basis of seniority, qualifications and
6 evaluation of past service.

7 (b) Qualifications shall mean that the applicant holds a
8 classification title in his category of employment as provided in
9 this section and must be given first opportunity for promotion
10 and filling vacancies. Other employees then must be considered
11 and shall qualify by meeting the definition of the job title as
12 defined in section eight of this article, that relates to the
13 promotion or vacancy. If requested by the employee, the board
14 must show valid cause why an employee with the most
15 seniority is not promoted or employed in the position for which
16 he or she applies. Applicants shall be considered in the
17 following order:

18 (1) Regularly employed service personnel;

19 (2) Service personnel whose employment has been
20 discontinued in accordance with this section;

21 (3) Professional personnel who held temporary service
22 personnel jobs or positions prior to the ninth day of June, one
23 thousand nine hundred eighty-two, and who apply only for such
24 temporary jobs or positions;

25 (4) Substitute service personnel; and

26 (5) New service personnel.

27 (c) The county board may not prohibit a service employee
28 from retaining or continuing his employment in any positions
29 or jobs held prior to the effective date of this section and
30 thereafter.

31 (d) A promotion shall be defined as any change in his
32 employment that the employee deems to improve his working
33 circumstance within his classification category of employment
34 and shall include a transfer to another classification category or
35 place of employment if the position is not filled by an employee
36 who holds a title within that classification category of
37 employment. Each class title listed in section eight of this
38 article shall be considered a separate classification category of
39 employment for service personnel, except for those class titles
40 having Roman numeral designations, which shall be considered
41 a single classification of employment. The cafeteria manager
42 class title shall be included in the same classification category
43 as cooks. The executive secretary class title shall be included in
44 the same classification category as secretaries.
45 Paraprofessional, autism mentor and braille or sign language
46 specialist class titles shall be included in the same classification
47 category as aides.

48 (e) For purposes of determining seniority under this section
49 an employee's seniority begins on the date that he or she enters
50 into his assigned duties.

51 (f) Notwithstanding any other provisions of this chapter to
52 the contrary, decisions affecting service personnel with respect
53 to extra-duty assignments shall be made in the following
54 manner: An employee with the greatest length of service time
55 in a particular category of employment shall be given priority
56 in accepting extra duty assignments, followed by other fellow
57 employees on a rotating basis according to the length of their
58 service time until all such employees have had an opportunity
59 to perform similar assignments. The cycle then shall be
60 repeated: *Provided*, That an alternative procedure for making
61 extra-duty assignments within a particular classification
62 category of employment may be utilized if the alternative
63 procedure is approved both by the county board and by an
64 affirmative vote of two thirds of the employees within that
65 classification category of employment. For the purpose of this
66 section, "extra-duty assignments" are defined as irregular jobs
67 that occur periodically or occasionally such as, but not limited
68 to, field trips, athletic events, proms, banquets and band festival
69 trips.

70 (g) Boards shall be required to post and date notices of all
71 job vacancies of established existing or newly created positions
72 in conspicuous working places for all school service employees
73 to observe for at least five working days. The notice of the job
74 vacancies shall include the job description, the period of
75 employment, the amount of pay and any benefits and other
76 information that is helpful to the employees to understand the
77 particulars of the job. After the five-day minimum posting
78 period all vacancies shall be filled within twenty working days
79 from the posting date notice of any job vacancies of established
80 existing or newly created positions. Job postings for vacancies
81 made pursuant to this section shall be written so as to ensure
82 that the largest possible pool of qualified applicants may apply.
83 Job postings may not require criteria which are not necessary
84 for the successful performance of the job and may not be
85 written with the intent to favor a specific applicant.

86 (h) All decisions by county boards concerning reduction in
87 work force of service personnel shall be made on the basis of
88 seniority, as provided in this section.

89 (i) The seniority of any service personnel shall be
90 determined on the basis of the length of time the employee has
91 been employed by the county board within a particular job
92 classification. For the purpose of establishing seniority for a
93 preferred recall list as provided in this section, when an
94 employee has been employed in one or more classifications, the
95 seniority accrued in each previous classification shall be
96 retained by the employee.

97 (j) If a county board is required to reduce the number of
98 employees within a particular job classification, the employee
99 with the least amount of seniority within that classification or
100 grades of classification shall be properly released and employed
101 in a different grade of that classification if there is a job
102 vacancy: *Provided*, That if there is no job vacancy for
103 employment within the classification or grades of classification,
104 he or she shall be employed in any other job classification
105 which he or she previously held with the county board if there
106 is a vacancy and shall retain any seniority accrued in the job
107 classification or grade of classification.

108 (k) If, prior to the first day of August after a reduction in
109 force or transfer is approved, the reason for any particular
110 reduction in force or transfer no longer exists as determined by
111 the county board in its sole and exclusive judgment, the board
112 shall rescind the reduction in force or transfer and shall notify
113 the affected employee in writing of his or her right to be
114 restored to his or her former position of employment. Within
115 five days of being so notified, the affected employee shall
116 notify the board of his or her intent to return to his or her
117 former position of employment or the right of restoration to the
118 former position shall terminate: *Provided*, That the board shall

119 not rescind the reduction in force of an employee until all
120 employees with more seniority in the classification category on
121 the preferred recall list have been offered the opportunity for
122 recall to regular employment as provided in this section. If there
123 are insufficient vacant positions to permit reemployment of all
124 more senior employees on the preferred recall list within the
125 classification category of the employee who was subject to
126 reduction in force, the position of the released employee shall
127 be posted and filled in accordance with this section.

128 (l) If two or more employees accumulate identical seniority,
129 the priority shall be determined by a random selection system
130 established by the employees and approved by the county
131 board.

132 (m) All employees whose seniority with the county board
133 is insufficient to allow their retention by the county board
134 during a reduction in work force shall be placed upon a
135 preferred recall list and shall be recalled to employment by the
136 county board on the basis of seniority.

137 (n) Employees placed upon the preferred list shall be
138 recalled to any position openings by the county board within the
139 classification(s), where they had previously been employed, or
140 to any lateral position for which the employee is qualified or to
141 a lateral area for which an employee has certification and/or
142 licensure.

143 (o) Employees on the preferred recall list shall not forfeit
144 their right to recall by the county board if compelling reasons
145 require an employee to refuse an offer of reemployment by the
146 county board.

147 (p) The county board shall notify all employees on the
148 preferred recall list of all position openings that from time to
149 time exist. The notice shall be sent by certified mail to the last
150 known address of the employee; it is the duty of each such

151 employee to notify the county board of any change in the
152 address of the employee.

153 (q) No position openings may be filled by the county board,
154 whether temporary or permanent, until all employees on the
155 preferred recall list have been properly notified of existing
156 vacancies and have been given an opportunity to accept
157 reemployment.

158 (r) An employee released from employment for lack of
159 need as provided in section eight-a or six, article two of this
160 chapter shall be accorded preferred recall status on the first day
161 of July of the succeeding school year if the employee has not
162 been reemployed as a regular employee.

163 (s) Any board failing to comply with the provisions of this
164 article may be compelled to do so by mandamus and is liable to
165 any party prevailing against the board for court costs and the
166 prevailing party's reasonable attorney fee, as determined and
167 established by the court. Further, employees denied promotion
168 or employment in violation of this section shall be awarded the
169 job, pay and any applicable benefits retroactively to the date of
170 the violation and shall be paid entirely from local funds.
171 Further, the board is liable to any party prevailing against the
172 board for any court reporter costs including copies of
173 transcripts.

§18A-4-19. Alteration of contract.

1 (a) Notwithstanding the provisions of section seven-a of
2 this article relating to professional personnel or any other
3 section of this code to the contrary, any alteration of an
4 employment contract of a professional educator who is
5 employed for more than two hundred days, which alteration
6 changes the number of days in the employment term, shall not
7 be deemed a creation of a new position, nor shall such alteration
8 require the posting of the position.

9 Notwithstanding the provisions of section seven-a of this
10 article relating to professional personnel or any other section of
11 this code to the contrary, any alteration of an employment
12 contract of a professional educator which reduces or eliminates
13 the local salary supplement or the benefits provided to such
14 employee due to a defeat of a special levy, or a loss in assessed
15 values or events over which it has no control and for which the
16 county board has received approval from the state board prior
17 to making such reduction or elimination in accordance with
18 section five-a of this article, shall not require termination of
19 said employment contract as set forth in sections two and eight-
20 a, article two of this chapter, nor shall it be deemed a creation
21 of a new position, nor shall such alteration require the posting
22 of the position.

23 (b) Notwithstanding the provisions of section eight-b of this
24 article relating to school service personnel or any other section
25 of this code to the contrary, any alteration of an employment
26 contract of a service personnel employee who is employed for
27 more than two hundred days, which alteration changes the
28 number of days in the employment term, shall not be deemed
29 a creation of a new position, nor shall such alteration require the
30 posting of the position.

31 Notwithstanding the provisions of section eight-b of this
32 article relating to school service personnel or any other section
33 of this code to the contrary, any alteration of an employment
34 contract of a service personnel employee which reduces or
35 eliminates the local salary supplement or the benefits provided
36 to such employee due to a defeat of a special levy, or a loss in
37 assessed values or events over which it has no control and for
38 which the county board has received approval from the state
39 board prior to making such reduction or elimination in
40 accordance with section five-b of this article, shall not require
41 termination of said employment contract as set forth in sections
42 six and eight-a, article two of this chapter, nor shall it be

- 43 deemed a creation of a new position, nor shall such alteration
44 require the posting of the position.

CHAPTER 106

(H. B. 2722 — By Delegates Morgan, Louisos, Fragale, Dempsey,
Paxton, Hubbard and Canterbury)

[Passed April 13, 2001; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article five, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to county boards of education; meetings; increasing compensation for board members; authorizing compensation of county board members who serve on administrative councils of multi-county vocational center for attending council meetings; providing that such meetings are not counted under the limit of compensable board meetings per fiscal year; and limiting compensable council meetings.

Be it enacted by the Legislature of West Virginia:

That section four, article five, 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 5. COUNTY BOARD OF EDUCATION.

§18-5-4. Meetings; employment and assignment of teachers; budget hearing; compensation of members; affiliation with state and national associations.

1 (a) The board shall meet on the first Monday of July, and
2 upon the dates provided by law for the laying of levies, and at
3 any other times the board fixes upon its records. At any meeting
4 as authorized in this section and in compliance with the
5 provisions of article four of this chapter, the board may employ
6 qualified teachers, or those who will qualify by the time of
7 entering upon their duties, necessary to fill existing or
8 anticipated vacancies for the current or next ensuing school
9 year. At a meeting of the board, on or before the first Monday
10 of May, the superintendent shall furnish in writing to the board
11 a list of those teachers to be considered for transfer and
12 subsequent assignment for the next ensuing school year; all
13 other teachers not listed are considered as reassigned to the
14 positions held at the time of this meeting. The list of those
15 recommended for transfer shall be included in the minute
16 record and the teachers listed shall be notified in writing. The
17 notice shall be delivered in writing, by certified mail, return
18 receipt requested, to the teachers' last-known addresses within
19 ten days following the board meeting, of their having been
20 recommended for transfer and subsequent assignment.

21 (b) Special meetings may be called by the president or any
22 three members, but no business may be transacted other than
23 that designated in the call.

24 (c) In addition, a public hearing shall be held concerning
25 the preliminary operating budget for the next fiscal year not less
26 than ten days after the budget has been made available to the
27 public for inspection, and within a reasonable time prior to the
28 submission of the budget to the state board for approval.
29 Reasonable time shall be granted at the hearing to any person
30 who wishes to speak regarding any part of the budget. Notice of
31 the hearing shall be published as a Class I legal advertisement
32 in compliance with the provisions of article three, chapter fifty-
33 nine of this code.

34 (d) A majority of the members constitutes the quorum
35 necessary for the transaction of official business.

36 (e) Board members may receive compensation at a rate not
37 to exceed one hundred sixty dollars per meeting attended, but
38 they may not receive pay for more than fifty meetings in any
39 one fiscal year: *Provided*, That board members who serve on an
40 administrative council of a multi-county vocational center may
41 also receive compensation for attending up to twelve meetings
42 of the council at the same rate as for meetings of the board.
43 Meetings of the council are not counted as board meetings for
44 purposes of determining the limit on compensable board
45 meetings.

46 (f) Members shall also be paid, upon the presentation of an
47 itemized sworn statement, for all necessary traveling expenses,
48 including all authorized meetings, incurred on official business,
49 at the order of the board.

50 (g) When, by a majority vote of its members, a county
51 board considers it a matter of public interest, the board may join
52 the West Virginia school board association and the national
53 school board association, and may pay the dues prescribed by
54 the associations and approved by action of the respective
55 county boards. Membership dues and actual traveling expenses
56 of board members for attending meetings of the West Virginia
57 school board association may be paid by their respective county
58 boards out of funds available to meet actual expenses of the
59 members, but no allowance may be made except upon sworn
60 itemized statements.

CHAPTER 107

(H. B. 2595 — By Delegates Harrison, Mathews, Carmichael,
Fahey, Overington, L. Smith and Beach)

[Passed April 14, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article eight, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to waiving the requirement that persons providing instruction in the home have at least four years more formal education.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 8. COMPULSORY SCHOOL ATTENDANCE.

§18-8-1. Commencement and termination of compulsory school attendance; exemptions.

1 Compulsory school attendance shall begin with the school
2 year in which the sixth birthday is reached prior to the first day
3 of September of such year or upon enrolling in a publicly
4 supported kindergarten program and continue to the sixteenth
5 birthday.

6 Exemption from the foregoing requirements of compulsory
7 public school attendance shall be made on behalf of any child
8 for the following causes or conditions, each such cause or
9 condition being subject to confirmation by the attendance
10 authority of the county:

11 *Exemption A. Instruction in a private, parochial or other*
12 *approved school.* — Such instruction shall be in a school
13 approved by the county board of education and for a time equal
14 to the school term of the county for the year. In all such schools
15 it shall be the duty of the principal or other person in control,
16 upon the request of the county superintendent of schools, to
17 furnish to the county board of education such information and
18 records as may be required with respect to attendance,
19 instruction and progress of pupils enrolled between the entrance
20 age and sixteen years;

21 *Exemption B. Instruction in home or other approved place.*
22 — (a) Such instruction shall be in the home of such child or
23 children or at some other place approved by the county board
24 of education and for a time equal to the school term of the
25 county. If such request for home instruction is denied by the
26 county board of education, good and reasonable justification for
27 such denial must be furnished in writing to the applicant by the
28 county board of education. The instruction in such cases shall
29 be conducted by a person or persons who, in the judgment of
30 the county superintendent and county board of education, are
31 qualified to give instruction in subjects required to be taught in
32 the free elementary schools of the state. It shall be the duty of
33 the person or persons providing the instruction, upon request of
34 the county superintendent, to furnish to the county board of
35 education such information and records as may be required
36 from time to time with respect to attendance, instruction and

37 progress of pupils enrolled between the entrance age and
38 sixteen years receiving such instruction. The state department
39 of education shall develop guidelines for the home schooling of
40 special education students including alternative assessment
41 measures to assure that satisfactory academic progress is
42 achieved.

43 (b) Notwithstanding the provisions of subsection (a) of this
44 Exemption B, the person or persons providing home instruction
45 meet the requirements for Exemption B when the conditions of
46 this subsection are met: *Provided*, That the county
47 superintendent shall have the right to seek from the circuit court
48 of the county an order denying the home instruction, which
49 order may be granted upon a showing of clear and convincing
50 evidence that the child will suffer educational neglect or that
51 there are other compelling reasons to deny home instruction.

52 (1) The person or persons providing home instruction
53 present to the county superintendent or county board of
54 education a notice of intent to provide home instruction and the
55 name and address of any child of compulsory school age to be
56 instructed: *Provided*, That if a child is enrolled in a public
57 school, notice of intent to provide home instruction shall be
58 given at least two weeks prior to withdrawing such child from
59 public school;

60 (2) The person or persons providing home instruction
61 submit satisfactory evidence of: (i) A high school diploma or
62 equivalent; and (ii) formal education at least four years higher
63 than the most academically advanced child for whom the
64 instruction will be provided: *Provided*, That the requirement of
65 a formal education at least four years higher than the most

66 academically advanced child is waived until the first day of
67 July, two thousand three;

68 (3) The person or persons providing home instruction
69 outline a plan of instruction for the ensuing school year; and

70 (4) The person or persons providing home instruction shall
71 annually obtain an academic assessment of the child for the
72 previous school year. This shall be satisfied in one of the
73 following ways:

74 (i) Any child receiving home instruction annually takes a
75 standardized test, to be administered at a public school in the
76 county where the child resides, or administered by a licensed
77 psychologist or other person authorized by the publisher of the
78 test, or administered by a person authorized by the county
79 superintendent or county board of education. The child shall be
80 administered a test which has been normed by the test publisher
81 on that child's age or grade group. In no event may the child's
82 parent or legal guardian administer the test. Where a test is
83 administered outside of a public school, the child's parent or
84 legal guardian shall pay the cost of administering the test. The
85 public school or other qualified person shall administer to
86 children of compulsory school age the comprehensive test of
87 basic skills, the California achievement test, the Stanford
88 achievement test or the Iowa tests of basic skills, achievement
89 and proficiency, or an individual standardized achievement test
90 that is nationally normed and provides statistical results which
91 test will be selected by the public school, or other person
92 administering the test, in the subjects of language, reading,
93 social studies, science and mathematics and shall be
94 administered under standardized conditions as set forth by the

95 published instructions of the selected test. No test shall be
96 administered if the publication date is more than ten years from
97 the date of the administration of the test. Each child's test
98 results shall be reported as a national percentile for each of the
99 five subjects tested. Each child's test results shall be made
100 available on or before the thirtieth day of June of the school
101 year in which the test is to be administered to the person or
102 persons providing home instruction, the child's parent or legal
103 guardian and the county superintendent. Upon request of a duly
104 authorized representative of the West Virginia department of
105 education, each child's test results shall be furnished by the
106 person or persons providing home instruction, or by the child's
107 parent or legal guardian, to the state superintendent of schools.
108 Upon notification that the mean of the child's test results for
109 any single year has fallen below the fortieth percentile, the
110 county board of education shall notify the parents or legal
111 guardian of said child, in writing, of the services available to
112 assist in the assessment of the child's eligibility for special
113 education services: *Provided*, That the identification of a
114 disability shall not preclude the continuation of home
115 schooling.

116 If the mean of the child's test results for any single year for
117 language, reading, social studies, science and mathematics fall
118 below the fortieth percentile on the selected tests, then the
119 person or persons providing home instruction shall initiate a
120 remedial program to foster achievement above that level and
121 the student shall show improvement. If, after two calendar
122 years, the mean of the child's test results fall below the fortieth
123 percentile level, home instruction shall no longer satisfy the
124 compulsory school attendance requirement exemption; or

125 (ii) The county superintendent is provided with a written
126 narrative indicating that a portfolio of samples of the child's
127 work has been reviewed and that the child's academic progress
128 for the year is in accordance with the child's abilities. This
129 narrative shall be prepared by a certified teacher or other person
130 mutually agreed upon by the parent or legal guardian and the
131 county superintendent. It shall be submitted on or before the
132 thirtieth day of June of the school year covered by the portfolio.
133 The parent or legal guardian shall be responsible for payment
134 of fees charged for the narrative; or

135 (iii) Evidence of an alternative academic assessment of the
136 child's proficiency mutually agreed upon by the parent or legal
137 guardian and the county superintendent is submitted to the
138 county superintendent by the thirtieth day of June of the school
139 year being assessed. The parent or legal guardian shall be
140 responsible for payment of fees charged for the assessment.

141 (c) The superintendent or a designee shall offer such
142 assistance, including textbooks, other teaching materials and
143 available resources, as may assist the person or persons
144 providing home instruction subject to their availability. Any
145 child receiving home instruction may, upon approval of the
146 county board of education, exercise the option to attend any
147 class offered by the county board of education as the person or
148 persons providing home instruction may deem appropriate
149 subject to normal registration and attendance requirements.

150 *Exemption C. Physical or mental incapacity.* — Physical or
151 mental incapacity shall consist of incapacity for school
152 attendance and the performance of school work. In all cases of
153 prolonged absence from school due to incapacity of the child to
154 attend, the written statement of a licensed physician or

155 authorized school nurse shall be required under the provisions
156 of this article: *Provided*, That in all cases incapacity shall be
157 narrowly defined and in no case shall the provisions of this
158 article allow for the exclusion of the mentally, physically,
159 emotionally or behaviorally handicapped child otherwise
160 entitled to a free appropriate education;

161 *Exemption D. Residence more than two miles from school*
162 *or school bus route.* — The distance of residence from a school,
163 or school bus route providing free transportation, shall be
164 reckoned by the shortest practicable road or path, which
165 contemplates travel through fields by right of permission from
166 the landholders or their agents. It shall be the duty of the county
167 board of education, subject to written consent of landholders, or
168 their agents, to provide and maintain safe foot bridges across
169 streams off the public highways where such are required for the
170 safety and welfare of pupils whose mode of travel from home
171 to school or to school bus route must necessarily be other than
172 along the public highway in order for said road or path to be not
173 over two miles from home to school or to school bus providing
174 free transportation;

175 *Exemption E. Hazardous conditions.* — Conditions
176 rendering school attendance impossible or hazardous to the life,
177 health or safety of the child;

178 *Exemption F. High school graduation.* — Such exemption
179 shall consist of regular graduation from a standard senior high
180 school;

181 *Exemption G. Granting work permits.* — The county
182 superintendent may, after due investigation, grant work permits
183 to youths under sixteen years of age, subject to state and federal

184 labor laws and regulations: *Provided*, That a work permit may
185 not be granted on behalf of any youth who has not completed
186 the eighth grade of school;

187 *Exemption H. Serious illness or death in the immediate*
188 *family of the pupil.* — It is expected that the county attendance
189 director will ascertain the facts in all cases of such absences
190 about which information is inadequate and report same to the
191 county superintendent of schools;

192 *Exemption I. Destitution in the home.* — Exemption based
193 on a condition of extreme destitution in the home may be
194 granted only upon the written recommendation of the county
195 attendance director to the county superintendent following
196 careful investigation of the case. A copy of the report
197 confirming such condition and school exemption shall be
198 placed with the county director of public assistance. This
199 enactment contemplates every reasonable effort that may
200 properly be taken on the part of both school and public
201 assistance authorities for the relief of home conditions officially
202 recognized as being so destitute as to deprive children of the
203 privilege of school attendance. Exemption for this cause shall
204 not be allowed when such destitution is relieved through public
205 or private means;

206 *Exemption J. Church ordinances; observances of regular*
207 *church ordinances.* — The county board of education may
208 approve exemption for religious instruction upon written
209 request of the person having legal or actual charge of a child or
210 children: *Provided*, That such exemption shall be subject to the
211 rules prescribed by the county superintendent and approved by
212 the county board of education;

213 *Exemption K. Alternative private, parochial, church or*
214 *religious school instruction.* — In lieu of the provisions of
215 Exemption A herein above, exemption shall be made for any
216 child attending any private school, parochial school, church
217 school, school operated by a religious order or other nonpublic
218 school which elects to comply with the provisions of article
219 twenty-eight, chapter eighteen of the code of West Virginia.

220 The completion of the eighth grade shall not exempt any
221 child under sixteen years of age from the compulsory
222 attendance provision of this article: *Provided*, That there is a
223 public high school or other public school of advanced grades or
224 a school bus providing free transportation to any such school,
225 the route of which is within two miles of the child's home by
226 the shortest practicable route or path as hereinbefore specified
227 under Exemption D of this section.

CHAPTER 108

(Com. Sub. for S. B. 676 — By Senators Unger and Snyder)

[Passed April 14, 2001; to take effect July 1, 2001. Approved by the Governor.]

AN ACT to amend and reenact section fifteen, article nine-d, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the school building authority; and authorizing distribution of money for building or improvement projects over a period of time or years as the work progresses.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 9D. SCHOOL BUILDING AUTHORITY.

§18-9D-15. Legislative intent; distribution of money.

1 (a) It is the intent of the Legislature to empower the school
2 building authority to facilitate and provide state funds and to
3 administer all federal funds provided for the construction and
4 major improvement of school facilities so as to meet the
5 educational needs of the people of this state in an efficient and
6 economical manner. The authority shall make funding
7 determinations in accordance with the provisions of this article
8 and shall assess existing school facilities and each facility's
9 school major improvement plan in relation to the needs of the
10 individual student, the general school population, the
11 communities served by the facilities and facility needs
12 statewide.

13 (b) An amount that is no more than three percent of the sum
14 of moneys that are determined by the authority to be available
15 for distribution during the then current fiscal year from: (1)
16 Moneys paid into the school building capital improvements
17 fund pursuant to section ten, article nine-a of this chapter; (2)
18 the issuance of revenue bonds for which moneys in the school
19 building debt service fund are pledged as security; (3) moneys
20 paid into the school construction fund pursuant to section six of
21 this article; and (4) any other moneys received by the authority,
22 except moneys paid into the school major improvement fund
23 pursuant to section six of this article, may be allocated and may
24 be expended by the authority for projects that service the
25 educational community statewide or, upon application by the
26 state board, for educational programs that are under the

27 jurisdiction of the state board. In addition, upon application by
28 the state board or the administrative council of an area
29 vocational educational center established pursuant to article
30 two-b of this chapter, the authority may allocate and expend
31 under this section moneys for school major improvement
32 projects proposed by the state board or an administrative
33 council for school facilities under the direct supervision of the
34 state board or an administrative council, respectively: *Provided,*
35 That the authority may not expend any moneys for a school
36 major improvement project proposed by the state board or the
37 administrative council of an area vocational educational center
38 unless the state board or an administrative council has
39 submitted a ten-year school major improvement plan, to be
40 updated annually, pursuant to section sixteen of this article:
41 *Provided, however,* That the authority shall, before allocating
42 any moneys to the state board or the administrative council of
43 an area vocational educational center for a school improvement
44 project, consider all other funding sources available for the
45 project.

46 (c) An amount that is no more than two percent of the
47 moneys that are determined by the authority to be available for
48 distribution during the current fiscal year from: (1) Moneys
49 paid into the school building capital improvements fund
50 pursuant to section ten, article nine-a of this chapter; (2) the
51 issuance of revenue bonds for which moneys in the school
52 building debt service fund are pledged as security; (3) moneys
53 paid into the school construction fund pursuant to section six of
54 this article; and (4) any other moneys received by the authority,
55 except moneys deposited into the school major improvement
56 fund, shall be set aside by the authority as an emergency fund
57 to be distributed in accordance with the guidelines adopted by
58 the authority.

59 (d) The remaining moneys determined by the authority to
60 be available for distribution during the then current fiscal year

61 from: (1) Moneys paid into the school building capital
62 improvements fund pursuant to section ten, article nine-a of this
63 chapter; (2) the issuance of revenue bonds for which moneys in
64 the school building debt service fund are pledged as security;
65 (3) moneys paid into the school construction fund pursuant to
66 section six of this article; and (4) any other moneys received by
67 the authority, except moneys deposited into the school major
68 improvement fund, shall be allocated and expended on the basis
69 of need and efficient use of resources, the basis to be
70 determined by the authority in accordance with the provisions
71 of section sixteen of this article.

72 (e) If a county board of education proposes to finance a
73 project that is approved pursuant to section sixteen of this
74 article through a lease with an option to purchase leased
75 premises upon the expiration of the total lease period pursuant
76 to an investment contract, the authority may allocate no moneys
77 to the county board in connection with the project: *Provided,*
78 That the authority may transfer moneys to the state board of
79 education which, with the authority, shall lend the amount
80 transferred to the county board to be used only for a one-time
81 payment due at the beginning of the lease term, made for the
82 purpose of reducing annual lease payments under the
83 investment contract, subject to the following conditions:

84 (1) The loan shall be secured in the manner required by the
85 authority, in consultation with the state board, and shall be
86 repaid in a period and bear interest at a rate as determined by
87 the state board and the authority and shall have such terms and
88 conditions as are required by the authority, all of which shall be
89 set forth in a loan agreement among the authority, the state
90 board and the county board;

91 (2) The loan agreement shall provide for the state board and
92 the authority to defer the payment of principal and interest upon
93 any loan made to the county board during the term of the

94 investment contract, and annual renewals of the investment
95 contract, among the state board, the authority, the county board
96 and a lessor: *Provided*, That in the event a county board which
97 has received a loan from the authority for a one-time payment
98 at the beginning of the lease term does not renew the subject
99 lease annually until performance of the investment contract in
100 its entirety is completed, the county board is in default and the
101 principal of the loan, together with all unpaid interest accrued
102 to the date of the default, shall, at the option of the authority, in
103 consultation with the state board, become due and payable
104 immediately or subject to renegotiation among the state board,
105 the authority and the county board: *Provided, however*, That if
106 a county board renews the lease annually through the
107 performance of the investment contract in its entirety, the
108 county board shall exercise its option to purchase the leased
109 premises: *Provided further*, That the failure of the county board
110 to make a scheduled payment pursuant to the investment
111 contract constitutes an event of default under the loan
112 agreement: *And provided further*, That upon a default by a
113 county board, the principal of the loan, together with all unpaid
114 interest accrued to the date of the default, shall, at the option of
115 the authority, in consultation with the state board, become due
116 and payable immediately or subject to renegotiation among the
117 state board, the authority and the county board: *And provided*
118 *further*, That if the loan becomes due and payable immediately,
119 the authority, in consultation with the state board, shall use all
120 means available under the loan agreement and law to collect the
121 outstanding principal balance of the loan, together with all
122 unpaid interest accrued to the date of payment of the
123 outstanding principal balance; and

124 (3) The loan agreement shall provide for the state board and
125 the authority to forgive all principal and interest of the loan
126 upon the county board purchasing the leased premises pursuant
127 to the investment contract and performance of the investment
128 contract in its entirety.

129 (f) To encourage county boards to proceed promptly with
130 facilities planning and to prepare for the expenditure of any
131 state moneys derived from the sources described in this
132 subsection, any county board failing to expend money within
133 three years of the allocation to the county board shall forfeit the
134 allocation and thereafter is ineligible for further allocations
135 pursuant to this subsection until the county board is ready to
136 expend funds in accordance with an approved facilities plan:
137 *Provided*, That the authority may authorize an extension beyond
138 the three-year forfeiture period not to exceed an additional two
139 years. Any amount forfeited shall be added to the total funds
140 available in the school construction fund of the authority for
141 future allocation and distribution.

142 (g) The remaining moneys that are determined by the
143 authority to be available for distribution during the then current
144 fiscal year from moneys paid into the school major
145 improvement fund pursuant to section six of this article shall be
146 allocated and distributed on the basis of need and efficient use
147 of resources, the basis to be determined by the authority in
148 accordance with the provisions of section sixteen of this article:
149 *Provided*, That the moneys may not be distributed to any county
150 board that does not have an approved school major
151 improvement plan or to any county board that is not prepared
152 to commence expenditures of the funds during the fiscal year in
153 which the moneys are distributed: *Provided, however*, That any
154 moneys allocated to a county board and not distributed to that
155 county board shall be deposited in an account to the credit of
156 that county board, the principal amount to remain to the credit
157 of and available to the county board for a period of two years.
158 Any moneys which are unexpended after a two-year period
159 shall be redistributed on the basis of need from the school major
160 improvement fund in that fiscal year.

161 (h) No local matching funds may be required under the
162 provisions of this section. However, the responsibilities of the

163 county boards of education to maintain school facilities are not
164 negated by the provisions of this article. To be eligible to
165 receive an allocation of school major improvement funds from
166 the authority, a county board must have expended in the
167 previous fiscal year an amount of county moneys equal to or
168 exceeding the lowest average amount of money included in the
169 county board's maintenance budget over any three of the
170 previous five years and must have budgeted an amount equal to
171 or greater than the average in the current fiscal year: *Provided,*
172 That the state board of education shall promulgate rules relating
173 to county boards' maintenance budgets, including items which
174 shall be included in the budgets.

175 (i) Any county board may use moneys provided by the
176 authority under this article in conjunction with local funds
177 derived from bonding, special levy or other sources.
178 Distribution to a county board, or to the state board or the
179 administrative council of an area vocational educational center
180 pursuant to subsection (b) of this section, may be in a lump sum
181 or in accordance with a schedule of payments adopted by the
182 authority pursuant to guidelines adopted by the authority.

183 (j) Funds in the school construction fund shall first be
184 transferred and expended as follows:

185 Any funds deposited in the school construction fund shall
186 be expended first in accordance with an appropriation by the
187 Legislature. To the extent that funds are available in the school
188 construction fund in excess of that amount appropriated in any
189 fiscal year, the excess funds may be expended in accordance
190 with the provisions of this article. Any projects which the
191 authority identified and announced for funding on or before the
192 first day of August, one thousand nine hundred ninety-five, or
193 identified and announced for funding on or before the
194 thirty-first day of December, one thousand nine hundred
195 ninety-five, shall be funded by the authority in an amount

196 which is not less than the amount specified when the project
197 was identified and announced.

198 (k) It is the intent of the Legislature to encourage county
199 boards to explore and consider arrangements with other
200 counties that may facilitate the highest and best use of all
201 available funds, which may result in improved transportation
202 arrangements for students, or which otherwise may create
203 efficiencies for county boards and the students. In order to
204 address the intent of the Legislature contained in this
205 subsection, the authority shall grant preference to those projects
206 which involve multicounty arrangements as the authority shall
207 determine reasonable and proper.

208 (l) County boards shall submit all designs for construction
209 of new school buildings to the school building authority for
210 review and approval prior to preparation of final bid
211 documents: *Provided*, That a vendor who has been debarred
212 pursuant to the provisions of sections thirty-three-a through
213 thirty-three-f, inclusive, article three, chapter five-a of this
214 code, may not bid on or be awarded a contract under this
215 section.

216 (m) The authority may elect to disburse funds for approved
217 construction projects over a period of more than one year
218 subject to the following:

219 (1) The authority may not approve the funding of a project
220 for more than three years; and

221 (2) The authority may not approve the use of more than
222 fifty percent of the revenue for projects to be funded over more
223 than one year.

CHAPTER 109

(Com. Sub. for S. B. 476 — By Senators Hunter, Unger, Caldwell,
Rowe, Burnette, Redd, Fanning, Helmick, Ross and Sharpe)

[Passed April 14, 2001; in effect from passage. Approved by the Governor.]

AN ACT to amend chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article ten-n, relating to providing access to information technology for visually impaired individuals through the procurement of compatible technology by the state purchasing division; setting forth findings and a statement of policy; providing definitions; providing for development of nonvisual access standards; and requiring nonvisual access requirements in all future state contracts for procurement of information technology.

Be it enacted by the Legislature of West Virginia:

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

**ARTICLE 10N. INFORMATION TECHNOLOGY ACCESS FOR THE BLIND
AND VISUALLY IMPAIRED.**

§18-10N-1. Findings; policy.

§18-10N-2. Definitions.

§18-10N-3. Purchasing to develop access standards; access clause to be included in contracts.

§18-10N-4. Procurements by the purchasing division.

§18-10N-1. Findings; policy.

1 The Legislature finds that the use of interactive display
2 terminals by state agencies is becoming a widespread means of
3 access for employees and the public to obtain information
4 available electronically, but that presentation of electronic data
5 solely in a visual format is a barrier to access by individuals
6 who are blind or visually impaired. Individuals who are blind
7 or visually impaired have the right to full participation in the
8 life of the state, including the use of advanced technology
9 which is purchased by the state for use by employees, program
10 participants and members of the general public. The Legislature
11 also recognizes that technological advances allow interactive
12 control of computers and use of the information by visually
13 impaired persons, but that nonvisual access is dependent on the
14 purchase of hardware and software that is compatible with
15 technology used for nonvisual access.

§18-10N-2. Definitions.

1 The following words have the meanings indicated:

2 (a) "Access" means the ability to receive, use and
3 manipulate data and operate controls included in information
4 technology.

5 (b) "Blind or visually impaired individual" means an
6 individual who:

7 (1) Has a visual acuity of 20/200 or less in the better eye
8 with corrective lenses or has a limited field of vision so that the
9 widest diameter of the visual field subtends an angle no greater
10 than twenty degrees;

11 (2) Has a medically indicated expectation of visual
12 deterioration; or

13 (3) Has a medically diagnosed limitation in visual
14 functioning that restricts the individual's ability to read and

15 write standard print at levels expected of individuals of
16 comparable ability.

17 (c) "Information technology" means all electronic
18 information processing hardware and software, including
19 telecommunications.

20 (d) "Nonvisual" means synthesized speech, Braille and
21 other output methods not requiring sight.

22 (e) "State agency" means the state or any of its
23 departments, agencies or boards or commissions.

24 (f) "Telecommunications" means the transmission of
25 information, voice, or data by radio, video or other electronic or
26 impulse means.

**§18-10N-3. Purchasing to develop access standards; access clause
to be included in contracts.**

1 (a) On or before first day of September, two thousand one,
2 the purchasing division of the department of administration
3 shall develop nonvisual access standards for information
4 technology systems employed by state agencies that:

5 (1) Provide blind or visually impaired individuals with
6 access to information stored electronically by state agencies by
7 ensuring compatibility with adaptive technology systems so that
8 blind and visually impaired individuals have full and equal
9 access when needed; and

10 (2) Are designed to present information, including prompts
11 used for interactive communications, in formats intended for
12 both visual and nonvisual use, such as the use of text-only
13 options.

14 (b) The purchasing division shall consult with state
15 agencies and representatives of individuals who are blind or
16 visually impaired in developing the nonvisual access standards
17 described in subsection (a) of this section and the procurement
18 criteria described in section four of this article.

19 (c) The head of each state agency shall establish a written
20 plan and develop any proposed budget requests for
21 implementing the nonvisual access standards for its agency at
22 facilities accessible by the public.

§18-10N-4. Procurements by the purchasing division.

1 (a) On or before first day of January, two thousand two, the
2 division shall approve minimum standards and criteria to be
3 used in approving or rejecting procurements by state agencies
4 for adaptive technologies for nonvisual access uses.

5 (b) Nothing in this article shall require the installation of
6 software or peripheral devices used for nonvisual access when
7 the information technology is being used by individuals who
8 are not blind or visually impaired. Nothing in this article shall
9 be construed to require the purchase of nonvisual adaptive
10 equipment by a state agency.

11 (c) Notwithstanding the provisions of subsection (b) of this
12 section, the applications, programs and underlying operating
13 systems, including the format of the data, used for the
14 manipulation and presentation of information shall permit the
15 installation and effective use of and shall be compatible with
16 nonvisual access software and peripheral devices.

17 (d) Compliance with the procurement requirements of this
18 section with regard to information technology purchased prior
19 to the first day of July, two thousand one, shall be achieved at
20 the time of procurement of an upgrade or replacement of
21 existing information technology equipment or software.

CHAPTER 110

(S. B. 703 — Originating in the Committee on Education)

[Passed April 14, 2001; to take effect July 1, 2001. Approved by the Governor.]

AN ACT to repeal article twenty-six-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to repeal articles three-a and three-f, chapter eighteen-b of said code; to repeal sections six and eleven, article nine of said chapter; to amend and reenact section eleven, article three, chapter twelve of said code; to amend and reenact sections one and three, article eleven-c, chapter eighteen of said code; to amend and reenact section four-a, article twenty-three of said chapter; to amend and reenact sections one-a, three and six, article one, chapter eighteen-b of said code; to amend and reenact sections two and six, article one-a of said chapter; to amend and reenact sections four and five, article one-b of said chapter; to amend and reenact sections one and four, article two-a of said chapter; to further amend said chapter by adding thereto two new articles, designated articles two-b and two-c; to amend and reenact sections seven and eight, article three-c of said chapter; to amend and reenact sections four and eight, article five of said chapter; to amend and reenact sections one, two-a and four-a, article six of said chapter; to amend and reenact section four, article seven of said chapter; to amend and reenact sections one, two, three, four, five, seven and eight, article nine of said chapter; to amend and reenact sections one and eight, article ten of said chapter; to further amend said chapter by adding thereto a new article, designated article eleven-a; to amend article fourteen of said chapter by adding thereto a new section, designated section

five-a; to amend and reenact section four, article five, chapter eighteen-c of said code; to amend and reenact sections one and twelve, article three-a, chapter twenty-nine-a of said code; and to further amend said article by adding thereto a new section, designated section nineteen, all relating to education; public education; post-secondary education; colleges, universities and community and technical colleges; rules for travel and moving expenses; West Virginia university hospital and West Virginia health system generally; clarifying membership on board of directors; higher education employee retirement plans generally; definitions; contribution levels; establishing a standardized retirement policy for all state higher education employees; requiring higher education policy commission to study vendors of retirement products and report to joint committee on pensions and retirement by certain date; establishing legislative intent; goals for post-secondary education; deleting requirement that classified employee salaries be compared to those in peer institutions; administration; transfer of powers, duties, rules, property and obligations; higher education rule making generally; authorizing transfer of property between commission and governing boards; transferring rules to commission; authorizing commission to transfer all rules, except legislative rules, to governing boards; clarifying authority of commission to promulgate rules; requiring rule to guide rule-making activities of governing boards; authorizing commission to reclassify certain legislative rules; prohibiting any requirement that reclassified rules be refiled unless amended; requiring commission to file proposed rules with legislative oversight commission on education accountability; designating that certain rules may be refiled as procedural or interpretive rules; changing submission date for institutional compacts; authorizing emergency rule and requiring rule on benchmarks and indicators be filed by certain date; setting specific requirements for rule; clarifying procedure for approval of

certain graduate education programs; powers and duties of higher education policy commission; setting limits on certain capital projects; authorizing commission to make certain appointments; directing commission to assume oversight of certain private education institutions; requiring the commission to make a determination of feasibility of certain recommendations; authorizing promulgation of rule for personnel matters; authorizing promulgation of joint rules; requiring joint rule on tuition and fee policy; requiring a method to allow participation in selection of certain administrative heads of community and technical colleges; authorizing promulgation of necessary rules for administration of state and federal student aid programs; additional duties of vice chancellor for community and technical college education and work force development; authority of chancellor and higher education policy commission to employ vice chancellor for state colleges; deleting certain restrictions on state colleges and freestanding community and technical colleges; deleting certain requirements relating to rules of governing boards and clarifying their rule making process; clarifying terms of members of institutional boards of governors; clarifying terms of faculty and classified employees on institutional boards of governors; deleting obsolete language; higher education employee grievances generally; directing prospective employee grievances to be filed under different procedure after certain date; definitions; placing certain restrictions on state division of personnel related to higher education employee grievances; West Virginia council for community and technical college education generally; legislative findings; legislative intent; definitions; reconstituting joint commission for vocational-technical-occupational education; membership; eligibility; terms; chairperson; reimbursement for expenses; powers and duties of West Virginia council for community and technical college education; chief executive officer; creating state advisory committee of community and technical college

presidents and provosts; chair of advisory committee; West Virginia community and technical college generally; legislative findings; legislative intent; definitions; requiring commission to review and analyze progress of community and technical colleges; requiring analysis to be based on benchmarks and indicators; requiring commission to determine existence of certain conditions relative to community and technical colleges; providing that insufficient funds is not valid reason for lack of progress; requiring annual report to legislative oversight commission on education accountability; requiring certain determinations by commission; authorizing creation of West Virginia community and technical college; requiring study and report to legislative oversight commission on education accountability by certain date on procedures, findings and determinations necessary prior to creation of college; requiring notification to governor, president of Senate, speaker of House of Delegates and legislative oversight commission on education accountability; requiring commission to certify necessary legislation; providing for transfer of certain powers, duties, property, obligations, etc. from certain governing boards to the governing board of the college; creating office of president of college; providing for governing board of college; powers and duties; providing for acting president; district consortia committees required to participate in certain work force development activities; clarifying mission of Potomac state college of West Virginia university; approval of institutional compacts and expenditure schedules for certain community and technical colleges; verifying progress toward goals by certain community and technical colleges; clarifying status of certain community and technical colleges; clarifying responsibility district of Marshall university community and technical college; providing exceptions to bid process; authorizing lease-purchase arrangements by governing boards with approval of the commission; directing the commission to make an annual report on business activities of governing boards; clarifying

membership and terms for state advisory council of faculty; clarifying membership and terms for state advisory council of classified employees; providing definition for institution of higher education for purposes of selecting members of advisory council of classified employees; clarifying appointments of members of certain advisory boards; clarifying membership on boards of governors and certain statewide advisory councils; deleting obsolete language relating to appeal by probationary faculty member of nonretention decision; higher education personnel classification system generally; clarifying authority of commission relating to classification system; definitions; legislative purposes; assignment to pay grades; job descriptions and titles; critical employees; merit increases; deleting obsolete language; salaries of classified employees generally; classified employees salary not to be reduced; defining equitable compensation; providing certain restrictions on appropriations; updating classified employee salary schedule; equitable system of job classification; rules; providing method for distributing salary increases; salary policies; authority to grant salary in excess of salary established by schedule in certain instances; deleting obsolete language; eliminating biennial review of equitable system of job classifications; eliminating inconsistent language on personnel classification conferences and placement on salary schedule of newly hired classified employees; eliminating institutional salary policies and salary increase authorization; tuition and fees generally; tuition and fee goals; collection of fees; authority of governing boards regarding additional registration fees; special capital improvements funds; terms for issuance of revenue bonds; use of revenue bonds proceeds; state autism training center generally; definitions; powers and duties of board of governors; responsibilities of autism training center; providing for advisory board and trainee teams; authorizing for governing boards to enter into property sales and lease back arrangements; deleting authority of senior administrator to promulgate rules for West Virginia higher

education grant program; higher education rule making; definitions; recommendations by legislative oversight commission on education accountability approving rules; and rules severability.

Be it enacted by the Legislature of West Virginia:

That article twenty-six-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that article three-a, chapter eighteen-b of said code be repealed; that article three-f of said chapter be repealed; that sections six and eleven, article nine of said chapter be repealed; that section eleven, article three, chapter twelve of said code be amended and reenacted; that sections one and three, article eleven-c, chapter eighteen of said code be amended and reenacted; that section four-a, article twenty-three of said chapter be amended and reenacted; that sections one-a, three and six, article one, chapter eighteen-b of said code be amended and reenacted; that sections two and six, article one-a of said chapter be amended and reenacted; that sections four and five, article one-b of said chapter be amended and reenacted; that sections one and four, article two-a of said chapter be amended and reenacted; that said chapter be further amended by adding thereto two new articles, designated articles two-b and two-c; that sections seven and eight, article three-c of said chapter be amended and reenacted; that sections four and eight, article five of said chapter be amended and reenacted; that sections one, two-a and four-a, article six of said chapter be amended and reenacted; that section four, article seven of said chapter be amended and reenacted; that sections one, two, three, four, five, seven and eight, article nine of said chapter be amended and reenacted; that sections one and eight, article ten of said chapter be amended and reenacted; that said chapter be further amended by adding thereto a new article, designated article eleven-a; that article fourteen of said chapter be amended by adding thereto a new section, designated section five-a; that section four, article five, chapter eighteen-c of said code be amended and reenacted; that sections one and twelve, article three-a, chapter twenty-nine-a of said code be

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

Chapter

12. Public Moneys and Securities.

18. Education.

18B. Higher Education.

18C. Student Loans; Scholarships and State Aid.

29A. State Administrative Procedures Act.

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

ARTICLE 3. APPROPRIATIONS, EXPENDITURES AND DEDUCTIONS.

§12-3-11. Travel expenses; rules to be promulgated concerning same; dues to voluntary organizations; recruitment expenses for higher education policy commission and West Virginia higher education governing boards; moving expenses of employees of higher education policy commission and West Virginia higher education governing boards.

1 (a) The governor shall promulgate rules concerning
 2 out-of-state travel by state officials and employees, except those
 3 in the legislative and judicial branches of the state government
 4 and except for the attorney general, auditor, secretary of state,
 5 treasurer, board of investments, commissioner of agriculture
 6 and their employees, the higher education policy commission
 7 and the higher education governing boards and institutions
 8 under their jurisdiction. The Legislature, the supreme court of
 9 appeals and the attorney general, auditor, secretary of state,
 10 treasurer, board of investments, commissioner of agriculture,
 11 the higher education policy commission and the higher
 12 education governing boards shall promulgate rules concerning
 13 out-of-state travel for their respective branches and departments
 14 of state government. Copies of such rules shall be filed with the

15 auditor and the secretary of state. It shall be unlawful for the
16 auditor to issue a warrant in payment of any claim for
17 out-of-state travel expenses incurred by a state officer or
18 employee unless such claim meets all the requirements of the
19 rules so filed.

20 (b) Payment for dues or membership in annual or other
21 voluntary organizations shall be made from the proper item or
22 appropriation after an itemized schedule of such organizations,
23 together with the amount of such dues or membership, has been
24 submitted to the budget director and approved by the governor.

25 (c) It shall be lawful for the higher education policy
26 commission or a higher education governing board to authorize
27 the payment of traveling expenses incurred by any person
28 invited to visit the campus of any state institution of higher
29 education or any other facility under control of a higher
30 education governing board or the higher education policy
31 commission to be interviewed concerning his or her possible
32 employment by a higher education governing board, the higher
33 education policy commission or agent thereof.

34 (d) It shall be lawful for the higher education policy
35 commission or a higher education governing board to authorize
36 payment of: (1) All or part of the reasonable expense incurred
37 by a person newly employed by a higher education governing
38 board or the higher education policy commission in moving his
39 or her household furniture, effects and immediate family to his
40 or her place of employment; and (2) all or part of the reasonable
41 expense incurred by an employee of a higher education
42 governing board or the higher education policy commission in
43 moving his or her household furniture, effects and immediate
44 family as a result of a reassignment of the employee which is
45 considered desirable, advantageous to and in the best interest of
46 the state: *Provided*, That no part of the moving expenses of any

47 one such employee shall be paid more frequently than once in
48 twelve months.

CHAPTER 18. EDUCATION.

Article

11C. West Virginia University Hospital and West Virginia Health System.

23. Additional Powers, Duties and Responsibilities of Governing Boards of State Institutions of Higher Education.

ARTICLE 11C. WEST VIRGINIA UNIVERSITY HOSPITAL AND WEST VIRGINIA HEALTH SYSTEM.

§18-11C-1. Definitions.

§18-11C-3. Board authorized to contract with corporation; description to be met by corporation.

§18-11C-1. Definitions.

1 The following words used in this article shall, unless the
2 context clearly indicates a different meaning, be construed as
3 follows:

4 (a) "Agreement" means the long-term lease and agreement
5 to be entered into between the board and the corporation
6 pursuant to section four of this article;

7 (b) "Assets" means all assets of the board constituting
8 tangible and intangible personal property credited to the
9 hospital on the financial ledgers and equipment inventories of
10 the university at the transfer date, and as more particularly or
11 additionally identified or supplemented in the agreement,
12 excluding all hospital funds deposited with the state treasurer;

13 (c) For the purposes of this article, "board" or "board of
14 trustees" means the West Virginia university board of
15 governors;

16 (d) "Corporation" means the nonstock, not-for-profit
17 corporation to be established under the general corporation laws
18 of the state, which meets the description prescribed by section
19 three of this article;

20 (e) "Corporation employees" means employees of the
21 corporation;

22 (f) "Directors" means the board of directors of the
23 corporation;

24 (g) "Existing facilities" means the West Virginia university
25 hospital and clinics, other than those used for student health and
26 family practice, presently existing at the West Virginia
27 university medical center in Morgantown and owned and
28 operated by the board;

29 (h) "Health science schools" means the schools of
30 medicine, dentistry, pharmacy and nursing and any other
31 schools at the university considered by the board to be health
32 sciences;

33 (i) "Hospital" means the inpatient and outpatient health care
34 services of the board, other than those used for student health
35 services and family practice clinics, operated in connection with
36 the university, consisting of the existing facilities and any other
37 health care service components of the West Virginia university
38 medical center at Morgantown rendering patient care services
39 and more particularly identified by the agreement;

40 (j) "Liabilities" means all liabilities, except those
41 specifically excluded by section four of this article, credited to
42 the hospital on the financial ledgers of the university at the
43 transfer date and as more particularly or additionally identified,
44 supplemented or limited in the agreement;

45 (k) "Medical personnel" means both university personnel
46 and corporation employees;

47 (l) "New facilities" means a new hospital facility and
48 out-patient clinics, appurtenant facilities, equipment and
49 necessary services to be acquired, built, operated or contracted
50 for by the corporation on property leased from the board within
51 Monongalia County, West Virginia, pursuant to the agreement;

52 (m) "Transfer date" means the first day of July, one
53 thousand nine hundred eighty-four, or any later date agreed
54 upon by the board and the corporation and filed with the
55 secretary of state;

56 (n) "University" means West Virginia university;

57 (o) "University personnel" means those employees of the
58 board or the university for whose services the corporation
59 contracts with the board or the university, as appropriate; and

60 (p) "West Virginia health system" or "system" means the
61 nonstock, not-for-profit corporation to be established under the
62 general corporation laws of the state, which meets the
63 description set forth in section three-a of this article.

**§18-11C-3. Board authorized to contract with corporation;
description to be met by corporation.**

1 The board is hereby authorized to enter into the agreement
2 and any other contractual relationships authorized by this article
3 with the corporation, but only if the corporation meets the
4 following description:

5 (a) The directors of the corporation, all of whom shall be
6 voting, shall consist of the president of the university, who shall
7 serve ex officio as chairman of the directors, the vice chancellor
8 for health sciences of the higher education policy commission,

9 one designee of the board: *Provided*, That if the position of vice
10 chancellor for health sciences has not been filled, the board
11 shall designate one additional member to serve until the
12 position is filled, the vice president for health sciences of the
13 university, the vice president for administration and finance of
14 the university, the chief of the medical staff of the hospital, the
15 dean of the school of medicine of the university, the dean of the
16 school of nursing of the university and the chief executive
17 officer of the corporation, all of whom shall serve as ex officio
18 members of the directors, a representative elected at large by
19 the corporation employees and seven directors to be appointed
20 by the West Virginia health system board. The West Virginia
21 health system board shall select and appoint the seven
22 appointed members in accordance with the provisions of section
23 six-a, article five-b, chapter sixteen of this code: *Provided*,
24 *however*, That the current directors of the corporation shall
25 continue to serve until they resign or their term expires. On and
26 after the effective date of this section, the seven appointed
27 directors shall be appointed by the system board for staggered
28 six-year terms. The system board shall select all of the
29 appointed members in a manner which assures geographic
30 diversity and assures that at least two members are from each
31 congressional district.

32 (b) The corporation shall report its audited records publicly
33 and to the joint committee on government and finance at least
34 annually.

35 (c) Upon liquidation of the corporation, the assets of the
36 corporation shall be transferred to the board for the benefit of
37 the university.

**ARTICLE 23. ADDITIONAL POWERS, DUTIES AND RESPONSIBILITIES
OF GOVERNING BOARDS OF STATE INSTITUTIONS
OF HIGHER EDUCATION.**

**§18-23-4a. Supplemental and additional retirement plans for
employees; payroll deductions; authority to match**

employee contributions; retroactive curative and technical corrective action.

1 (a) Any reference in this code to the “additional retirement
2 plan” relating to state higher education employees, means the
3 “higher education retirement plan” provided in this section.
4 Any state higher education employee participating in a
5 retirement plan upon the effective date of this section continues
6 to participate in that plan and may not elect to participate in any
7 other state retirement plan. Any such retirement plan continues
8 to be governed by the provisions of law applicable on the
9 effective date of this section.

10 (b) The higher education policy commission, on behalf of
11 the governing boards and itself, shall contract for a retirement
12 plan for its employees, to be known as the “higher education
13 retirement plan”. The governing boards and higher education
14 policy commission shall make periodic deductions from the
15 salary payments due the employees in the amount they are
16 required to contribute to the higher education retirement plan,
17 which deductions shall be six percent.

18 (c) The higher education policy commission and the
19 governing boards, with policy commission approval, may
20 contract for a supplemental retirement plan for any or all of
21 their employees to supplement the benefits the employees
22 otherwise receive. The governing boards and higher education
23 policy commission may make additional periodic deductions
24 from the salary payments due the employees in the amount they
25 are required to contribute for the supplemental retirement plan.

26 (d) The higher education policy commission shall conduct
27 a study of the feasibility of offering multiple vendors of
28 retirement products and services to be offered for the benefit of
29 higher education employees. The commission shall report the
30 findings of the study, along with a plan for offering multiple

31 vendors for the employees, to the joint committee on pensions
32 and retirement no later than the first day of December, two
33 thousand one. Upon approval by the joint committee on
34 pensions and retirement, the commission shall provide a choice
35 of vendors to their employees. Any selection of vendors made
36 by the commission shall be determined according to a request
37 for proposal issued pursuant to the provisions of section four,
38 article five, chapter eighteen-b of this code.

39 (e) Each governing board and the higher education policy
40 commission, by way of additional compensation to their
41 employees, shall pay an amount equal to the contributions of
42 the employees into the higher education retirement plan from
43 funds appropriated to the board or commission for personal
44 services.

45 (f) Each participating employee has a full and immediate
46 vested interest in the retirement and death benefits accrued from
47 all the moneys paid into the higher education retirement plan or
48 a supplemental retirement plan for his or her benefit. Upon
49 proper requisition of a board or the higher education policy
50 commission, the auditor shall periodically issue a warrant,
51 payable as specified in the requisition, for the total
52 contributions so withheld from the salaries of all participating
53 employees and for the governing board's or higher education
54 policy commission's matching funds.

55 (g) Any person whose employment commences on or after
56 the effective date of this section, and who is eligible to
57 participate in the higher education retirement plan, shall
58 participate in that plan and is not eligible to participate in any
59 other state retirement system. The additional retirement plan
60 contracted for by the governing boards prior to the effective
61 date of this section remains in effect unless changed by the
62 higher education policy commission. Nothing in this section
63 may be construed to consider employees of the governing

64 boards as employees of the higher education policy
65 commission, nor is the higher education policy commission
66 responsible or liable for retirement benefits contracted by, or on
67 behalf of, the governing boards.

68 (h) It is the intent of the Legislature in amending and
69 reenacting this section during its two thousand one regular
70 session solely to:

71 (1) Maintain the current retirement plans offered to state
72 higher education employees in their current form;

73 (2) Clarify that employees of the higher education policy
74 commission are participants in the higher education retirement
75 plan;

76 (3) Codify the current contribution levels of the governing
77 boards, the higher education policy commission and their
78 employees toward the present higher education retirement plan;

79 (4) Make mandatory the contribution levels of the
80 governing boards and higher education policy commission;

81 (5) Establish a standardized retirement policy for all state
82 higher education employees as determined by the policy
83 commission;

84 (6) Clarify the application and purposes of the additional
85 and supplemental retirement plans previously provided for in
86 this section; and

87 (7) Remove obsolete and archaic language.

CHAPTER 18B. HIGHER EDUCATION.

Article

1. Governance.

1A. Compact with Higher Education for the Future of West Virginia.

- 1B. Higher Education Policy Commission.
- 2A. Institutional Boards of Governors.
- 2B. West Virginia Council for Community and Technical College Education.
- 2C. West Virginia Community and Technical College.
- 3C. Community and Technical College System.
5. Higher Education Budgets and Expenditures.
6. Advisory Councils of Faculty.
7. Personnel Generally.
9. Classified Employee Salary Schedule and Classification System.
10. Fees and Other Money Collected at State Institutions of Higher Education.
- 11A. State Autism Training Center.
14. Miscellaneous.

ARTICLE 1. GOVERNANCE.

§18B-1-1a. Goals for post-secondary education.

§18B-1-3. Transfer of powers, duties, property, obligations, etc., of prior governing boards to the higher education policy commission and governing boards.

§18B-1-6. Rule making.

§18B-1-1a. Goals for post-secondary education.

1 (a) *Findings.* — The Legislature finds that post-secondary
2 education is vital to the future of West Virginia. For the state to
3 realize its considerable potential in the twenty-first century, it
4 must have a system for the delivery of post-secondary
5 education which is competitive in the changing national and
6 global environment, is affordable within the fiscal constraints
7 of the state and for the state's residents to participate and has
8 the capacity to deliver the programs and services necessary to
9 meet regional and statewide needs.

10 (1) West Virginia leads a national trend toward an aging
11 population wherein a declining percentage of working-age
12 adults will be expected to support a growing percentage of
13 retirees. Public school enrollments statewide have declined and
14 will continue to do so for the foreseeable future with a few
15 notable exceptions in growing areas of the state. As the state

16 works to expand and diversify its economy, it is vitally
17 important that young people entering the work force from our
18 education systems have the knowledge and skills to succeed in
19 the economy of the twenty-first century. It is equally important,
20 however, that working-age adults who are the large majority of
21 the current and potential work force also possess the requisite
22 knowledge and skills and the ability to continue learning
23 throughout their lifetimes. The reality for West Virginia is that
24 its future rests not only on how well its youth are educated, but
25 also on how well it educates its entire population of any age.

26 (2) Post-secondary education is changing throughout the
27 nation. Place-bound adults, employers and communities are
28 demanding education and student services that are accessible at
29 any time, at any place and at any pace. Institutions are seizing
30 the opportunity to provide academic content and support
31 services on a global scale by designing new courseware,
32 increasing information technology-based delivery, increasing
33 access to library and other information resources and
34 developing new methods to assess student competency rather
35 than “seat time” as the basis for recognizing learning, allocating
36 resources and ensuring accountability. In this changing
37 environment, the state must take into account the continuing
38 decline in the public school-age population, the limits of its
39 fiscal resources and the imperative need to serve the
40 educational needs of working-age adults. West Virginia cannot
41 afford to finance quality higher education systems that aspire to
42 offer a full array of programs while competing among
43 themselves for a dwindling pool of traditional applicants. The
44 competitive position of the state and its institutions will depend
45 fundamentally on its capacity to reinforce the quality and
46 differentiation of its institutions through policies that encourage
47 focus and collaboration.

48 (3) The current accountability system is exceptionally
49 complicated and largely defines accountability in terms of

50 institutional procedures. It also is not well equipped to address
51 cross-cutting issues such as regional economic and work force
52 development, community and technical college services,
53 collaboration with the public schools to improve quality and
54 student participation rates, access to graduate education and
55 other broad issues of state interest. Severe fiscal constraints
56 require West Virginia to make maximum use of existing assets
57 to meet new demands. New investments must be targeted to
58 those initiatives designed to enhance and reorient existing
59 capacity, provide incentives for collaboration and focus on the
60 new demands. It must have a single accountability point for
61 developing, building consensus around and sustaining attention
62 to the public policy agenda and for allocating resources
63 consistent with this policy agenda.

64 (4) The state should make the best use of the expertise that
65 private institutions of higher education can offer and recognize
66 the importance of their contributions to the economic, social
67 and cultural well-being of their communities.

68 (5) The system of public higher education should be open
69 and accessible to all persons, including persons with disabilities
70 and other persons with special needs.

71 (b) *Compact with higher education.* — In pursuance of
72 these findings, it is the intent of the Legislature to engage
73 higher education in a statewide compact for the future of West
74 Virginia, as provided in article one-a of this chapter, that
75 focuses on a public policy agenda that includes, but is not
76 limited to, the following:

77 (1) Diversifying and expanding the economy of the state;

78 (2) Increasing the competitiveness of the state's work force
79 and the availability of professional expertise by increasing the
80 number of college degrees produced to the level of the national

81 average and significantly improving the level of adult
82 functional literacy; and

83 (3) Creating a system of higher education that is equipped
84 to succeed at producing these results.

85 (c) *Elements of the compact with higher education.* — It is
86 the intent of the Legislature that the compact with higher
87 education include the following elements:

88 (1) A step-by-step process, as provided in articles one-b and
89 three-c of this chapter, which will enable the state to achieve its
90 public policy agenda through a system of higher education
91 equipped to assist in producing the needed results. This process
92 includes, but is not limited to, separate institutional compacts
93 with state institutions of higher education that describe changes
94 in institutional missions in the areas of research, graduate
95 education, admission standards, community and technical
96 college education and geographical areas of responsibility to
97 accomplish the following:

98 (A) A capacity within higher education to conduct research
99 to enhance West Virginia in the eyes of the larger economic and
100 educational community and to provide a basis for West
101 Virginia's improved capacity to compete in the new economy
102 through research oriented to state needs;

103 (B) Access to stable and continuing graduate level
104 programs in every region of the state, particularly in teacher
105 education related to teaching within a subject area to improve
106 teacher quality;

107 (C) Universities and colleges that have focused missions,
108 their own points of distinction and quality and strong links with
109 the educational, economic and social revitalization of their
110 regions and the state of West Virginia;

111 (D) Greater access and capacity to deliver technical
112 education, work force development and other higher education
113 services to place-bound adults thus improving the general levels
114 of post-secondary educational attainment and literacy;

115 (E) Independently accredited community and technical
116 colleges in every region of the state, to the extent possible, that:
117 (i) Assess regional needs; (ii) ensure access to comprehensive
118 community and technical college and work force development
119 services within each of their respective regions; (iii) convene
120 and act as a catalyst for local action in collaboration with
121 regional leaders, employers and other educational institutions;
122 (iv) provide and, as necessary, broker educational services; (v)
123 provide necessary student services; (vi) fulfill such other
124 aspects of the community and technical college mission and
125 general provisions for community and technical colleges as
126 provided for in article three-c of this chapter; and (vii) make
127 maximum use of existing infrastructure and resources within
128 their regions to increase access, including, but not limited to,
129 vocational technical centers, schools, libraries, industrial parks
130 and work sites.

131 (2) Providing additional resources, subject to availability
132 and appropriation by the Legislature, as provided in article
133 one-a of this chapter, to make the state institutions of higher
134 education more competitive with their peers, assist them in
135 accomplishing the elements of the public policy agenda and
136 ensure the continuity of academic programs and services to
137 students.

138 (3) Establishing a process for the allocation of additional
139 resources which focuses on achieving the elements of the public
140 policy agenda and streamlines accountability for the
141 step-by-step progress toward achieving these elements within
142 a reasonable time frame as provided in article one-a of this
143 chapter.

144 (4) Providing additional flexibility to the state institutions
145 of higher education by making permanent the exceptions
146 granted to higher education relating to travel rules and vehicles
147 pursuant to sections forty-eight through fifty-three, inclusive,
148 article three, chapter five-a of this code and section eleven,
149 article three, chapter twelve of this code.

150 (5) Revising the higher education governance structure to
151 make it more responsive to state and regional needs.

152 (d) *General goals for post-secondary education.* — In
153 pursuance of the findings and the development of institutional
154 compacts with higher education for the future of West Virginia
155 pursuant to article one-a of this chapter, it is the intent of the
156 Legislature to establish general goals for post-secondary
157 education and to have the commission report the progress
158 toward achieving these goals in the higher education report card
159 required pursuant to section eight, article one-b of this chapter
160 and, where applicable, made a part of the institutional
161 compacts. The Legislature establishes the general goals as
162 follows:

163 (1) The overall focus of education is on a lifelong process
164 which is to be as seamless as possible at all levels and is to
165 encourage citizens of all ages to increase their knowledge and
166 skills. Efforts in pursuit of this goal include, but are not limited
167 to, the following:

168 (A) Collaboration, coordination and interaction between
169 public and post-secondary education to: (i) Improve the quality
170 of public education, particularly with respect to ensuring that
171 the needs of public schools for teachers and administrators is
172 met; (ii) inform public school students, their parents and
173 teachers of the academic preparation that students need to be
174 prepared adequately to succeed in their selected fields of study
175 and career plans; and (iii) improve instructional programs in the

176 public schools so that the students enrolling in post-secondary
177 education are adequately prepared;

178 (B) Collaboration, coordination and interaction between
179 public and post-secondary education, the governor's council on
180 literacy and the governor's work force investment office to
181 promote the effective and efficient utilization of work force
182 investment and other funds to: (i) Provide greatly improved
183 access to information and services for individuals and
184 employers on education and training programs, financial
185 assistance, labor markets and job placement; (ii) increase
186 awareness among the state's citizens of the opportunities
187 available to them to improve their basic literacy, work force and
188 post-secondary skills and credentials; and (iii) help improve
189 their motivation to take advantage of available opportunities by
190 making the system more seamless and user friendly;

191 (C) Collaboration, coordination and interaction between
192 public and post-secondary education on the development of
193 seamless curriculum in technical preparation programs of study
194 between the secondary and post-secondary levels; and

195 (D) Opportunities for advanced high school students to
196 obtain college credit prior to high school graduation.

197 (2) The number of degrees produced per capita by West
198 Virginia institutions of higher education is at the national
199 average. Efforts in pursuit of this goal include, but are not
200 limited to, the following:

201 (A) Collaboration, coordination and interaction between
202 public and post-secondary education, the governor's council on
203 literacy and the governor's work force investment office to
204 promote to individuals of all ages the benefits of increased
205 post-secondary educational attainment;

206 (B) Assistance in overcoming the financial barriers to
207 post-secondary education for both traditional and nontraditional
208 students;

209 (C) An environment within post-secondary education that
210 is student-friendly and that encourages and assists students in
211 the completion of degree requirements within a reasonable time
212 frame. The environment also should expand participation for
213 the increasingly diverse student population;

214 (D) A spirit of entrepreneurship and flexibility within
215 post-secondary education that is responsive to the needs of the
216 current work force and other nontraditional students for
217 upgrading and retraining college-level skills; and

218 (E) The expanded use of technology for instructional
219 delivery and distance learning.

220 (3) All West Virginians, whether traditional or
221 nontraditional students, displaced workers or those currently
222 employed, have access to post-secondary educational
223 opportunities through their community and technical colleges,
224 colleges and universities which:

225 (i) Are relevant and affordable; (ii) allow them to gain
226 transferrable credits and associate or higher level degrees; (iii)
227 provide quality technical education and skill training; and (iv)
228 are responsive to business, industry, labor and community
229 needs.

230 (4) State institutions of higher education prepare students
231 to practice good citizenship and to compete in a global
232 economy in which good jobs require an advanced level of
233 education and skills which far surpasses former requirements.
234 Efforts in pursuit of this goal include, but are not limited to, the
235 following:

236 (A) The development of entrepreneurial skills through
237 programs such as the rural entrepreneurship through action
238 learning (REAL) program which include practical experience
239 in market analysis, business plan development and operations;

240 (B) Elements of citizenship development are included
241 across the curriculum in core areas, including practical
242 applications such as community service, civic involvement and
243 participation in charitable organizations and in the many
244 opportunities for the responsible exercise of citizenship that
245 higher education institutions provide;

246 (C) Students are provided opportunities for internships,
247 externships, work study and other methods to increase their
248 knowledge and skills through practical application in a work
249 environment;

250 (D) College graduates meet or exceed national and
251 international standards for skill levels in reading, oral and
252 written communications, mathematics, critical thinking, science
253 and technology, research and human relations;

254 (E) College graduates meet or exceed national and
255 international standards for performance in their fields through
256 national accreditation of programs and through outcomes
257 assessment of graduates; and

258 (F) Admission and exit standards for students, professional
259 staff development, program assessment and evaluation and
260 other incentives are used to improve teaching and learning.

261 (5) State institutions of higher education exceed peer
262 institutions in other states in measures of institutional
263 productivity and administrative efficiency. Efforts in pursuit of
264 this goal include, but are not limited to:

265 (A) The establishment of systematic ongoing mechanisms
266 for each state institution of higher education to set goals, to
267 measure the extent to which those goals are met and to use the
268 results of quantitative evaluation processes to improve
269 institutional effectiveness;

270 (B) The combination and use of resources, technology and
271 faculty to their maximum potential in a way that makes West
272 Virginia higher education more productive than its peer
273 institutions in other states while maintaining educational
274 quality; and

275 (C) The use of systemic program review to determine how
276 much duplication is necessary to maintain geographic access
277 and to eliminate unnecessary duplication.

278 (6) Post-secondary education enhances state efforts to
279 diversify and expand the economy of the state. Efforts in
280 pursuit of this goal include, but are not limited to, the
281 following:

282 (A) The focus of resources on programs and courses which
283 offer the greatest opportunities for students and the greatest
284 opportunity for job creation and retention in the state;

285 (B) The focus of resources on programs supportive of West
286 Virginia employment opportunities and the emerging
287 high-technology industries;

288 (C) Closer linkages among higher education and business,
289 labor, government and community and economic development
290 organizations; and

291 (D) Clarification of institutional missions and shifting of
292 resources to programs which meet the current and future work
293 force needs of the state.

294 (7) Faculty and administrators are compensated on a
295 competitive level with peer institutions to attract and keep
296 quality personnel at state institutions of higher education.

297 (8) The tuition and fee levels for in-state students are
298 competitive with those of peer institutions and the tuition and
299 fee levels for out-of-state students are set at a level which at the
300 least covers the full cost of instruction.

**§18B-1-3. Transfer of powers, duties, property, obligations, etc.,
of prior governing boards to the higher education
policy commission and governing boards.**

1 (a) All powers, duties and authorities transferred to the
2 board of regents pursuant to former provisions of chapter
3 eighteen of this code and transferred to the board of trustees and
4 board of directors which were created as the governing boards
5 pursuant to the former provisions of this chapter and all powers,
6 duties and authorities of the board of trustees and board of
7 directors, to the extent they are in effect on the seventeenth day
8 of June, two thousand, are hereby transferred to the interim
9 governing board created in article one-c of this chapter and
10 shall be exercised and performed by the interim governing
11 board until the first day of July, two thousand one, as such
12 powers, duties and authorities may apply to the institutions
13 under its jurisdiction.

14 (b) Title to all property previously transferred to or vested
15 in the board of trustees and the board of directors and property
16 vested in either of the boards separately, formerly existing
17 under the provisions of chapter eighteen-b of this code, are
18 hereby transferred to the interim governing board created in
19 article one-c of this chapter until the first day of July, two
20 thousand one. Property transferred to or vested in the board of
21 trustees and board of directors shall include:

22 (1) All property vested in the board of governors of West
23 Virginia university and transferred to and vested in the West
24 Virginia board of regents;

25 (2) All property acquired in the name of the state board of
26 control or the West Virginia board of education and used by or
27 for the state colleges and universities and transferred to and
28 vested in the West Virginia board of regents;

29 (3) All property acquired in the name of the state
30 commission on higher education and transferred to and vested
31 in the West Virginia board of regents; and

32 (4) All property acquired in the name of the board of
33 regents and transferred to and vested in the respective board of
34 trustees and board of directors.

35 (c) Each valid agreement and obligation previously
36 transferred to or vested in the board of trustees and board of
37 directors formerly existing under the provisions of chapter
38 eighteen-b of this code is hereby transferred to the interim
39 governing board until the first day of July, two thousand one, as
40 those agreements and obligations may apply to the institutions
41 under its jurisdiction. Valid agreements and obligations
42 transferred to the board of trustees and board of directors shall
43 include:

44 (1) Each valid agreement and obligation of the board of
45 governors of West Virginia university transferred to and
46 deemed the agreement and obligation of the West Virginia
47 board of regents;

48 (2) Each valid agreement and obligation of the state board
49 of education with respect to the state colleges and universities
50 transferred to and deemed the agreement and obligation of the
51 West Virginia board of regents;

52 (3) Each valid agreement and obligation of the state
53 commission on higher education transferred to and deemed the
54 agreement and obligation of the West Virginia board of regents;
55 and

56 (4) Each valid agreement and obligation of the board of
57 regents transferred to and deemed the agreement and obligation
58 of the respective board of trustees and board of directors.

59 (d) All orders, resolutions and rules adopted or promulgated
60 by the respective board of trustees and board of directors and in
61 effect immediately prior to the first day of July, two thousand,
62 are hereby transferred to the interim governing board until the
63 first day of July, two thousand one, and shall continue in effect
64 and shall be deemed the orders, resolutions and rules of the
65 interim governing board until rescinded, revised, altered or
66 amended by the commission or the governing boards in the
67 manner and to the extent authorized and permitted by law. Such
68 orders, resolutions and rules shall include:

69 (1) Those adopted or promulgated by the board of
70 governors of West Virginia university and in effect
71 immediately prior to the first day of July, one thousand nine
72 hundred sixty-nine, unless and until rescinded, revised, altered
73 or amended by the board of regents in the manner and to the
74 extent authorized and permitted by law;

75 (2) Those respecting state colleges and universities adopted
76 or promulgated by the West Virginia board of education and in
77 effect immediately prior to the first day of July, one thousand
78 nine hundred sixty-nine, unless and until rescinded, revised,
79 altered or amended by the board of regents in the manner and
80 to the extent authorized and permitted by law;

81 (3) Those adopted or promulgated by the state commission
82 on higher education and in effect immediately prior to the first
83 day of July, one thousand nine hundred sixty-nine, unless and

84 until rescinded, revised, altered or amended by the board of
85 regents in the manner and to the extent authorized and
86 permitted by law; and

87 (4) Those adopted or promulgated by the board of regents
88 prior to the first day of July, one thousand nine hundred
89 eighty-nine, unless and until rescinded, revised, altered or
90 amended by the respective board of trustees or board of
91 directors in the manner and to the extent authorized and
92 permitted by law.

93 (e) Title to all real property transferred to or vested in the
94 interim governing board pursuant to this section of the code is
95 hereby transferred to the commission effective the first day of
96 July, two thousand one. The board of governors for each
97 institution may request that the commission transfer title to the
98 board of governors of any real property specifically identifiable
99 with that institution or the commission may initiate the transfer.
100 Any such request must be made within two years of the
101 effective date of this section and be accompanied by an
102 adequate legal description of the property. The title to any real
103 property that is jointly utilized by institutions or for statewide
104 programs under the jurisdiction of the commission shall be
105 retained by the commission.

106 (f) Ownership of or title to any other property, materials,
107 equipment, or supplies obtained or purchased by the interim
108 governing board or the previous governing boards on behalf of
109 an institution is hereby transferred to the board of governors of
110 that institution effective the first day of July, two thousand one.

111 (g) Each valid agreement and obligation previously
112 transferred or vested in the interim governing board and which
113 was undertaken or agreed to on behalf of an institution or
114 institutions is hereby transferred to the board of governors of
115 the institution or institutions for whose benefit the agreement

116 was entered into or the obligation undertaken, effective the first
117 day of July, two thousand one. The obligations contained in
118 revenue bonds issued by the previous governing boards under
119 the provisions of section eight, article ten, chapter eighteen-b
120 and article twelve-b, chapter eighteen of this code are hereby
121 transferred to the commission and each institution shall transfer
122 to the commission those funds the commission determines are
123 necessary to pay that institution's share of bonded indebtedness.
124 The obligations contained in revenue bonds issued on behalf of
125 a state institution of higher education pursuant to any other
126 section of this code is hereby transferred to the board of
127 governors of the institution on whose behalf the bonds were
128 issued.

129 (h) All orders, resolutions, policies and rules adopted or
130 promulgated by the respective board of trustees, board of
131 directors, or interim governing board and in effect immediately
132 prior to the first day of July, two thousand one, are hereby
133 transferred to the commission effective the first day of July, two
134 thousand one, and shall continue in effect until rescinded,
135 revised, altered or amended or transferred to the governing
136 boards by the commission as set out in this section and in
137 section six, article one of this chapter.

138 (i) The commission may, in its sole discretion, transfer any
139 rule, other than a legislative rule, to the jurisdiction of the
140 governing boards who may rescind, revise, alter or amend any
141 rule so transferred pursuant to rules adopted by the commission.

142 (j) As to any title, agreement, obligation, order, resolution,
143 rule or any other matter about which there is some uncertainty,
144 misunderstanding or question, the matter shall be summarized
145 in writing and sent to the commission which shall make a
146 determination regarding such matter within thirty days of
147 receipt thereof.

148 (k) Rules or provisions of law which refer to other
149 provisions of law which were repealed, rendered inoperative or
150 superseded by the provisions of this section shall remain in full
151 force and effect to such extent as may still be applicable to
152 higher education and may be so interpreted. Such references
153 include, but are not limited to, references to sections and prior
154 enactments of article twenty-six, chapter eighteen of this code
155 and code provisions relating to retirement, health insurance,
156 grievance procedures, purchasing, student loans and savings
157 plans. Any determination which needs to be made regarding
158 applicability of any provision of law shall first be made by the
159 commission.

§18B-1-6. Rule making.

1 (a) Effective the first day of July, two thousand one, the
2 commission is hereby empowered to promulgate, adopt, amend
3 or repeal rules, in accordance with the provisions of article
4 three-a, chapter twenty-nine-a of this code.

5 (b) The commission shall promulgate a rule to guide the
6 development and approval of rules, guidelines and other policy
7 statements made by the governing boards. The rule
8 promulgated by the commission shall include, but is not limited
9 to, the following provisions:

10 (1) A procedure to ensure that public notice is given and
11 that the right of interested parties to have a fair and adequate
12 opportunity to respond is protected;

13 (2) Designation of a single location where all proposed and
14 approved rules, guidelines and other policy statements can be
15 accessed by the public;

16 (3) A procedure to maximize internet access to all proposed
17 and approved rules, guidelines and other policy statements, to
18 the extent technically and financially feasible.

19 (c) On and after the effective date of this section, and
20 notwithstanding any other provision of this code to the contrary,
21 no rule heretofore required by law to be promulgated as a
22 legislative rule may be considered to be a legislative rule for the
23 purposes of article three-a, chapter twenty-nine-a of this code,
24 except for the following:

25 (1) The legislative rule required by subsection (c), section
26 eight, article one of this chapter;

27 (2) The legislative rule required by section eight-a, article
28 one of this chapter;

29 (3) The legislative rule required by section two, article one-
30 a of this chapter;

31 (4) The legislative rule required by section four, article one-
32 b of this chapter;

33 (5) The legislative rule required by section one, article
34 three, chapter eighteen-c of this code;

35 (6) The legislative rule required by section one, article four,
36 chapter eighteen-c of this code;

37 (7) The legislative rule required by section seven, article
38 five, chapter eighteen-c of this code; and

39 (8) The legislative rule required by section one, article six,
40 chapter eighteen-c of this code.

41 (d) On or after the effective date of this section and before
42 the first day of October, two thousand one, notwithstanding any
43 other provision of this code to the contrary, any rule heretofore
44 promulgated as a legislative rule which was not required
45 specifically by law to be promulgated as a legislative rule, or
46 any rule previously required to be a legislative rule by statute

47 but reclassified by subsection (c) of this section, may be
48 reclassified by the commission either as an interpretive rule or
49 as a procedural rule. The commission shall notify in writing the
50 legislative oversight commission on education accountability of
51 such reclassification and shall file such notice with the office of
52 the secretary of state to be published in the state register.

53 (e) Nothing in this section may be construed to require that
54 any rule reclassified under this section be promulgated again
55 under the procedures set out in article three-a, chapter twenty-
56 nine-a unless the rule is amended or modified.

57 (f) The commission shall cause a copy of any rule it
58 proposes to promulgate, adopt, amend or repeal under the
59 authority of this article to be filed with the legislative oversight
60 commission on education accountability created in said article
61 three-a, chapter twenty-nine-a of this code.

ARTICLE 1A. COMPACT WITH HIGHER EDUCATION FOR THE FUTURE OF WEST VIRGINIA.

§18B-1A-2. Institutional compacts with state institutions of higher education;
establishment and review of process.

§18B-1A-6. Graduate education.

§18B-1A-2. Institutional compacts with state institutions of higher education; establishment and review process.

1 (a) Each institution of higher education shall prepare an
2 institutional compact for submission to the commission. When
3 the process herein provided is completed, the institutional
4 compacts shall form the agreement between the institutions of
5 higher education and the commission and, ultimately, between
6 the institutions of higher education and the people of West
7 Virginia on how the institutions will use their resources to
8 address the intent of the Legislature and the goals set forth in
9 section one-a, article one of this chapter. The compacts shall
10 contain the following:

11 (1) A step-by-step process to accomplish the intent of the
12 Legislature and the goals set forth in section one-a, article one
13 of this chapter as organized by the commission. The step-by-
14 step process shall be delineated by objectives and shall set forth
15 a time line for achieving the objectives which shall, where
16 applicable, include benchmarks to measure institutional
17 progress as defined in subsection (e) of this section.

18 (2) A determination of the mission of the institution which
19 specifically addresses changes, as applicable, in the areas of
20 research, graduate education, baccalaureate education, revised
21 admission requirements, community and technical colleges and
22 such other areas as the commission determines appropriate. In
23 the determination of mission, the institutions and the
24 commission shall consider the report completed by the national
25 center for higher education management systems pursuant to
26 the legislative study as provided in section seven, article three
27 of this chapter;

28 (3) A plan which is calculated to make any changes in
29 institutional mission and structure within a six-year period;

30 (4) A statement of the geographic areas of responsibility,
31 where applicable, for each goal to be accomplished as provided
32 in subsection (d) of this section;

33 (5) A detailed statement of how the compact is aligned with
34 and will be implemented in conjunction with the master plan of
35 the institution;

36 (6) Such other items, requirements or initiatives, required
37 by the commission, designed to accomplish the intent of the
38 Legislature and the goals set forth in section one-a, article one
39 of this chapter or other public policy goals established by the
40 commission.

41 (b) Each institutional compact shall be updated annually
42 and shall follow the same general guidelines contained in
43 subsection (a) of this section.

44 (c) Development and updating of the institutional compacts
45 shall be subject to the following:

46 (1) The ultimate responsibility for developing and updating
47 the institutional compacts at the institutional level resides with
48 the institutional board of advisors or the board of governors, as
49 appropriate;

50 (2) The ultimate responsibility for developing and adopting
51 the final version of the institutional compacts resides with the
52 commission;

53 (3) The initial institutional compacts shall be submitted to
54 the commission by the institutions on or before the first day of
55 February, two thousand one. The first annual updates shall be
56 submitted on or before the fifteenth day of November, two
57 thousand one, and succeeding updates shall be submitted on the
58 fifteenth day of November of each year thereafter;

59 (4) The commission shall review the initial institutional
60 compacts and the annual updates and either shall adopt the
61 institutional compact or return it with specific comments for
62 change or improvement. The commission shall continue this
63 process as long as it considers advisable;

64 (5) By the first day of May of each year, if the institutional
65 compact of any institution as presented by that institution is not
66 adopted by the commission, then the commission is empowered
67 and directed to develop and adopt the institutional compact for
68 the institution and the institution shall be bound by the compact
69 so adopted; and

70 (6) The commission shall, as far as practicable, establish
71 uniform processes and forms for the development and
72 submission of the institutional compacts. As a part of this
73 function, the commission shall organize the statements of
74 legislative intent and goals contained in section one-a, article
75 one of this chapter in a manner that facilitates the purposes of
76 this subdivision and the purposes of this section.

77 (d) The commission shall assign geographic areas of
78 responsibility to the state institutions of higher education as a
79 part of their institutional compacts to ensure that all areas of the
80 state are provided necessary programs and services to achieve
81 the public policy agenda. The benchmarks established in the
82 institutional compacts shall include measures of programs and
83 services by geographic area throughout the assigned geographic
84 area of responsibility.

85 (e) The compacts shall contain benchmarks used to
86 determine progress toward meeting the goals established in the
87 compacts. The benchmarks shall meet the following criteria:

88 (1) They shall be as objective as possible;

89 (2) They shall be directly linked to the goals in the
90 compacts;

91 (3) They shall be measured by the indicators described in
92 subsection (f) of this section; and

93 (4) Where applicable, they shall be used to measure
94 progress in geographic areas of responsibility.

95 (f) The commission shall establish by legislative rule
96 indicators which measure the degree to which the goals and
97 objectives set forth in section one-a, article one of this chapter,
98 are being addressed and met. The benchmarks established in

99 subsection (e) of this section shall be measured by the
100 indicators.

101 (1) The Legislature finds that an emergency exists, and
102 therefore the commission shall file as an emergency rule the
103 rule pertaining to benchmarks and indicators that was filed with
104 the office of the secretary of state on the twenty-sixth day of
105 December, two thousand. The commission shall file a
106 legislative rule in accordance with the provisions of article
107 three-a, chapter twenty-nine-a of this code to replace the
108 emergency rule no later than the first day of November, two
109 thousand one.

110 (2) The legislative rule shall set forth at the least the
111 following as pertains to all state institutions of higher
112 education:

113 (A) The indicators to be used to measure the degree to
114 which the goals and objectives are being met;

115 (B) Uniform definitions for the various data elements to be
116 used in establishing the indicators;

117 (C) Guidelines for the collection and reporting of data; and

118 (D) Sufficient detail within the benchmarks and indicators
119 to:

120 (i) Provide measurable evidence that the pursuits of the
121 institution are targeting the educational needs of the citizens of
122 the state and the components of the compacts and master plans;

123 (ii) Delineate the goals and benchmarks for an institution so
124 that the commission can precisely measure the degree to which
125 progress is being made toward achieving the goals for post-
126 secondary education provided in section one-a, article one of
127 this chapter; and

128 (iii) Distinctly identify specific goals within the master plan
129 or compact of an institution that are not being met, or toward
130 which sufficient progress is not being made.

131 (3) In addition to any other requirement, the legislative rule
132 shall set forth at the least the following as pertains to
133 community and technical college education:

134 (A) Benchmarks and indicators which are targeted to
135 identify:

136 (i) The degree to which progress is being made by
137 institutions toward meeting the goals for post-secondary
138 education and the essential conditions provided in section three,
139 article three-c of this chapter;

140 (ii) Information and data necessary to be considered by the
141 policy commission in making the determination required by
142 section three, article two-c of this chapter;

143 (iii) The degree to which progress is being made in the
144 areas considered by the commission for the purpose of making
145 the determination required by section three, article two-c of this
146 chapter; and

147 (B) Sufficient detail within the benchmarks and indicators
148 to provide clear evidence to support an objective determination
149 by the commission that an institution's progress toward
150 achieving the goals for post-secondary education and the
151 essential conditions is so deficient that implementation of the
152 provisions of section four, article two-c of this chapter is
153 warranted and necessary.

154 (g) The commission shall approve the master plans
155 developed by the boards of governors and the institutional
156 boards of advisors pursuant to subsection (b), section four,

157 article two-a of this chapter and subsection (k), section one,
158 article six of this chapter.

§18B-1A-6. Graduate education.

1 (a) *Intent.* — It is the intent of the Legislature to address the
2 need for high quality graduate education programs to be
3 available throughout the state.

4 (b) *Findings.* — The Legislature makes the following
5 findings:

6 (1) Since West Virginia ranks below its competitor states
7 in graduate degree production, particularly in the areas that are
8 important to the state's competitive position in the new
9 economy of the twenty-first century, there is a considerable
10 need for greater access to graduate education, especially at the
11 master's degree level;

12 (2) There is a significant disparity in access to part-time
13 graduate degree programs among the different regions of the
14 state and part-time graduate enrollments are heavily
15 concentrated in the counties immediately surrounding Marshall
16 university and West Virginia university;

17 (3) There is a particular need for increased access to
18 graduate programs linked directly to the revitalization of the
19 regional economies of the state; and

20 (4) There is a particular need for improved quality and
21 accessibility of pre-service and in-service programs for teachers
22 in subject matter fields.

23 (c) In order to meet the need for graduate education, the
24 commission shall be responsible for accomplishing the
25 following:

26 (1) Ensuring that West Virginia university and Marshall
27 university expand access to master's degree programs
28 throughout West Virginia, with a strong emphasis on
29 collaboration with the baccalaureate colleges and community
30 and technical colleges in each region;

31 (2) Ensuring that any institution providing a master's
32 degree program under the provisions of this section provides a
33 meaningful, coherent program by offering courses in such a
34 way that students, including place-bound adults, have ample
35 opportunity to complete a degree in a reasonable period of time;

36 (3) Focusing on providing courses that enhance the
37 professional skills of teachers in their subject areas; and

38 (4) Ensuring that programs are offered in the most cost-
39 effective manner to expand access throughout the region and
40 the state.

41 (d) Concord college, Fairmont state college, Shepherd
42 college, West Liberty state college and West Virginia state
43 college shall meet the need for graduate education in their
44 regions by following the procedures outlined below.

45 (1) The institutions shall develop as graduate centers for
46 their regions to broker access to graduate programs by
47 contracting with accredited colleges and universities in and out
48 of the state. These programs shall be related directly to each
49 region's education and economic needs.

50 (2) The institutions may begin collaborative programs with
51 other institutions leading to the granting of master's degrees in
52 selected areas that are demonstrated to be related directly to the
53 needs of their regions and that draw on faculty strengths. An
54 institution may continue to offer collaborative programs aimed
55 at meeting the documented needs with the approval of the

56 commission or, if a sustained need still exists, the institution
57 may move to the next level.

58 (3) If the graduate education needs of the region have not
59 been met through brokering and collaborative programs, the
60 institution may explore the option of beginning its own
61 graduate-level program leading to the granting of a master's
62 degree. The institution may begin its own master's degree
63 program if it can meet the following conditions as determined
64 by the commission:

65 (A) Demonstrate that the institution has successfully
66 completed each of the steps required before exploring
67 development of its own master's degree program;

68 (B) Provide evidence based on experience gained in the
69 brokering and collaborative arrangements that a sustained
70 demand exists for the program;

71 (C) Demonstrate that the baccalaureate institution has the
72 capacity to provide the program;

73 (D) Demonstrate that the core mission of the baccalaureate
74 institution will not be impaired by offering the graduate
75 program;

76 (E) Provide evidence that the graduate program has a
77 reasonable expectation of being accredited;

78 (F) Demonstrate that the need documented in subdivision
79 (B) of this subsection is not currently being met by any other
80 state institution of higher education; and

81 (G) The commission may designate one of the institutions
82 listed in subsection (d) of this section to develop and implement
83 no more than four of its own masters level programs as a pilot
84 project: *Provided*, That the selected institution shall move

85 toward and achieve regional accreditation of the masters
86 program within a reasonable time as determined by the
87 commission. The institution shall be selected based on the
88 following:

89 (I) Sufficient credentialed faculty to offer quality programs
90 in the areas selected;

91 (II) Sufficient unmet demand for the programs; and

92 (III) Sustainable unmet demand based on generally
93 accepted projections for population growth in the region served
94 by the institution.

95 The programs authorized by this clause may not be
96 restricted by the provisions of subdivisions (1), (2) and (3) of
97 this subsection nor by the provisions of subsection (e) of this
98 section.

99 (e) There is an urgent need for master's degree programs
100 for teachers in disciplines or subject areas, such as mathematics,
101 science, history, literature, foreign languages and the arts.
102 Currently, master's-level courses in education that are offered
103 in the regions served by the state universities are primarily in
104 areas such as guidance and counseling, administration, special
105 education and other disciplines unrelated to teaching in subject
106 areas. If this need is not being met in a region through the
107 procedure established in subsection (d) of this section, then the
108 graduate center in that region may plan a master's degree
109 program in education focused on teaching in subject area fields
110 in which the demand is not being met. No institution may begin
111 a graduate program under the provisions of this section until the
112 program has been reviewed and approved by the commission.
113 The commission shall approve only those programs, as
114 authorized by this subsection, that emphasize serving the needs
115 of teachers and schools in the colleges' immediate regions. In

116 determining whether a program should be approved, the
117 commission also shall rely upon the recommendations of the
118 statewide task force on teacher quality provided for in section
119 eight, article fourteen of this chapter.

120 (f) The commission shall review all graduate programs
121 being offered under the provisions of this section and, using the
122 criteria established for program startup in subsection (d) of this
123 section, determine which programs should be discontinued.

124 (g) At least annually, the governing boards shall evaluate
125 graduate programs developed pursuant to the provisions of this
126 section and report to the commission on the following:

127 (1) The number of programs being offered and the courses
128 offered within each program;

129 (2) The disciplines in which programs are being offered;

130 (3) The locations and times at which courses are offered;

131 (4) The number of students enrolled in the program; and

132 (5) The number of students who have obtained master's
133 degrees through each program.

134 The governing boards shall provide the commission with
135 any additional information the commission requests in order to
136 make a determination on the viability of a program.

137 (h) In developing any graduate program under the
138 provisions of this section, institutions shall consider delivering
139 courses at times and places convenient to adult students who are
140 employed full time. Institutions shall place an emphasis on
141 extended degree programs, distance learning and off-campus
142 centers which utilize the cost-effective nature of extending
143 existing university capacity to serve the state rather than

144 duplicating the core university capacity and incurring the
145 increased cost of developing master's degree programs at other
146 institutions throughout the state.

147 (i) Brokering institutions shall invite proposals from other
148 public institutions of higher education for service provision
149 prior to contracting with other institutions: *Provided*, That if
150 institutions propose providing graduate programs in service
151 areas other than in their responsibility district, the institution
152 seeking to establish a program shall work through the district's
153 lead institution in providing those services.

154 (j) In addition to the approval required by the commission,
155 authorization for any institution to offer a master's degree
156 program under the provisions of this section is subject to the
157 formal approval processes established by the governing boards.

ARTICLE 1B. HIGHER EDUCATION POLICY COMMISSION.

§18B-1B-4. Powers and duties of higher education policy commission.

§18B-1B-5. Employment of chancellor for higher education; office; powers and
duties generally; employment of vice chancellors.

§18B-1B-4. Powers and duties of higher education policy commission.

1 (a) The primary responsibility of the commission is to
2 develop, establish and implement policy that will achieve the
3 goals and objectives found in section one-a, article one of this
4 chapter. To that end, the commission has the following powers
5 and duties:

6 (1) Develop, oversee and advance the public policy agenda
7 to address major challenges facing the state, including, but not
8 limited to, the goals and objectives found in section one-a,
9 article one of this chapter and including specifically those goals
10 and objectives pertaining to the compacts created pursuant to
11 section two, article one-a of this chapter and to develop and

12 implement the master plan described in section ten of this
13 article for the purpose of accomplishing the mandates of this
14 section;

15 (2) Develop, oversee and advance the implementation of a
16 financing policy for higher education in West Virginia. The
17 policy shall meet the following criteria:

18 (A) Provide an adequate level of education and general
19 funding for institutions pursuant to section five, article one-a of
20 this chapter;

21 (B) Serve to maintain institutional assets, including, but not
22 limited to, human and physical resources and deferred
23 maintenance; and

24 (C) Invest and provide incentives for achieving the priority
25 goals in the public policy agenda, including, but not limited to,
26 those found in section one-a, article one of this chapter;

27 (3) Create a policy leadership structure capable of the
28 following actions:

29 (A) Developing, building public consensus around and
30 sustaining attention to a long-range public policy agenda. In
31 developing the agenda, the commission shall seek input from
32 the Legislature and the governor and specifically from the state
33 board of education and local school districts in order to create
34 the necessary linkages to assure smooth, effective and seamless
35 movement of students through the public education and
36 post-secondary education systems and to ensure that the needs
37 of public school courses and programs can be fulfilled by the
38 graduates produced and the programs offered;

39 (B) Ensuring that the governing boards carry out their duty
40 effectively to govern the individual institutions of higher
41 education; and

42 (C) Holding the higher education institutions and the higher
43 education system as a whole accountable for accomplishing
44 their missions and implementing the provisions of the
45 compacts;

46 (4) Develop and adopt each institutional compact;

47 (5) Review and adopt the annual updates of the institutional
48 compacts;

49 (6) Review the progress of community and technical
50 colleges in every region of West Virginia; such review includes,
51 but is not limited to, evaluating and reporting annually to the
52 legislative oversight commission on education accountability
53 on the step-by-step implementation required in article three-c
54 of this chapter;

55 (7) Serve as the accountability point for the governor for
56 implementation of the public policy agenda and for the
57 Legislature by maintaining a close working relationship with
58 the legislative leadership and the legislative oversight
59 commission on education accountability;

60 (8) Promulgate legislative rules pursuant to article three-a,
61 chapter twenty-nine-a to fulfill the purposes of section five,
62 article one-a of this chapter;

63 (9) Establish and implement a peer group for each public
64 institution of higher education in the state as described in
65 section three, article one-a of this chapter;

66 (10) Establish and implement the benchmarks and
67 performance indicators necessary to measure institutional
68 achievement towards state policy priorities and institutional
69 missions;

70 (11) In January, two thousand one, and annually thereafter,
71 report to the Legislature and to the legislative oversight
72 commission on education accountability during the January
73 interim meetings, on a date and at a time and location to be
74 determined by the president of the Senate and the speaker of the
75 House of Delegates. The report shall address at least the
76 following:

77 (A) The performance of the system of higher education
78 during the previous fiscal year, including, but not limited to,
79 progress in meeting goals stated in the compacts and progress
80 of the institutions and the higher education system as a whole
81 in meeting the goals and objectives set forth in section one-a,
82 article one of this chapter;

83 (B) An analysis of enrollment data collected pursuant to
84 subsection (i), section one, article ten of this chapter and
85 recommendations for any changes necessary to assure access to
86 high-quality, high-demand education programs for West
87 Virginia residents;

88 (C) The priorities established for capital investment needs
89 pursuant to subdivision (12) of this subsection and the
90 justification for such priority;

91 (E) Recommendations of the commission for statutory
92 changes needed to further the goals and objectives set forth in
93 section one-a, article one of this chapter;

94 (12) Establish a formal process for identifying needs for
95 capital investments and for determining priorities for these
96 investments;

97 (13) On or before the first day of October, two thousand,
98 develop, establish and implement guidelines for institutions to
99 follow concerning extensive capital projects. The guidelines
100 shall provide a process for developing capital projects,

101 including, but not limited to, the notification by an institution
102 to the commission of any proposed capital project which has the
103 potential to exceed one million dollars in cost. No such project
104 may be pursued by an institution without the approval of the
105 commission nor may an institution participate directly or
106 indirectly with any public or private entity in any capital project
107 which has the potential to exceed one million dollars in cost;

108 (14) Draw upon the expertise available within the
109 governor's work force investment office and the West Virginia
110 development office as a resource in the area of work force
111 development and training;

112 (15) Acquire legal services as are considered necessary,
113 including representation of the commission, its institutions,
114 employees and officers before any court or administrative body,
115 notwithstanding any other provision of this code to the contrary.
116 The counsel may be employed either on a salaried basis or on
117 a reasonable fee basis. In addition, the commission may, but is
118 not required to, call upon the attorney general for legal
119 assistance and representation as provided by law;

120 (16) Employ a chancellor for higher education pursuant to
121 section five of this article;

122 (17) Employ other staff as necessary and appropriate to
123 carry out the duties and responsibilities of the commission;

124 (18) Provide suitable offices in Charleston for the
125 chancellor, vice chancellors and other staff;

126 (19) Conduct a study of the faculty tenure system as
127 administered by the governing boards with specific attention to
128 the role of community service and other criteria for achieving
129 tenured status. The commission shall make a report of its
130 findings and recommendations to the legislative oversight

131 commission on education accountability by the first day of July,
132 two thousand one;

133 (20) Advise and consent in the appointment of the
134 presidents of the institutions of higher education pursuant to
135 section six of this article. The role of the commission in
136 approving an institutional president is to assure through
137 personal interview that the person selected understands and is
138 committed to achieving the goals and objectives as set forth in
139 the institutional compact and in section one-a, article one of this
140 chapter;

141 (21) Approve the total compensation package from all
142 sources for institutional presidents, as proposed by the
143 governing boards. The governing boards must obtain approval
144 from the commission of the total compensation package both
145 when institutional presidents are employed initially and
146 afterward when any change is made in the amount of the total
147 compensation package;

148 (22) Establish and implement the policy of the state to
149 assure that parents and students have sufficient information at
150 the earliest possible age on which to base academic decisions
151 about what is required for students to be successful in college,
152 other post-secondary education and careers related, as far as
153 possible, to results from current assessment tools in use in West
154 Virginia;

155 (23) Approve and implement a uniform standard, as
156 developed by the chancellor, to determine which students shall
157 be placed in remedial or developmental courses. The standard
158 shall be aligned with college admission tests and assessment
159 tools used in West Virginia and shall be applied uniformly by
160 the governing boards throughout the public higher education
161 system. The chancellor shall develop a clear, concise
162 explanation of the standard which the governing boards shall

163 communicate to the state board of education and the state
164 superintendent of schools;

165 (24) Review and approve or disapprove capital projects as
166 described in subdivision (12), subsection (a) of this section;

167 (25) Develop and implement an oversight plan to manage
168 system-wide technology such as the following:

169 (A) Expanding distance learning and technology networks
170 to enhance teaching and learning, promote access to quality
171 educational offerings with minimum duplication of effort,
172 increase the delivery of instruction to nontraditional students,
173 provide services to business and industry and increase the
174 management capabilities of the higher education system; and

175 (B) Reviewing courses and programs offered within the
176 state by nonstate public or private institutions of higher
177 education;

178 (26) Establish and implement policies and procedures to
179 ensure that students may transfer and apply toward the
180 requirements for a bachelor's degree the maximum number of
181 credits earned at any regionally accredited in-state or
182 out-of-state community and technical college with as few
183 requirements to repeat courses or to incur additional costs as is
184 consistent with sound academic policy;

185 (27) Establish and implement policies and procedures to
186 ensure that students may transfer and apply toward the
187 requirements for a degree the maximum number of credits
188 earned at any regionally accredited in-state or out-of-state
189 higher education institution with as few requirements to repeat
190 courses or to incur additional costs as is consistent with sound
191 academic policy;

192 (28) Establish and implement policies and procedures to
193 ensure that students may transfer and apply toward the
194 requirements for a master's degree the maximum number of
195 credits earned at any regionally accredited in-state or
196 out-of-state higher education institution with as few
197 requirements to repeat courses or to incur additional costs as is
198 consistent with sound academic policy;

199 (29) Establish and implement policies and programs, in
200 cooperation with the institutions of higher education, through
201 which students who have gained knowledge and skills through
202 employment, participation in education and training at
203 vocational schools or other education institutions, or
204 internet-based education programs, may demonstrate by
205 competency-based assessment that they have the necessary
206 knowledge and skills to be granted academic credit or advanced
207 placement standing toward the requirements of an associate
208 degree or a bachelor's degree at a state institution of higher
209 education;

210 (30) Seek out and attend regional, national and international
211 meetings and forums on education and work force development
212 related topics, as in the commission's discretion is critical for
213 the performance of their duties as members, for the purpose of
214 keeping abreast of education trends and policies to aid it in
215 developing the policies for this state to meet the established
216 education goals and objectives pursuant to section one-a, article
217 one of this chapter;

218 (31) Develop, establish and implement guidelines for
219 higher education governing boards and institutions to follow
220 when considering capital projects. The guidelines shall include,
221 but not be limited to, the following:

222 (A) That the governing boards and institutions not approve
223 or promote projects that give competitive advantage to new

224 private sector projects over existing West Virginia businesses,
225 unless the commission determines such private sector projects
226 are in the best interest of the students, the institution and the
227 community to be served; and

228 (B) That the governing boards and institutions not approve
229 or promote projects involving private sector businesses which
230 would have the effect of reducing property taxes on existing
231 properties or avoiding, in whole or in part, the full amount of
232 taxes which would be due on newly developed or future
233 properties.

234 The commission shall determine whether the guidelines
235 developed pursuant to this subdivision should apply to any
236 project which a governing board and institution allege to have
237 been planned on or before the seventeenth day of June, two
238 thousand. In making the determination, the commission shall be
239 guided by the best interests of the students, the institution and
240 the community to be served;

241 (32) Certify to the Legislature, on or before the first day of
242 February, two thousand one, the priority funding percentages
243 and other information needed to complete the allocation of
244 funds in section five, article one-a of this chapter;

245 (33) Consider and submit to the appropriate agencies of the
246 executive and legislative branches of state government, a single
247 budget for higher education that reflects recommended
248 appropriations: *Provided*, That on the first day of January, two
249 thousand one, and annually thereafter, the commission shall
250 submit the proposed institutional allocations based on each
251 institution's progress toward meeting the goals of its
252 institutional compact;

253 (34) Initiate a full review and analysis of all student fees
254 charged by state institutions of higher education and make

255 recommendations to the legislative oversight commission on
256 education accountability no later than the second day of
257 January, two thousand two. The final report shall contain
258 findings of fact and recommendations for proposed legislation
259 to condense, simplify and streamline the fee schedule and the
260 use of fees or other money collected by state institutions of
261 higher education;

262 (35) The commission has the authority to assess institutions
263 for the payment of expenses of the commission or for the
264 funding of statewide higher education services, obligations or
265 initiatives;

266 (36) Promulgate rules allocating reimbursement of
267 appropriations, if made available by the Legislature, to
268 institutions of higher education for qualifying noncapital
269 expenditures incurred in the provision of services to students
270 with physical, learning or severe sensory disabilities;

271 (37) Make appointments to boards and commissions where
272 this code requires appointments from the state college system
273 board of directors or the university of West Virginia system
274 board of trustees which were abolished effective the thirtieth
275 day of June, two thousand. Notwithstanding any provisions of
276 this code to the contrary, the commission may appoint one of its
277 own members or any other citizen of the state as its designee.
278 The commission shall appoint the total number of persons in the
279 aggregate required to be appointed by these previous governing
280 boards;

281 (38) Assume the powers set out in section five, article three
282 of this chapter. The rules previously promulgated by the state
283 college system board of directors pursuant to that section are
284 hereby transferred to the commission and shall continue in
285 effect until rescinded, revised, altered or amended by the
286 commission;

287 (39) Examine and determine the feasibility of
288 recommendations contained in the *Implementation Board*
289 *Report* presented to the commission in January, two thousand
290 one, and, at the discretion of the commission, create the
291 advantage valley community college network to enhance
292 provision of community and technical college education in the
293 responsibility areas of Marshall university, West Virginia state
294 college and West Virginia university institute of technology;

295 (40) Pursuant to the provisions of article three-a, chapter
296 twenty-nine-a of this code and section six, article one of this
297 chapter, promulgate rules as necessary or expedient to fulfill the
298 purposes of this chapter. The commission may promulgate a
299 new uniform rule for the purpose of standardizing, as much as
300 possible, the administration of personnel matters among the
301 institutions of higher education;

302 (41) Determine when a joint rule among the governing
303 boards is necessary or required by law and, in those instances
304 and in consultation with the governing boards, promulgate the
305 joint rule;

306 (42) Promulgate a joint rule establishing tuition and fee
307 policy. The rule shall include, but is not limited to, the
308 following:

309 (A) Comparisons with peer institutions;

310 (B) Differences among institutional missions;

311 (C) Strategies for promoting student access;

312 (D) Consideration of charges to out-of-state students; and

313 (E) Such other policies as the commission considers
314 appropriate; and

315 (43) Develop a method for the council, or members thereof,
316 to participate in the selection of administrative heads of the
317 community and technical colleges.

318 (b) In addition to the powers and duties listed in subsection
319 (a) of this section, the commission has the following general
320 powers and duties related to its role in developing, articulating
321 and overseeing the implementation of the public policy agenda:

322 (1) Planning and policy leadership including a distinct and
323 visible role in setting the state's policy agenda and in serving as
324 an agent of change;

325 (2) Policy analysis and research focused on issues affecting
326 the system as a whole or a geographical region thereof;

327 (3) Development and implementation of institutional
328 mission definitions including use of incentive money to
329 influence institutional behavior in ways that are consistent with
330 public priorities;

331 (4) Academic program review and approval including the
332 use of institutional missions as a template to judge the appropri-
333 ateness of both new and existing programs and the authority to
334 implement needed changes;

335 (5) Development of budget and allocation of resources,
336 including reviewing and approving institutional operating and
337 capital budgets and distributing incentive and perfor-
338 mance-based funding;

339 (6) Administration of state and federal student aid pro-
340 grams, including promulgation of any rules formerly vested in
341 the previous governing boards in relation to those programs;

342 (7) Acting as the agent to receive and disburse public funds
343 when a governmental entity requires designation of a statewide
344 higher education agency for this purpose;

345 (8) Development, establishment and implementation of
346 information, assessment and accountability systems including
347 maintenance of statewide data systems that facilitate long-term
348 planning and accurate measurement of strategic outcomes and
349 performance indicators;

350 (9) Developing, establishing and implementing policies for
351 licensing and oversight for both public and private de-
352 gree-granting and nondegree-granting institutions that provide
353 post-secondary education courses or programs in the state;

354 (10) Development, implementation and oversight of
355 statewide and regionwide projects and initiatives such as those
356 using funds from federal categorical programs or those using
357 incentive and performance-based funding from any source; and

358 (11) Quality assurance that intersects with all other duties
359 of the commission particularly in the areas of planning, policy
360 analysis, program review and approval, budgeting and informa-
361 tion and accountability systems.

362 (c) In addition to the powers and duties provided for in
363 subsections (a) and (b) of this section and any other powers and
364 duties as may be assigned to it by law, the commission has such
365 other powers and duties as may be necessary or expedient to
366 accomplish the purposes of this article.

367 (d) The commission is authorized to withdraw specific
368 powers of any governing board for a period not to exceed two
369 years if the commission makes a determination that:

370 (1) The governing board has failed for two consecutive
371 years to develop an institutional compact as required in article
372 one of this chapter;

373 (2) The commission has received information, substantiated
374 by independent audit, of significant mismanagement or failure
375 to carry out the powers and duties of the board of governors
376 according to state law; or

377 (3) Other circumstances which, in the view of the commis-
378 sion, severely limit the capacity of the board of governors to
379 carry out its duties and responsibilities.

380 (4) The period of withdrawal of specific powers may not
381 exceed two years during which time the commission is autho-
382 rized to take steps necessary to reestablish the conditions for
383 restoration of sound, stable and responsible institutional
384 governance.

385 (e) Notwithstanding the provisions of section six, article
386 one-a of this chapter, the commission shall undertake a study of
387 the most effective and efficient strategies and policies to
388 address the findings and intent of that section.

389 (1) The issues addressed by this study shall include, but not
390 be limited to:

391 (A) Strategies to ensure access to graduate education;

392 (B) The development of state colleges as regional graduate
393 centers with authority to broker access to graduate programs in
394 their responsibility areas;

395 (C) The process by which state colleges obtain authoriza-
396 tion to grant graduate degrees;

397 (D) The relationship of regional graduate centers at state
398 colleges to graduate programs offered within those regions by
399 state universities; and

400 (E) Other issues related to initiatives to meet each region's
401 need and enhance the quality and competitiveness of graduate
402 programs offered and/or brokered by West Virginia state
403 colleges and universities.

404 (2) The commission shall report the findings of this study
405 along with the recommendations for legislative actions, if any,
406 to address these findings and the intent of this section, to the
407 legislative oversight commission on education accountability
408 by the first day of January, two thousand one.

**§18B-1B-5. Employment of chancellor for higher education;
office; powers and duties generally; employment
of vice chancellors.**

1 (a) The commission, created pursuant to section one of this
2 article, shall employ a chancellor for higher education who shall
3 be the chief executive officer of the commission and who shall
4 serve at its will and pleasure. The vice chancellor for adminis-
5 tration shall serve as the interim chancellor until a chancellor is
6 employed.

7 (b) The commission shall set the qualifications for the
8 position of chancellor and shall conduct a thorough nationwide
9 search for qualified candidates. A qualified candidate is one
10 who meets at least the following criteria:

11 (1) Possesses an excellent academic and administrative
12 background;

13 (2) Demonstrates strong communication skills;

14 (3) Has significant experience and an established national
15 reputation as a professional in the field of higher education;

16 (4) Is free of institutional or regional biases; and

17 (5) Holds or retains no other administrative position within
18 the system of higher education while employed as chancellor.

19 (c) The chancellor shall be compensated on a basis in
20 excess of, but not to exceed twenty percent greater than, the
21 base salary of any president of a state institution of higher
22 education or the administrative head of a governing board.

23 (d) With the approval of the commission, the chancellor
24 may employ a vice chancellor for health sciences who shall
25 serve at the will and pleasure of the chancellor. The vice
26 chancellor for health sciences shall coordinate the West
27 Virginia university school of medicine, the Marshall university
28 school of medicine, and the West Virginia school of osteopathic
29 medicine and also shall provide assistance to the governing
30 boards on matters related to medical education and health
31 sciences. The vice chancellor for health sciences shall perform
32 all duties assigned by the chancellor, the commission and state
33 law. In the case of a vacancy in the office of vice chancellor of
34 health sciences, the duties assigned to this office by law are the
35 responsibility of the chancellor or a designee.

36 (e) With the approval of the commission, the chancellor
37 shall employ a vice chancellor for community and technical
38 college education and work force development who serves at
39 the will and pleasure of the chancellor. The duties of this
40 position include serving as the chief executive officer of the
41 West Virginia council for community and technical college
42 education created pursuant to article two-b of this chapter, and
43 such other duties as assigned by law or by the commission. Any
44 reference in this code to the vice chancellor for community and
45 technical colleges means the vice chancellor for community and

46 technical college education and work force development, which
47 vice chancellor for community and technical colleges shall
48 become the vice chancellor for community and technical
49 college education and work force development. It is the duty
50 and responsibility of the vice chancellor for community and
51 technical college education and work force development to:

52 (1) Provide assistance to the commission, the chancellor
53 and the governing boards on matters related to community and
54 technical college education;

55 (2) Advise, assist and consult regularly with the institu-
56 tional presidents; institutional boards of governors or boards of
57 advisors, as appropriate; and district consortia committees of
58 the state institutions of higher education involved in community
59 and technical college education; and

60 (3) Perform all duties assigned by the chancellor, the
61 commission and state law.

62 (f) With the approval of the commission, the chancellor
63 shall employ a vice chancellor for administration pursuant to
64 section two, article four of this chapter.

65 (g) With the approval of the commission, the chancellor
66 may employ a vice chancellor for state colleges who shall serve
67 at the will and pleasure of the chancellor. It is the duty and
68 responsibility of the vice chancellor for state colleges to:

69 (1) Provide assistance to the commission, the chancellor
70 and the state colleges on matters related to or of interest and
71 concern to these institutions;

72 (2) Advise, assist and consult regularly with the institu-
73 tional presidents and institutional boards of governors of each
74 state college;

75 (3) Serve as an advocate and spokesperson for the state
76 colleges to represent them and to make their interests, views
77 and issues known to the chancellor, the commission and
78 governmental agencies;

79 (4) Perform all duties assigned by the chancellor, the
80 commission and state law;

81 In addition, the vice chancellor for state colleges has the
82 responsibility and the duty to provide staff assistance to the
83 institutional presidents and governing boards to the extent
84 practicable.

85 (h) Apart from the offices of the vice chancellors as set
86 forth in this section and section two, article four of this chapter,
87 the chancellor shall determine the organization and staffing
88 positions within the office that are necessary to carry out his or
89 her powers and duties and may employ necessary staff.

90 (i) The chancellor may enter into agreements with any state
91 agency or political subdivision of the state, any state higher
92 education institution or any other person or entity to enlist staff
93 assistance to implement the powers and duties assigned by the
94 commission or by state law.

95 (j) The chancellor shall be responsible for the day-to-day
96 operations of the commission and shall have the following
97 responsibilities:

98 (1) To carry out policy and program directives of the
99 commission;

100 (2) To develop and submit annual reports on the implemen-
101 tation plan to achieve the goals and objectives set forth in
102 section one-a, article one of this chapter and in the institutional
103 compacts;

104 (3) To prepare and submit to the commission for its
105 approval the proposed budget of the commission including the
106 offices of the chancellor and the vice chancellors;

107 (4) On and after the first day of July, two thousand one, to
108 assist the governing boards in developing rules, subject to the
109 provisions of section six, article one of this chapter: *Provided,*
110 That nothing in this chapter requires the rules of the governing
111 boards to be filed pursuant to the rule-making procedures
112 provided in article three-a, chapter twenty-nine-a of this code.
113 The chancellor shall be responsible for ensuring that any policy
114 which is required to be uniform across the institutions is applied
115 in a uniform manner;

116 (5) To perform all other duties and responsibilities assigned
117 by the commission or by state law.

118 (k) The chancellor shall be reimbursed for all actual and
119 necessary expenses incurred in the performance of all assigned
120 duties and responsibilities.

121 (l) The chancellor is the primary advocate for higher
122 education and, with the commission, advises the Legislature on
123 matters of higher education in West Virginia. As the primary
124 advocate for higher education, the chancellor shall work closely
125 with the legislative oversight commission on education ac-
126 countability and with the elected leadership of the state to
127 ensure that they are fully informed about higher education
128 issues and that the commission fully understands the goals for
129 higher education that the Legislature has established by law.

130 (m) The chancellor may design and develop for consider-
131 ation by the commission new statewide or regional initiatives
132 in accordance with the goals set forth in section one-a, article
133 one of this chapter and the public policy agenda articulated by
134 the commission.

135 (n) The chancellor shall work closely with members of the
136 state board of education and with the state superintendent of
137 schools to assure that the following goals are met:

138 (1) Development and implementation of a seamless
139 kindergarten-through-college system of education; and

140 (2) Appropriate coordination of missions and programs. To
141 further the goals of cooperation and coordination between the
142 commission and the state board of education, the chancellor
143 shall serve as an ex officio, nonvoting member of the state
144 board of education.

ARTICLE 2A. INSTITUTIONAL BOARDS OF GOVERNORS.

§18B-2A-1. Composition of boards; terms and qualifications of members; vacancies; eligibility for reappointment.

§18B-2A-4. Powers and duties of governing boards generally.

§18B-2A-1. Composition of boards; terms and qualifications of members; vacancies; eligibility for reappointment.

1 (a) Effective the thirtieth day of June, two thousand one, the
2 institutional boards of advisors at Bluefield state college,
3 Concord college, eastern West Virginia community and
4 technical college, Fairmont state college, Glenville state
5 college, Marshall university, Shepherd college, southern West
6 Virginia community and technical college, West Liberty state
7 college, West Virginia northern community and technical
8 college, the West Virginia school of osteopathic medicine, West
9 Virginia state college and West Virginia university are abol-
10 ished.

11 (b) Effective the first day of July, two thousand one, a
12 board of governors is established at each of the following
13 institutions: Bluefield state college, Concord college, eastern
14 West Virginia community and technical college, Fairmont state

15 college, Glenville state college, Marshall university, Shepherd
16 college, southern West Virginia community and technical
17 college, West Liberty state college, West Virginia northern
18 community and technical college, the West Virginia school of
19 osteopathic medicine, West Virginia state college and West
20 Virginia university. Each board of governors shall consist of
21 twelve persons: *Provided*, That the institutional boards of
22 governors for Marshall university and West Virginia university
23 shall consist of fifteen persons. Each board of governors shall
24 include:

25 (1) A full-time member of the faculty with the rank of
26 instructor or above duly elected by the faculty;

27 (2) A member of the student body in good academic
28 standing, enrolled for college credit work and duly elected by
29 the student body;

30 (3) A member from the institutional classified employees
31 duly elected by the classified employees; and

32 (4) Nine lay members appointed by the governor by and
33 with the advice and consent of the Senate pursuant to section
34 one-a, article six of this chapter: *Provided*, That for the institu-
35 tional boards of governors at Marshall university and West
36 Virginia university, twelve lay members shall be appointed by
37 the governor by and with the advice and consent of the Senate
38 pursuant to section one-a, article six of this chapter: *Provided*,
39 *however*, That of the appointed lay members, the governor shall
40 appoint one superintendent of a county board of education from
41 the area served by the institution: *Provided further*, That in
42 making the initial appointments to the institutional boards of
43 governors, the governor shall appoint, except in the case of
44 death, resignation or failure to be confirmed by the Senate,
45 those persons who are lay members of the institutional boards
46 of advisors for those institutions named in subsection (a) on the

47 thirtieth day of June, two thousand one, and appointed pursuant
48 to section one-a, article six of this chapter.

49 (c) Of the nine members appointed by the governor, no
50 more than five may be of the same political party: *Provided*,
51 That of the twelve members appointed by the governor to the
52 governing boards of Marshall university and West Virginia
53 university, no more than seven may be of the same political
54 party. At least six of the members shall be residents of the state:
55 *Provided, however*, That of the twelve members appointed by
56 the governor to the governing boards of Marshall university and
57 West Virginia university, at least eight of the members shall be
58 residents of the state.

59 (d) The student member shall serve for a term of one year.
60 The term beginning in July, two thousand one, shall end on the
61 thirtieth day of June, two thousand two. Thereafter, the term
62 shall begin on the first day of July.

63 (e) The faculty member shall serve for a term of two years.
64 The term beginning in July, two thousand one, ends on the
65 thirtieth day of June, two thousand three. Thereafter, the term
66 shall begin on the first day of July. Faculty members are
67 eligible to succeed themselves for three additional terms, not to
68 exceed a total of eight consecutive years.

69 (f) The member representing classified employees shall
70 serve for a term of two years. The term beginning in July, two
71 thousand one, shall end on the thirtieth day of June, two
72 thousand three. Thereafter, the term shall begin on the first day
73 of July. Members representing classified employees are eligible
74 to succeed themselves for three additional terms, not to exceed
75 a total of eight consecutive years.

76 (g) The appointed lay citizen members shall serve terms of
77 four years each and shall be eligible to succeed themselves for
78 no more than one additional term.

79 (h) A vacancy in an unexpired term of a member shall be
80 filled for the unexpired term within thirty days of the occur-
81 rence of the vacancy in the same manner as the original
82 appointment or election. Except in the case of a vacancy, all
83 elections shall be held and all appointments shall be made no
84 later than the thirtieth day of June preceding the commence-
85 ment of the term, except the election of officers for the term
86 beginning in July, two thousand one shall be made that July.
87 Each board of governors shall elect one of its appointed lay
88 members to be chairperson in June of each year. No member
89 may serve as chairperson for more than two consecutive years.

90 (i) The appointed members of the institutional boards of
91 governors shall serve staggered terms. Of the initial appoint-
92 ments by the governor to each of the institutional boards of
93 governors, two shall be appointed for terms of one year, two
94 shall be appointed for terms of two years, two shall be ap-
95 pointed for terms of three years and three shall be appointed for
96 terms of four years: *Provided*, That for the initial appointments
97 to the governing boards of Marshall university and West
98 Virginia university, three shall be appointed for terms of one
99 year, three shall be appointed for terms of two years, three shall
100 be appointed for terms of three years and three shall be ap-
101 pointed for terms of four years. After the initial appointments,
102 all appointees shall serve for terms of four years.

103 (j) No person shall be eligible for appointment to member-
104 ship on a board of governors who is an officer, employee or
105 member of any other board of governors, a member of an
106 institutional board of advisors of any public institution of higher
107 education, an employee of any institution of higher education,
108 an officer or member of any political party executive commit-
109 tee, the holder of any other public office or public employment
110 under the government of this state or any of its political
111 subdivisions or a member of the commission: *Provided*, That
112 this subsection shall not be construed to prevent the representa-

113 tive from the faculty, classified employees, or students or the
114 superintendent of a county board of education from being
115 members of the governing boards.

116 (k) Before exercising any authority or performing any
117 duties as a member of a governing board, each member shall
118 qualify as such by taking and subscribing to the oath of office
119 prescribed by section five, article IV of the constitution of West
120 Virginia and the certificate thereof shall be filed with the
121 secretary of state.

122 (l) No member of a governing board appointed by the
123 governor may be removed from office by the governor except
124 for official misconduct, incompetence, neglect of duty or gross
125 immorality and then only in the manner prescribed by law for
126 the removal of the state elective officers by the governor.

127 (m) The president of the institution shall make available
128 resources of the institution for conducting the business of its
129 board of governors. The members of the board of governors
130 shall serve without compensation, but shall be reimbursed for
131 all reasonable and necessary expenses actually incurred in the
132 performance of their official duties under this article upon
133 presentation of an itemized sworn statement of their expenses.
134 All expenses incurred by the board of governors and the
135 institution under this section shall be paid from funds allocated
136 to the institution for that purpose.

§18B-2A-4. Powers and duties of governing boards generally.

1 Effective the first day of July, two thousand one, each
2 governing board shall separately have the following powers and
3 duties:

4 (a) Determine, control, supervise and manage the financial,
5 business and education policies and affairs of the state institu-
6 tions of higher education under its jurisdiction;

7 (b) Develop a master plan for the institutions under its
8 jurisdiction; except the administratively linked community and
9 technical colleges shall develop their master plans subject to the
10 provisions of section one, article six of this chapter. The
11 ultimate responsibility for developing and updating the master
12 plans at the institutional level resides with the board of gover-
13 nors or board of advisors, as applicable, but the ultimate
14 responsibility for approving the final version of the institutional
15 master plans, including periodic updates, resides with the
16 commission. Each master plan shall include, but not be limited
17 to, the following:

18 (1) A detailed demonstration of how the master plan will be
19 used to meet the goals and objectives of the institutional
20 compact;

21 (2) A well-developed set of goals outlining missions,
22 degree offerings, resource requirements, physical plant needs,
23 personnel needs, enrollment levels and other planning
24 determinates and projections necessary in such a plan to assure
25 that the needs of the institution's area of responsibility for a
26 quality system of higher education are addressed;

27 (3) Documentation of the involvement of the commission,
28 institutional constituency groups, clientele of the institution and
29 the general public in the development of all segments of the
30 institutional master plan.

31 The plan shall be established for periods of not less than
32 three nor more than six years and shall be revised periodically
33 as necessary, including the addition or deletion of degree
34 programs as, in the discretion of the appropriate governing
35 board, may be necessary.

36 (c) Prescribe for the state institutions of higher education
37 under its jurisdiction, in accordance with its master plan and the

38 compact for each institution, specific functions and responsibil-
39 ities to meet the higher education needs of its area of responsi-
40 bility and to avoid unnecessary duplication;

41 (d) Direct the preparation of a budget request for the state
42 institutions of higher education under its jurisdiction, such
43 request to relate directly to missions, goals and projections as
44 found in the institutional master plans and the institutional
45 compacts;

46 (e) Consider, revise and submit to the commission a budget
47 request on behalf of the state institutions of higher education
48 under its jurisdiction;

49 (f) Review, at least every five years, all academic programs
50 offered at the state institutions of higher education under its
51 jurisdiction. The review shall address the viability, adequacy
52 and necessity of the programs in relation to its institutional
53 master plan, the institutional compact and the education and
54 work force needs of its responsibility district. As a part of the
55 review, each governing board shall require the institutions
56 under its jurisdiction to conduct periodic studies of its graduates
57 and their employers to determine placement patterns and the
58 effectiveness of the education experience. Where appropriate,
59 these studies should coincide with the studies required of many
60 academic disciplines by their accrediting bodies;

61 (g) The governing boards also shall ensure that the se-
62 quence and availability of academic programs and courses
63 offered by the institutions under their jurisdiction is such that
64 students have the maximum opportunity to complete programs
65 in the time frame normally associated with program comple-
66 tion. Each governing board also is responsible to see that the
67 needs of nontraditional college-age students are appropriately
68 addressed and, to the extent it is possible for the individual
69 governing board to control, to assure core coursework com-

70 pleted at state institutions of higher education under its jurisdic-
71 tion is transferable to any other state institution of higher
72 education for credit with the grade earned;

73 (h) Subject to the provisions of article one-b of this chapter,
74 the appropriate governing board has the exclusive authority to
75 approve the teacher education programs offered in the institu-
76 tion under its control. In order to permit graduates of teacher
77 education programs to receive a degree from a nationally
78 accredited program and in order to prevent expensive duplica-
79 tion of program accreditation, the chancellor may select and
80 utilize one nationally recognized teacher education program
81 accreditation standard as the appropriate standard for program
82 evaluation;

83 (i) Utilize faculty, students and classified employees in
84 institutional-level planning and decision making when those
85 groups are affected;

86 (j) Subject to the provisions of federal law and pursuant to
87 the provisions of article nine of this chapter and to rules
88 adopted by the commission, administer a system for the
89 management of personnel matters, including, but not limited to,
90 personnel classification, compensation, and discipline for
91 employees of the institutions under their jurisdiction;

92 (k) Administer a system for the hearing of employee
93 grievances and appeals therefrom: *Provided*, That after the first
94 day of July, two thousand one, and notwithstanding any other
95 provisions of this code to the contrary, the procedure estab-
96 lished in article six-a, chapter twenty-nine of this code shall be
97 the exclusive mechanism for hearing prospective employee
98 grievances and appeal: *Provided, however*, That in construing
99 the application of article six-a, chapter twenty-nine to griev-
100 ances of higher education employees, the following shall apply:

101 (1) "Chief administrator" means the president of a state
102 institution of higher education as to those employees employed
103 by the institution and the chancellor as to those employees
104 employed by the commission;

105 (2) The state division of personnel shall not be a party to
106 nor have any authority regarding a grievance initiated by a
107 higher education employee; and

108 (3) The provisions of this section supersede and replace the
109 grievance procedure set out in article twenty-nine, chapter
110 eighteen of this code for any grievance initiated by a higher
111 education employee after the first day of July, two thousand
112 one.

113 (l) Solicit and utilize or expend voluntary support, including
114 financial contributions and support services, for the state
115 institutions of higher education under its jurisdiction;

116 (m) Appoint a president or other administrative head for the
117 institutions of higher education under its jurisdiction subject to
118 the provisions of section six, article one-b of this chapter;

119 (n) Conduct written performance evaluations of each
120 institution's president pursuant to section six, article one-b of
121 this chapter;

122 (o) Submit to the commission no later than the first day of
123 November of each year an annual report of the performance of
124 the institutions of higher education under its jurisdiction during
125 the previous fiscal year as compared to stated goals in its master
126 plan and institutional compact;

127 (p) Enter into contracts or consortium agreements with the
128 public schools, private schools or private industry to provide
129 technical, vocational, college preparatory, remedial and
130 customized training courses at locations either on campuses of

131 the public institution of higher education or at off-campus
132 locations in the institution's responsibility district. To accom-
133 plish this goal, the boards are permitted to share resources
134 among the various groups in the community;

135 (q) Delegate, with prescribed standards and limitations, the
136 part of its power and control over the business affairs of a
137 particular state institution of higher education under its jurisdic-
138 tion to the president or other administrative head of the state
139 institution of higher education in any case where it considers
140 the delegation necessary and prudent in order to enable the
141 institution to function in a proper and expeditious manner and
142 to meet the requirements of its institutional compact. If a
143 governing board elects to delegate any of its power and control
144 under the provisions of this subsection, it shall notify the
145 chancellor. Any such delegation of power and control may be
146 rescinded by the appropriate governing board or the chancellor
147 at any time, in whole or in part;

148 (r) Unless changed by the interim governing board or the
149 chancellor, the governing boards shall continue to abide by
150 existing rules setting forth standards for acceptance of advanced
151 placement credit for their respective institutions. Individual
152 departments at institutions of higher education may, upon
153 approval of the institutional faculty senate, require higher
154 scores on the advanced placement test than scores designated
155 by the appropriate governing board when the credit is to be used
156 toward meeting a requirement of the core curriculum for a
157 major in that department;

158 (s) Each governing board, or its designee, shall consult,
159 cooperate and work with the state treasurer and the state auditor
160 to update as necessary and maintain an efficient and
161 cost-effective system for the financial management and
162 expenditure of special revenue and appropriated state funds at
163 the institutions under its jurisdiction that ensures that properly

164 submitted requests for payment be paid on or before due date,
165 but in any event, within fifteen days of receipt in the state
166 auditor's office;

167 (t) The governing boards in consultation with the chancellor
168 and the secretary of the department of administration shall
169 develop, update as necessary and maintain a plan to administer
170 a consistent method of conducting personnel transactions,
171 including, but not limited to, hiring, dismissal, promotions and
172 transfers at the institutions under their jurisdiction. Each such
173 personnel transaction shall be accompanied by the appropriate
174 standardized system or forms which will be submitted to the
175 respective governing board and the department of finance and
176 administration;

177 (u) Notwithstanding any other provision of this code to the
178 contrary, the governing boards shall have the authority to
179 transfer funds from any account specifically appropriated for
180 their use to any corresponding line item in a general revenue
181 account at any agency or institution under their jurisdiction as
182 long as such transferred funds are used for the purposes
183 appropriated. The governing boards also shall have the author-
184 ity to transfer funds from appropriated special revenue accounts
185 for capital improvements under their jurisdiction to special
186 revenue accounts at agencies or institutions under their jurisdic-
187 tion as long as such transferred funds are used for the purposes
188 appropriated; and

189 (v) Notwithstanding any other provision of this code to the
190 contrary, the governing boards may acquire legal services as are
191 considered necessary, including representation of the governing
192 boards, their institutions, employees and officers before any
193 court or administrative body. The counsel may be employed
194 either on a salaried basis or on a reasonable fee basis. In
195 addition, the governing boards may, but are not required to, call

196 upon the attorney general for legal assistance and representation
197 as provided by law.

**ARTICLE 2B. WEST VIRGINIA COUNCIL FOR COMMUNITY AND
TECHNICAL COLLEGE EDUCATION.**

§18B-2B-1. Legislative findings; intent; purpose.

§18B-2B-2. Definitions.

§18B-2B-3. Joint Commission for vocational-technical-occupational education
reconstituted as West Virginia council for community and technical
college education; jurisdiction of higher education policy commis-
sion; supervision of chancellor; chief executive officer.

§18B-2B-4. Appointment, composition and terms of council.

§18B-2B-5. Meetings and compensation.

§18B-2B-6. Powers and duties of the council.

§18B-2B-7. Powers and duties of the chief executive officer.

§18B-2B-8. State advisory committee of community and technical college presidents
and provosts.

§18B-2B-1. Legislative findings; intent; purpose.

1 (a) The Legislature hereby finds that:

2 (1) The goals, objectives and purposes contained in Senate
3 Bill 653, passed during the regular legislative session in two
4 thousand, reflected the research findings available to the
5 Legislature at the time; since then, however, additional research
6 indicates that, while Senate Bill 653 moves in the appropriate
7 direction of independent accreditation and meeting essential
8 conditions for public community and technical colleges, the
9 legislation does not take the final steps that are considered to be
10 necessary by independent researchers. This position is clearly
11 demonstrated by the recent research findings and recommenda-
12 tions cited below:

13 (A) “West Virginia: A Vision Shared! Economic Develop-
14 ment: A Plan for West Virginia’s Future”, hereinafter cited in
15 this article and article two-c of this chapter as the *Market Street*
16 *Report*, is a research document commissioned by the West

17 Virginia council for community and economic development to
18 assess the economic competitiveness of the state. The report
19 makes a number of findings and recommendations important to
20 public community and technical college education:

21 (i) The state needs to adopt and implement a specific focus
22 on technical education; in particular, it needs to move away
23 from the traditionally isolated and limited vocational program-
24 ming towards a systematic approach of teaching technical skills
25 that employers need today;

26 (ii) The state needs to establish a strong technical education
27 system that is separate from the university system and is
28 responsive to the needs of business throughout the state;

29 (iii) The state needs to establish as a high level priority the
30 training and retraining of its working age adults to help them
31 acquire and maintain the competitive skills they need to
32 succeed in today's economy; and

33 (iv) The state needs to emphasize the role of lifelong
34 learning as a critical piece of its overall education and training
35 system if the state is to make the transition to the new economy.

36 (B) The *Report to the Legislative Oversight Commission on*
37 *Education Accountability*, hereinafter cited in this article and
38 article two-c as the *McClenney Report*, is a study required by
39 provisions of Senate Bill 653 and conducted by Dr. Kay
40 McClenney. The research found that:

41 (i) The participation rate in West Virginia community and
42 technical college education is substantially lower than will be
43 necessary if the state is to achieve its goals for economic
44 development and prosperity for its citizens;

45 (ii) The low visibility of the component community and
46 technical colleges effectively restricts access for the West

47 Virginians who most need encouragement to participate in post-
48 secondary education and training;

49 (iii) It is not clear that the parent institutions of the compo-
50 nent community colleges actually embrace the community
51 college mission;

52 (iv) The community and technical college developmental
53 education programs are under serving by far the evident needs
54 of the population, especially as that service relates to nontradi-
55 tional students;

56 (v) Adults over age twenty-five are under represented in the
57 community and technical college student populations;

58 (vi) Technical education program development and
59 enrollment are not at the levels necessary to serve the needs of
60 the state;

61 (vii) Independent accreditation and the essential conditions
62 required by Senate Bill 653 are necessary, but not sufficient
63 alone to provide a strong enough tool to accomplish the state's
64 goal to strengthen community and technical college education;
65 and therefore,

66 (viii) The state needs to create a community college support
67 capacity at the state level that will bring leadership, coordina-
68 tion, technical support, advocacy and critical mass to a state-
69 wide network of local community and technical college
70 campuses.

71 (C) *The Report and Recommendations of the Implementa-*
72 *tion Board to the West Virginia Higher Education Policy*
73 *Commission*, hereinafter cited in this article and article two-c of
74 this chapter as the *Implementation Board Report*, is a study
75 required by Senate Bill 653 to determine the most effective and
76 efficient method to deliver community and technical college

77 services in the responsibility areas of Marshall university, West
78 Virginia state college and West Virginia university institute of
79 technology. The *Implementation Board Report* states its goals
80 and vision for community and technical college education in the
81 advantage valley region as one of a dynamic, vital and vibrant
82 community college network which offers:

83 (i) Affordable, quality training and education to students;

84 (ii) Represents a recognized path of choice to success in the
85 knowledge economy for thousands of West Virginians; and

86 (iii) Provides West Virginia businesses with the highly
87 skilled work force necessary to meet their evolving needs in the
88 global knowledge economy.

89 (D) In furtherance of their goals, the *Implementation Board*
90 *Report* recommended formation of the advantage valley
91 community college network:

92 (i) To enhance economic development through coordinated
93 leadership and a delivery system for education and training
94 initiatives;

95 (ii) To provide accountability through a separate compact
96 and through independent accreditation of each of the affected
97 community and technical colleges; and

98 (iii) To enhance education opportunities for the citizens of
99 the area and assist in overcoming the barrier of accessibility in
100 higher education.

101 (b) Based on the recent research cited above, the Legisla-
102 ture further finds that:

103 (1) The recommendations of the *Market Street Report*
104 clearly point out the shortcomings of the state's current

105 approach to providing post-secondary education and programs
106 and show the consequences of failing to change appropriately;

107 (2) The research, findings, vision and goals set forth in the
108 *McClenney Report* and the *Implementation Board Report* are
109 noteworthy and, although written, in part, to address specific
110 institutions, have broad application statewide for community
111 and technical colleges;

112 (3) The research shows that:

113 (A) A need exists to enhance community and technical
114 college education in West Virginia through the delivery of
115 services that meet the goals of this chapter and that are deliv-
116 ered pursuant to the process for meeting the essential conditions
117 established in section three, article three-c of this chapter;

118 (B) A need exists for statewide leadership, coordination,
119 and support for the work of the community and technical
120 colleges and for advocacy for the public priorities these
121 institutions are charged to address;

122 (C) Community and technical colleges need to be efficient,
123 avoiding duplication and the burden of bureaucracy while
124 recognizing fiscal realities;

125 (D) Community and technical colleges need a high degree
126 of flexibility and local autonomy to preserve and expand their
127 ability to respond rapidly and effectively to local or regional
128 needs;

129 (E) Community and technical colleges need state-level
130 support and leadership that recognize differences among
131 regions of the state and among institutions and accept the
132 reality that institutions are at different stages in their develop-
133 ment and have different challenges and capabilities;

134 (F) Clear benchmarks and regular monitoring are required
135 to assess the progress of community and technical colleges
136 toward meeting the established goals and for meeting the
137 essential conditions, including independent accreditation,
138 established in this chapter;

139 (4) Certain acts to streamline accountability, to make
140 maximum use of existing assets to meet new demands and
141 target funding to initiatives designed to enhance and reorient
142 existing capacity, and to provide incentives for brokering and
143 collaboration require that the role of the joint commission for
144 vocational-technical-occupational education be reexamined.

145 (c) *Legislative intent.* — The intent of the Legislature in
146 enacting this article is to address the research findings cited
147 above by reconstituting the joint commission for vocational-
148 technical-occupational education as the West Virginia council
149 for community and technical college education in order to
150 reorient the mission, role and responsibilities consistent with
151 and supportive of the mission, role and responsibilities of the
152 commission, the goals for post-secondary education and
153 accountability for assisting the public community and technical
154 colleges, branches, centers, regional centers, and other delivery
155 sites with a community and technical college mission in
156 achieving the state's public policy agenda.

157 (d) *Purpose.* — The purpose of this article is to provide for
158 the development of a leadership and support mechanism for the
159 community and technical colleges, branches, centers, regional
160 centers, and other delivery sites with a community and technical
161 college mission to assist them in meeting the essential condi-
162 tions and in the step-by-step implementation process for
163 achieving the goals for community and technical college
164 education as provided for in article three-c of this chapter, and
165 to promote coordination and collaboration among secondary
166 and post-secondary vocational-technical-occupational and adult

167 basic education programs as provided for in this chapter and
168 chapter eighteen of this code. The focus of this leadership
169 and support mechanism is to encourage development of a
170 statewide mission to raise education attainment, increase adult
171 literacy, promote work force and economic development, and
172 ensure access to secondary and post-secondary education for
173 the citizens of the state while maintaining the local autonomy
174 and flexibility necessary to the success of community and
175 technical education.

§18B-2B-2. Definitions.

1 The following words when used in this article have the
2 meaning hereinafter ascribed to them unless the context clearly
3 indicates a different meaning:

4 (a) “Adult basic education” means adult basic skills
5 education designed to improve the basic literacy needs of
6 adults, including information processing skills, communication
7 skills and computational skills, leading to a high school
8 equivalency diploma, under the jurisdiction of the state board
9 of education.

10 (b) “Post-secondary vocational-technical-occupational
11 education” means any course or program beyond the high
12 school level that results in, or may result in, the awarding of a
13 two-year associate degree, certificate or other credential from
14 an institution under the jurisdiction of a governing board or
15 other public or private education provider.

16 (c) “Secondary vocational-technical-occupational educa-
17 tion” means any course or program at the high school level that
18 results in, or may result in, a high school diploma or its equiva-
19 lent, under the jurisdiction of the state board of education.

20 (d) “Vice chancellor” means the vice chancellor for
21 community and technical college education and work force

22 development pursuant to section five, article one-b of this
23 chapter.

24 (e) “West Virginia Council for Community and Technical
25 College Education” or “council” means the council established
26 pursuant to section three of this article. On and after the
27 effective date of this article, any reference in this code to the
28 joint commission for vocational-technical-occupational
29 education means the West Virginia council for community and
30 technical college education.

§18B-2B-3. Joint commission for vocational-technical-occupational education reconstituted as West Virginia council for community and technical college education; jurisdiction of higher education policy commission; supervision of chancellor; chief executive officer.

1 (a) Effective the first day of July, two thousand one, the
2 West Virginia joint commission for voca-
3 tional-technical-occupational education is reconstituted as the
4 West Virginia council for community and technical college
5 education. Any reference in this code to the joint commission
6 for vocational-technical-occupational education means the West
7 Virginia council for community and technical college educa-
8 tion. The council has all the powers and duties assigned by law
9 to the joint commission for vocational-technical-occupational
10 education prior to the effective date of this section and such
11 other powers and duties as may be assigned by law or by the
12 commission.

13 (b) The council is subject to the jurisdiction of the commis-
14 sion established in article one-b of this chapter. The vice
15 chancellor serves as chief executive officer of the council.

§18B-2B-4. Appointment, composition and terms of council.

1 (a) On the effective date of this section, the joint commis-
2 sion for vocational-technical-occupational education is reconsti-
3 tuted as the West Virginia council for community and technical
4 college education and all terms of members appointed by the
5 governor prior to the effective date of this section expire upon
6 the appointment by the governor of all the members required to
7 be appointed by this section.

8 (b) The council is comprised of eight members selected as
9 follows:

10 (1) Three members appointed by the governor, with the
11 advice and consent of the Senate;

12 (2) Two members appointed by the governor from a list of
13 six persons nominated by the president of the Senate: *Provided*,
14 That no more than two nominees may be from the same
15 congressional district and no more than three may be from the
16 same political party;

17 (3) Two members appointed by the governor from a list of
18 six persons nominated by the speaker of the House of Dele-
19 gates: *Provided*, That no more than two nominees may be from
20 the same congressional district and no more than three may be
21 from the same political party; and

22 (4) The assistant superintendent for technical and adult
23 education of the state department of education who serves as an
24 ex officio, nonvoting member of the council;

25 (c) The governor may, but is not required to, reappoint any
26 person who was a member of the joint commission immediately
27 prior to the effective date of this section: *Provided*, That the
28 individual selected is otherwise eligible to serve.

29 (d) All appointed members shall be citizens of the state,
30 shall represent the public interest and shall be persons who
31 understand and are committed to achieving the goals and
32 objectives set forth in section one-a, article one of this chapter,
33 the essential conditions for community and technical college
34 education programs and services set forth in article three-c of
35 this chapter, and the goals for secondary and post-secondary
36 vocational-technical-occupational and adult basic education in
37 the state. The appointed members shall represent the interests
38 of the business, labor and employer communities and demon-
39 strate knowledge of the education needs of the various regions,
40 attainment levels and age groups within the state.

41 (e) The governor may not appoint any person to be a
42 member of the council who is an officer, employee or member
43 of an advisory board of any state college or university, the
44 holder of any other public office or public employment under
45 the government of this state or any of its political subdivisions,
46 an appointee or employee of any governing board or an
47 immediate family member of any employee under the jurisdic-
48 tion of the commission or any governing board. No individual
49 may serve on the council who is engaged in providing, or
50 employed by a person or company whose primary function is to
51 provide, work force development services and activities. Of the
52 members appointed by the governor, no more than four thereof
53 may belong to the same political party and no more than three
54 may be appointed from any congressional district.

55 (f) Members of the council shall serve for terms of four
56 years, except that of the original appointments, one member
57 shall be appointed for one year; two members shall be ap-
58 pointed for two years; two members shall be appointed for three
59 years; and two members shall be appointed for four years. No
60 member may serve more than two consecutive full terms nor
61 may any member be appointed to a term which results in the
62 member serving more than eight consecutive years.

§18B-2B-5. Meetings and compensation.

1 (a) The vice chancellor shall call the initial meeting of the
2 council and preside until a chairperson is selected. The mem-
3 bers shall elect a chairperson from among the persons appointed
4 by the governor. The council shall hold at least eight meetings
5 annually and may meet more often at the call of the chairper-
6 son. One such meeting shall be a public forum for the discus-
7 sion of the goals and standards for work force development,
8 economic development, and vocational education in the state.

9 (b) The council shall hold an annual meeting each June for
10 the purpose of electing officers for the next fiscal year. At the
11 annual meeting, the council shall elect from its appointed
12 members a chairperson and other officers as it may consider
13 necessary or desirable: *Provided*, That the initial meeting for
14 the purpose of selecting the first chairperson and other officers
15 shall be held during July, two thousand one, or as soon thereaf-
16 ter as practicable. The chairperson and other officers shall be
17 elected for a one-year term commencing on the first day of July
18 following the annual meeting: *Provided, however*, That the
19 terms of officers elected in July, two thousand one, begin upon
20 election and end on the thirtieth day of June, two thousand two.
21 The chairperson of the board may serve no more than two
22 consecutive terms as chair.

23 (c) Members of the council shall serve without compensa-
24 tion, but shall be reimbursed for all reasonable and necessary
25 expenses actually incurred in the performance of their official
26 duties under this article upon presentation of an itemized sworn
27 statement of their expenses, except that the ex officio member
28 of the council who is an employee of the state shall be reim-
29 bursed by the employing agency.

30 (d) A majority of the members constitutes a quorum for
31 conducting the business of the council.

§18B-2B-6. Powers and duties of the council.

1 (a) The council has all the powers and duties assigned to the
2 joint commission prior to the effective date of this article as set
3 forth in the provisions of section two, article two-b, chapter
4 eighteen of this code and such other powers and duties as may
5 be assigned by law or by the commission. Authority granted
6 under that section to the joint commission as the sole agency
7 responsible for the administration of voca-
8 tional-technical-occupational education in the state is hereby
9 transferred to the council.

10 (b) Under the supervision of the commission, the council
11 has the following powers and duties:

12 (1) To develop and recommend to the commission for
13 inclusion in the statewide public agenda, a plan for raising
14 education attainment, increasing adult literacy, promoting work
15 force and economic development and ensuring access to
16 advanced education for the citizens of West Virginia;

17 (2) To provide statewide leadership, coordination, support,
18 and technical assistance to the community and technical
19 colleges and to provide a focal point for visible and effective
20 advocacy for their work and for the public agenda adopted by
21 the commission;

22 (3) To review and approve all institutional compacts for the
23 community and technical colleges prior to their submission to
24 the commission for final approval;

25 (4) To consider and submit to the commission a budget for
26 community and technical colleges that:

27 (A) Includes recommended appropriations;

28 (B) Considers the progress of each institution toward
29 meeting the essential conditions set forth in section three,
30 article three-c of this chapter, including independent accredita-
31 tion; and

32 (C) Considers the progress of each institution toward
33 meeting the goals established in its institutional compact;

34 (5) To make recommendations to the commission for
35 approval of the administration and distribution of the
36 independently-accredited community and technical college
37 development account;

38 (6) To design and recommend to the commission a plan of
39 strategic funding to strengthen capacity for support of commu-
40 nity and technical college education in all areas of the state;

41 (7) To foster coordination among all state-level, regional
42 and local entities providing post-secondary vocational educa-
43 tion or work force development and to coordinate all public
44 institutions and entities that have a community and technical
45 college mission;

46 (8) To assume on behalf of the commission the principal
47 responsibility for overseeing the implementation of the step-by-
48 step process for achieving independent accreditation and for
49 meeting the essential conditions pursuant to article three-c of
50 this chapter;

51 (9) To participate in the selection of administrative heads
52 of the community and technical colleges as directed by the
53 commission;

54 (10) To provide a single, statewide link for current and
55 prospective employers whose needs extend beyond one locality;

56 (11) To provide a mechanism that serves two or more
57 institutions to facilitate joint problem solving in areas includ-
58 ing, but not limited to:

59 (A) Defining faculty roles and personnel policies;

60 (B) Delivering high-cost technical education programs
61 across the state;

62 (C) Providing one-stop service for work force training to be
63 delivered by multiple institutions; and

64 (D) Providing opportunities for resource-sharing and
65 collaborative ventures;

66 (12) To provide support and technical assistance to develop,
67 coordinate, and deliver effective and efficient community and
68 technical college education programs and services in the state;

69 (13) To assist the community and technical colleges in
70 establishing and promoting links with business, industry and
71 labor in the geographic areas for which each of the community
72 and technical colleges is responsible;

73 (14) To develop alliances among the community and
74 technical colleges for resource sharing, joint development of
75 courses and courseware, and sharing of expertise and staff
76 development;

77 (15) To serve aggressively as an advocate for development
78 of a seamless curriculum, to cooperate with the governor's p-20
79 council of West Virginia to remove barriers relating to transfer
80 and articulation between and among community and technical
81 colleges, state colleges and universities, and public education,
82 preschool through grade twelve, and to encourage the most
83 efficient utilization of available resources. The council for
84 community and technical college education is responsible for

85 advising the commission on these issues and making appropri-
86 ate recommendations;

87 (16) To assist the commission in informing public school
88 students, their parents and teachers of the academic preparation
89 that students need in order to be prepared adequately to succeed
90 in their selected fields of study and career plans;

91 (17) To assist the commission in developing a statewide
92 system of community and technical college programs and
93 services in every region of West Virginia for competency-based
94 certification of knowledge and skills, including a statewide
95 competency-based associate degree program;

96 (18) To review and approve all institutional master plans
97 for the community and technical colleges prior to their submis-
98 sion to the commission for final approval;

99 (19) To recommend to the commission policies or rules for
100 promulgation that are necessary or expedient for the effective
101 and efficient performance of community and technical colleges
102 in the state;

103 (20) To recommend to the commission a set of benchmarks
104 and performance indicators to apply to community and techni-
105 cal colleges to measure institutional progress toward meeting
106 the goals as outlined in section one-a, article one of this chapter
107 and in meeting the essential conditions established in article
108 three-c of this chapter;

109 (21) To assist the commission staff in developing a separate
110 section on community and technical colleges for inclusion in
111 the higher education report card as defined in section eight,
112 article one-b of this chapter. This section shall include, but is
113 not limited to, evaluation of the institutions based upon the
114 benchmarks and indicators developed in subdivision (20) of this
115 subsection;

116 (22) If approved by the commission, to facilitate creation of
117 the advantage valley community college network recommended
118 by the *Implementation Board Report* as well as any other
119 regional networks of affiliated community and technical
120 colleges if requested by all affected institutions in that region as
121 the commission finds to be appropriate and in the best interests
122 of the citizens to be served;

123 (23) To advise and assist the state board of education and
124 the commission on state plans for secondary and post-secondary
125 vocational-technical-occupational and adult basic education,
126 including, but not limited to:

127 (A) Policies to strengthen vocational-technical-occupational
128 and adult basic education;

129 (B) Programs and methods to assist in the improvement,
130 modernization and expanded delivery of vocational-techni-
131 cal-occupational and adult basic education programs;

132 (24) To distribute federal vocational education funding
133 provided under the Carl D. Perkins Vocational and Technical
134 Education Act of 1998, PL 105-332, with an emphasis on the
135 distribution of financial assistance among secondary and
136 post-secondary vocational-technical-occupational and adult
137 basic education programs to help meet the public policy agenda.

138 In distributing funds the council shall use the following
139 guidelines:

140 (A) The board of education shall continue to be the fiscal
141 agent for federal vocational education funding;

142 (B) For the fiscal years beginning on the first day of July,
143 two thousand one and two thousand two, the percentage split of
144 the federal allocation for vocational education between the
145 West Virginia board of education and the commission shall

146 remain the same as the percentage split that was distributed to
147 the board of education and the commission for the fiscal year
148 that began on the first day of July, two thousand;

149 (C) For the fiscal year beginning on the first day of July,
150 two thousand three and thereafter, the percentage split between
151 the board of education and the commission shall be determined
152 by rule promulgated by the council under the provisions of
153 article three-a, chapter twenty-nine-a of this code: *Provided*,
154 That the council shall first obtain the approval of the board of
155 education before proposing a rule;

156 (25) To collaborate, cooperate and interact with all second-
157 ary and post-secondary vocational-technical-occupational and
158 adult basic education programs in the state, including the
159 programs assisted under the federal Carl D. Perkins Vocational
160 and Technical Education Act of 1998, PL 105-332, and the
161 Work Force Investment Act of 1998, to promote the develop-
162 ment of seamless curriculum and the elimination of duplicative
163 programs;

164 (26) To coordinate the delivery of voca-
165 tional-technical-occupational and adult basic education in a
166 manner designed to make the most effective use of available
167 public funds to increase accessibility for students;

168 (27) To analyze and report to the commission and the West
169 Virginia board of education on the distribution of spending for
170 vocational-technical-occupational and adult basic education in
171 the state and on the availability of vocational-technical-occupa-
172 tional and adult basic education activities and services within
173 the state.

174 (28) To promote the delivery of vocational-technical-
175 occupational, adult basic education and community and
176 technical college education programs in the state which

177 emphasize the involvement of business, industry and labor
178 organizations;

179 (29) To promote public participation in the provision of
180 vocational-technical-occupational, adult basic education and
181 community and technical education at the local level, with an
182 emphasis on programs which involve the participation of local
183 employers and labor organizations;

184 (30) To promote equal access to quality vocational-
185 technical-occupational, adult basic education and community
186 and technical college education programs to handicapped and
187 disadvantaged individuals, adults who are in need of training
188 and retraining, individuals who are single parents or homemak-
189 ers, individuals participating in programs designed to eliminate
190 sexual bias and stereotyping, and criminal offenders serving in
191 correctional institutions;

192 (31) To meet annually between the months of October and
193 December with the advisory committee of community and
194 technical college presidents and provosts created pursuant to
195 section eight of this article to discuss those matters relating to
196 community and technical college education in which advisory
197 committee members or the council may have an interest; and

198 (32) To accept and expend any gift, grant, contribution,
199 bequest, endowment or other money for the purposes of this
200 article.

201 (c) In addition to the powers and duties provided for in
202 subsections (a) and (b) of this section and any other powers and
203 duties as may be assigned to it by law or by the commission, the
204 council has such other powers and duties as may be necessary
205 or expedient to accomplish the purposes of this article.

§18B-2B-7. Powers and duties of the chief executive officer.

1 The vice chancellor is the chief executive officer of the
2 council and as such may exercise the powers and duties
3 assigned pursuant to subsection three, section five, article one-b
4 of this chapter. The vice chancellor has all powers and duties
5 assigned by law or by the commission and, in addition, has the
6 following powers and duties:

7 (1) To serve as the principal accountability point for the
8 commission for implementation of the public policy agenda as
9 it relates to community and technical colleges;

10 (2) To serve on behalf of the commission as the liaison to
11 the council and to the community and technical colleges;

12 (3) To assume on behalf of the commission the principal
13 responsibility for directing and assisting the work of the
14 council; and

15 (4) With the approval of the commission and the chancel-
16 lor, to employ and direct staff as necessary and appropriate to
17 carry out the duties and responsibilities of this article. On the
18 first day of July, two thousand one, all personnel employed on
19 the thirtieth day of June, two thousand one, within the joint
20 commission for vocational-technical-occupational education are
21 hereby transferred to the jurisdiction of the commission and are
22 under the direct supervision of the vice chancellor and the
23 chancellor: *Provided*, That prior to the first day of October, two
24 thousand one, no employee shall be terminated or have his or
25 her salary or benefit levels reduced as the sole result of the
26 governance reorganization set forth in this article.

**§18B-2B-8. State advisory committee of community and technical
college presidents and provosts.**

1 (a) Effective the first day of July, two thousand one, there
2 is hereby created the state advisory committee of community
3 and technical college presidents and provosts. For the purposes

4 of this section, the state advisory committee of community and
5 technical college presidents and provosts shall be referred to as
6 the “advisory committee”.

7 (b) Each president or other administrative head of a public
8 community and technical college, as defined in section four,
9 article three-c of this chapter shall be a member of the advisory
10 committee. An administrative head of a component, branch,
11 center, regional center or other delivery site with a community
12 and technical college mission may be a member if considered
13 appropriate.

14 (c) The vice chancellor serves as chair of the advisory
15 committee and shall convene the initial meeting during the
16 month of July, two thousand one. Thereafter, the advisory
17 committee shall meet at least once each quarter.

18 (d) The advisory committee shall communicate to the
19 council, through the vice chancellor, on matters of importance
20 to the group and shall meet annually between the months of
21 October and December with the council to discuss those matters
22 relating to community and technical college education in which
23 advisory committee members or the council may have an
24 interest.

25 (e) The vice chancellor shall prepare meeting minutes
26 which shall be made available, upon request, to the public.

ARTICLE 2C. WEST VIRGINIA COMMUNITY AND TECHNICAL COLLEGE.

§18B-2C-1. Legislative findings; intent.

§18B-2C-2. Definitions.

§18B-2C-3. Authority and duty of commission to determine progress of community and technical colleges; conditions; authority to create West Virginia community and technical college.

§18B-2C-4. Authority of commission in creating West Virginia community and technical college.

§18B-2C-5. Transfer of powers, duties, property, obligations, etc., of prior governing boards to the governing board of West Virginia community and technical college.

§18B-2C-6. Powers and duties of governing board for the West Virginia community and technical college.

§18B-2C-7. Powers and duties of vice chancellor as president of the West Virginia community and technical college.

§18B-2C-1. Legislative findings; intent.

1 (a) *Legislative findings.* —

2 (1) The Legislature hereby finds that for more than a decade
3 legislation has been enacted having as a principal goal creation
4 of a strong, effective system of community and technical
5 education capable of meeting the needs of the citizens of the
6 state. In furtherance of that goal, the Legislature has passed the
7 following major pieces of legislation:

8 (A) Senate Bill 420, passed during the regular session of
9 one thousand nine hundred eighty-nine, reorganized the
10 governance structure of public higher education and created the
11 joint commission for vocational-technical-occupational
12 education to bridge the gap between secondary and post-
13 secondary vocational, technical, and occupational education;

14 (B) Senate Bill 377, passed during the regular session of
15 one thousand nine hundred ninety-three, adopted goals and
16 objectives for public post-secondary education, addressed the
17 needs of nontraditional students, directed the institutions to
18 include an assessment of work force development needs in their
19 master plans and established the resource allocation model and
20 policies to aid governing boards and institutions in meeting the
21 established goals and objectives;

22 (C) Senate Bill 547, passed during the regular session of
23 one thousand nine hundred ninety-five, established goals and
24 funding for faculty and staff salaries, required the governing

25 boards to establish community and technical education with the
26 administrative, programmatic and budgetary control necessary
27 to respond to local needs and provided that community and
28 technical college budgets be appropriated to a separate control
29 account;

30 (D) Senate Bill 653, passed during the regular session of
31 two thousand, established the commission to develop a public
32 policy agenda for higher education in conjunction with state
33 leaders, set forth the essential conditions that must be met by
34 each community and technical college in the state, and man-
35 dated that most component community and technical colleges
36 move to independent accreditation.

37 (2) The *Market Street Report*, the *McClenney Report*, and
38 the *Implementation Board Report*, cited in article two-b of this
39 chapter, each reflects recent research and indicates that, while
40 these legislative actions cited above have helped the state to
41 make progress in certain areas of higher education, they have
42 not offered a complete solution to the problems of community
43 and technical colleges.

44 (b) *Intent*. — It is the intent of the Legislature:

45 (1) That this article and article two-b of this chapter be seen
46 as additional steps in the process of developing strong institu-
47 tions capable of delivering community and technical education
48 to meet the needs of the state and that they be viewed as
49 building blocks added to the foundation laid by earlier legisla-
50 tion.

51 (2) To create a mechanism whereby the commission, if
52 necessary, can assure through its own direct action that the
53 goals established pursuant to section one-a, article one of this
54 chapter are met.

55 (3) To authorize the commission to create the West Virginia
56 community and technical college to serve the interests of the
57 people of West Virginia by advancing the public policy agenda
58 developed pursuant to article one-b of this chapter. Specifically,
59 the focus of the college and its governing board is:

60 (A) To encourage development of a statewide mission that:

61 (i) Raises education attainment;

62 (ii) Increases adult literacy;

63 (iii) Promotes work force and economic development; and

64 (iv) Ensures access to post-secondary education for the
65 citizens of the state;

66 (B) To provide oversight or governance of the community
67 and technical colleges, branches, centers, regional centers, and
68 other delivery sites with a community and technical college
69 mission;

70 (C) To provide leadership, support and coordination; and

71 (D) To protect and expand the local autonomy and flexibil-
72 ity necessary for community and technical colleges to succeed.

§18B-2C-2. Definitions.

1 The following words when used in this article and article
2 two-b of this chapter have the meaning hereinafter ascribed to
3 them unless the context clearly indicates a different meaning:

4 (a) "Adult basic education" means adult basic skills
5 education designed to improve the basic literacy needs of
6 adults, including information processing skills, communication
7 skills and computational skills, leading to a high school

8 equivalency diploma, under the jurisdiction of the state board
9 of education.

10 (b) "Governing board" means the West Virginia council for
11 community and technical college education when acting as the
12 governing board for the West Virginia community and technical
13 college created pursuant to the provisions of this article.

14 (c) "Post-secondary vocational-technical-occupational
15 education" means any course or program beyond the high
16 school level that results in, or may result in, the awarding of a
17 two-year associate degree, certificate or other credential from
18 an institution under the jurisdiction of a governing board or
19 other public or private education provider.

20 (d) "Secondary vocational-technical-occupational educa-
21 tion" means any course or program at the high school level that
22 results in, or may result in, a high school diploma or its equiva-
23 lent, under the jurisdiction of the state board of education.

24 (e) "Vice chancellor" means the vice chancellor for
25 community and technical college education and work force
26 development pursuant to section five, article one-b of this
27 chapter.

28 (f) "West Virginia council for community and technical
29 college education" or "council" means the council established
30 pursuant to section three, article two-b of this chapter.

31 (g) "West Virginia community and technical college" or
32 "college" means the statewide, accredited entity created
33 pursuant to the provisions of this article.

**§18B-2C-3. Authority and duty of commission to determine
progress of community and technical colleges;
conditions; authority to create West Virginia
community and technical college.**

1 (a) Beginning on the first day of July, two thousand one,
2 and at least annually thereafter, the commission shall review
3 and analyze all the public community and technical colleges,
4 branches, centers, regional centers, and other delivery sites with
5 a community and technical college mission to determine their
6 progress toward meeting the goals and objectives set forth in
7 section one-a, article one of this chapter and toward advancing
8 the purposes, goals and objectives set forth in article three-c of
9 this chapter.

10 (b) The analysis required in subsection (a) of this section
11 shall be based, in whole or in part, upon the findings made
12 pursuant to the rule establishing benchmarks and indicators
13 required to be promulgated by the commission in section two,
14 article one-a of this chapter.

15 (c) Based upon their analysis in subsections (a) and (b) of
16 this section, the commission shall make a determination
17 whether any one or more of the following conditions exist:

18 (1) One or more of the component community and technical
19 colleges required to do so has not achieved, or is not making
20 sufficient, satisfactory progress toward achieving the essential
21 conditions, including independent accreditation;

22 (2) One or more of the public community and technical
23 colleges, branches, centers, regional centers, and other delivery
24 sites with a community and technical college mission requires
25 financial assistance or other support to meet the goals and
26 essential conditions set forth in this chapter;

27 (3) It is in the best interests of the people of the state or a
28 region within the state to have a single, accredited institution
29 which can provide an umbrella of statewide accreditation;

30 (4) It is in the best interests of the people of the state or a
31 region of the state to have one accredited institution able to

32 extend accreditation to institutions and entities required to seek
33 independent accreditation;

34 (5) One or more of the public community and technical
35 colleges, branches, centers, regional centers, or other delivery
36 sites with a community and technical college mission request
37 from the commission the type of assistance which can best be
38 delivered through implementation of the provisions of section
39 four of this article. Institutional requests that may be considered
40 by the commission include, but are not limited to, assistance in
41 seeking and/or attaining independent accreditation, in meeting
42 the goals for post-secondary education established in section
43 one-a, article one of this chapter, in meeting the essential
44 conditions set forth in section three, article three-c of this
45 chapter, or in establishing and implementing regional networks.

46 (6) One or more public community and technical colleges,
47 branches, centers, regional centers, or other delivery sites with
48 a community and technical college mission, has not met, or is
49 not making sufficient, satisfactory progress toward meeting, the
50 goals set forth in section one-a, article one of this chapter; and

51 (7) The council makes a recommendation to the commis-
52 sion that it is in the best interests of the people of the state or a
53 region of the state to create a statewide, independently accred-
54 ited community and technical college.

55 (d) The commission may not make a determination subject
56 to the provisions of subsection (c) of this section that a condi-
57 tion does not exist based upon a finding that the higher educa-
58 tion entity lacks sufficient funds to make sufficient, satisfactory
59 progress.

60 (e) The commission shall prepare a written report on the
61 findings and determinations required by this section for the
62 legislative oversight commission on education accountability
63 by the first day of December, two thousand one, and each year

64 thereafter, together with a detailed history of any actions taken
65 by the commission under the authority of this article.

**§18B-2C-4. Authority of commission in creating West Virginia
community and technical college.**

1 (a) Subject to the provisions of subsection (c), section three
2 of this article, if the commission makes a determination that one
3 or more of the conditions exist, then the commission is autho-
4 rized to create the West Virginia community and technical
5 college.

6 (b) As soon as practicable after the commission determines
7 that the college should be created, the commission shall notify
8 the governor, the president of the Senate, the speaker of the
9 House of Delegates and the legislative oversight commission on
10 education accountability of the proposed actions: *Provided*,
11 That the commission shall conduct a study regarding the
12 procedures, findings and determinations considered necessary
13 prior to any creation of the college and shall report its findings
14 to the legislative oversight commission on education account-
15 ability no later than the first day of December, two thousand
16 one: *Provided, however*, That the commission may not create
17 the college prior to the report being received by the legislative
18 oversight commission on education accountability.

19 (c) The commission shall certify to the legislative oversight
20 commission on education accountability, on or before the first
21 day of December of the year in which the college is created,
22 proposed legislation to accomplish the purposes of this article
23 for those matters requiring statutory change.

**§18B-2C-5. Transfer of powers, duties, property, obligations,
etc., of prior governing boards to the governing
board of West Virginia community and technical
college.**

1 If the commission determines that any of the conditions
2 provided for in section three of this article have been met, then
3 as to those entities to whom the conditions apply, the commis-
4 sion may:

5 (1) Designate the governing boards that shall become
6 institutional boards of advisors and transfer governing authority
7 of that board to the governing board of the college;

8 (2) Transfer as appropriate, consistent with state law, all
9 powers, duties, property, obligations, contracts, rules, orders,
10 resolutions or any other matters which should be transferred or
11 vested in the governing board;

12 (3) Assign powers and duties to the governing board and
13 the college as may be necessary or expedient to accomplish the
14 purposes of this article;

15 (4) Create the office of president of the college; and

16 (5) Take such other action as necessary or expedient to
17 accomplish the purposes of this chapter.

**§18B-2C-6. Powers and duties of governing board for the West
Virginia community and technical college.**

1 (a) The council created pursuant to article two-b of this
2 chapter is the governing board for the West Virginia commu-
3 nity and technical college.

4 (b) The powers and duties of the governing board are as
5 follows:

6 (1) To assist the public community and technical colleges,
7 branches, centers, regional centers and other delivery sites with
8 a community and technical college mission in any way practica-

9 ble to meet the goals and objectives set forth in section one-a,
10 article one of this chapter;

11 (2) To assist in meeting any other goals or objectives
12 adopted by the commission as part of its public policy agenda;

13 (3) To accept and expend any gift, grant, contribution,
14 bequest, endowment or other money for the purposes of this
15 article;

16 (4) To exercise all the powers and duties ascribed to
17 governing boards in section four, article two-a of this chapter;
18 and

19 (5) To meet annually between the months of October and
20 December with the advisory committee of community and
21 technical college presidents and provosts created pursuant to
22 section eight, article two-b of this chapter to discuss those
23 matters relating to community and technical college education
24 in which advisory committee members or the council may have
25 an interest.

26 (c) The governing board has the following powers and
27 duties as to all institutions:

28 (1) To coordinate public community and technical colleges,
29 branches, centers, regional centers, and other delivery sites with
30 a community and technical college mission including, but not
31 limited to, those that are free-standing or administratively-
32 linked to a sponsoring institution.

33 (2) To negotiate arrangements with individual entities who
34 may elect to become units of the college for academic and
35 accreditation purposes while retaining certain administrative
36 links to a sponsoring institution;

37 (3) To develop the college as a statewide, accredited
38 institution through which multiple, affiliated entities and sites
39 may achieve accreditation;

40 (4) To provide directly to community and technical
41 colleges, branches, centers, regional centers and other delivery
42 sites with a community and technical college mission, certain
43 support services including, but not limited to, student informa-
44 tion systems, registration, financial and accounting systems and
45 employee recordkeeping; and

46 (5) To exercise all the powers and duties assigned to the
47 council pursuant to the provisions of article two-b of this
48 chapter or by the commission.

49 (d) Subject to the supervision of the commission, the
50 governing board has the following powers and duties as to any
51 entity meeting the conditions of transfer pursuant to section
52 four of this article:

53 (1) To govern and have direct academic and administrative
54 responsibility for any public community and technical college,
55 branch, center, regional center, or other delivery site with a
56 community and technical college mission.

57 (2) To require the entities to seek independent accreditation
58 through the college.

59 (3) To allocate state budgetary resources to the entity; and

60 (4) With the advice and consent of the commission, to
61 appoint the administrative heads of institutions governed by the
62 governing board.

**§18B-2C-7. Powers and duties of vice chancellor as president of
the West Virginia community and technical
college.**

1 The vice chancellor serves as the acting president of the
2 college until such time as a president is selected as prescribed
3 by law. As acting president, the vice chancellor has all the
4 powers and duties assigned by law, by the commission or by the
5 governing board. In addition, the vice chancellor shall continue
6 to exercise all other powers and duties assigned by law or by
7 the commission.

ARTICLE 3C. COMMUNITY AND TECHNICAL COLLEGE SYSTEM.

§18B-3C-7. District consortia committees.

§18B-3C-8. Process for achieving independently-accredited community and technical colleges.

§18B-3C-7. District consortia committees.

1 (a) The president or provost of each community and
2 technical college shall form a district consortium committee
3 which shall include representatives, distributed geographically
4 to the extent practicable, of the major community and technical
5 college branches, vocational-technical centers, comprehensive
6 high schools, four-year colleges and universities, community
7 service or cultural organizations, economic development
8 organizations, business, industry, labor, elected public officials
9 and employment and training programs and offices within the
10 district. The consortium committee shall be chaired by the
11 president or provost, or his or her designee, and shall advise and
12 assist the president or provost with the following:

13 (1) Completing a comprehensive assessment of the district
14 to determine what education and training programs are neces-
15 sary to meet the short and long-term work force development
16 needs of the district;

17 (2) Coordinating efforts with regional labor market infor-
18 mation systems to identify the ongoing needs of business and
19 industry, both current and projected, and to provide information

20 to assist in an informed program of planning and decision
21 making;

22 (3) Planning and development of a unified effort to meet
23 the documented work force development needs of the district
24 through individual and cooperative programs, shared facilities,
25 faculty, staff, equipment and other resources and the develop-
26 ment and use of distance learning and other education technolo-
27 gies;

28 (4) Regularly reviewing and revising curricula to ensure
29 that the work force needs are met, developing new programs
30 and phasing out or modifying existing programs as appropriate
31 to meet such needs, streamlining procedures for designing and
32 implementing customized training programs and accomplishing
33 such other complements of a quality comprehensive community
34 and technical college;

35 (5) Increasing the integration of secondary and post-
36 secondary curriculum and programs that are targeted to meet
37 regional labor market needs, including implementation of a
38 comprehensive school-to-work transition system that accom-
39 plishes the following:

40 (A) Helps students focus on career objectives;

41 (B) Establishes cooperative programs and student intern-
42 ships with business and industry;

43 (C) Builds upon current programs such as high schools that
44 work, tech prep associate degree programs, registered appren-
45 ticeships and rural entrepreneurship through action learning;
46 and

47 (D) Addresses the needs of at-risk students and school
48 dropouts;

49 (6) Planning and implementation of integrated professional
50 development activities for secondary and post-secondary
51 faculty, staff and administrators and other consortium partners
52 throughout the district;

53 (7) Ensuring that program graduates have attained the
54 competencies required for successful employment through the
55 involvement of business, industry and labor in establishing
56 student credentialing;

57 (8) Performance assessment of student knowledge and
58 skills which may be gained from multiple sources so that
59 students gain credit toward program completion and advance
60 more rapidly without repeating coursework in which they
61 already possess competency;

62 (9) Cooperating with work force development investment
63 councils in establishing one-stop-shop career centers with
64 integrated employment and training and labor market informa-
65 tion systems that enable job seekers to assess their skills,
66 identify and secure needed education training and secure
67 employment and employers to locate available workers;

68 (10) Increasing the integration of adult literacy, adult basic
69 education, federal work force investment act and community
70 and technical college programs and services to expedite the
71 transition of adults from welfare to gainful employment; and

72 (11) Establishing a single point of contact for employers
73 and potential employers to access education and training
74 programs throughout the district.

75 (b) The district consortium committee shall cooperate with
76 the regional work force investment board in the responsibility
77 area of its institution and shall participate in any development
78 or amendment to the regional work force investment plan.

§18B-3C-8. Process for achieving independently-accredited community and technical colleges.

1 (a) Over a six-year period beginning the first day of July,
2 two thousand one, West Virginia shall move from having
3 “component” community and technical colleges to having a
4 statewide network of independently-accredited community and
5 technical colleges serving every region of the state. This section
6 does not apply to the freestanding community and technical
7 colleges, West Virginia university at Parkersburg and Potomac
8 state college of West Virginia university: *Provided*, That
9 Potomac state college of West Virginia university shall serve as
10 a comprehensive two-year institution for the delivery of transfer
11 education, may offer career programs in the area of agriculture,
12 and may offer nontraditional outreach and work force develop-
13 ment programs as a collaborative effort in a region with the
14 local community and technical college whose mission and
15 charge encompasses outreach and work force development
16 programs.

17 (b) To be eligible for funds appropriated to develop
18 independently accredited community and technical colleges, a
19 state institution of higher education shall demonstrate the
20 following:

21 (1) That it has as a part of its institutional compact ap-
22 proved by the council and the commission a step-by-step plan
23 with measurable benchmarks for developing an independently
24 accredited community and technical college that meets the
25 essential conditions set forth in section three of this article,
26 except as limited in subdivisions (1), (2) and (4), subsection (c)
27 of this section;

28 (2) That it is able to offer evidence annually to the satisfac-
29 tion of the council and the commission that it is making
30 progress toward accomplishing the benchmarks established in

31 its institutional compact for developing an independently
32 accredited community and technical college; and

33 (3) That it has submitted an expenditure schedule approved
34 by the council and the commission which sets forth a proposed
35 plan of expenditures for funds allocated to it from the fund.

36 (c) The following are recommended strategies for moving
37 from the current arrangement of “component” community and
38 technical colleges to the legislatively mandated statewide
39 network of independently accredited community and technical
40 colleges serving every region of the state. The Legislature
41 recognizes that there may be other means to achieve this
42 ultimate objective; however, it is the intent of the Legislature
43 that the move from the current arrangement of “component”
44 community and technical colleges to the legislatively mandated
45 statewide network of independently accredited community and
46 technical colleges serving every region of the state shall be
47 accomplished. The following recommendations are designed to
48 reflect significant variations among regions and the potential
49 impacts on the sponsoring institutions.

50 (1) *Bluefield state community and technical college.* —
51 Bluefield state community and technical college, including the
52 Lewisburg center, should retain its relationship as a component
53 of Bluefield state college. The president and the board of
54 governors of Bluefield state college are accountable to the
55 commission for ensuring that the full range of community and
56 technical college services is available throughout the region and
57 that the community and technical college adheres, as nearly as
58 possible, to the essential conditions pursuant to section three of
59 this article with the possible exception of independent accredi-
60 tation.

61 (2) *Center for higher education and work force develop-*
62 *ment at Beckley.* — The president of Bluefield state college and

63 the institutional board of advisors are responsible, according to
64 a plan approved by the commission, for the step-by-step
65 implementation of a new independently accredited community
66 and technical college administratively linked to Bluefield state
67 college, known as the center for higher education and work
68 force development, which adheres to the essential conditions
69 pursuant to section three of this article. As an independently
70 accredited community and technical college, the center also
71 shall serve as higher education center for its region by
72 brokering with other colleges, universities and other providers,
73 in-state and out-of-state, both public and private, to ensure the
74 coordinated access of students, employers, and other clients to
75 needed programs and services. The new community and
76 technical college shall serve Raleigh, Summers and Fayette
77 counties and be headquartered in Beckley. The commission
78 shall appoint an institutional board of advisors for the center at
79 Beckley which is separate from the institutional board of
80 advisors of Bluefield state college but may have some overlap
81 in membership to facilitate coordination. In addition, the
82 president of the center shall appoint a district consortium
83 committee to advise the president on a comprehensive assess-
84 ment of the needs in the region, on coordinating efforts with
85 regional labor market information systems, and on other areas
86 as provided for in section seven of this article relating to the
87 duties of district consortia committees. The center shall
88 facilitate the planning and development of a unified effort
89 involving multiple providers and facilities, including, but not
90 limited to, Concord college, the college of West Virginia,
91 Marshall university, West Virginia university, West Virginia
92 university institute of technology and other entities to meet the
93 documented work force development needs in the region:
94 *Provided*, That nothing in this subdivision prohibits or limits
95 any existing, or the continuation of any existing, affiliation
96 between the college of West Virginia, West Virginia university
97 institute of technology and West Virginia university. The center

98 for higher education and work force development at Beckley
99 also shall provide the facilities and support services for other
100 public and private institutions delivering courses, programs and
101 services in Beckley. The objective would be to assure students
102 and employers in the area that there would be coordination and
103 efficient use of resources among the separate programs and
104 facilities, existing and planned, in the Beckley area. If, at a
105 future time, the commission believes it appropriate, it may
106 recommend to the Legislature that the Beckley institution be
107 created as a freestanding institution.

108 (3) *Glennville state community and technical college.* —
109 Glennville state community and technical college, including the
110 centers in Nicholas, Lewis and Roane counties, should retain its
111 relationship as a component of Glennville state college. The
112 president of Glennville state college and the governing board are
113 accountable to the commission for ensuring that the full range
114 of community and technical college services is available
115 throughout the region and that the community and technical
116 college adheres as nearly as possible to the essential conditions
117 pursuant to section three of this article, with the possible
118 exception of independent accreditation.

119 (4) *Fairmont state community and technical college.* —
120 Fairmont state community and technical college shall be an
121 independently accredited community and technical college
122 serving Marion, Doddridge, Barbour, Harrison, Monongalia,
123 Preston, Randolph and Taylor counties. The community and
124 technical college is developed on the base of the existing
125 component community and technical college of Fairmont state
126 college. Subject to the provisions of this section, the president
127 and the governing board of Fairmont state college are responsi-
128 ble, according to a plan approved by the commission, for
129 step-by-step implementation of the independently accredited
130 community and technical college which adheres to the essential
131 conditions pursuant to section three of this article. Subject to

132 the provisions of section twelve of this article, the community
133 and technical college will remain administratively linked to
134 Fairmont state college. Nothing herein shall be construed to
135 require Fairmont state college to discontinue any associate
136 degree program in areas of particular institutional strength
137 which are closely articulated to their baccalaureate programs
138 and missions or which are of a high-cost nature and can best be
139 provided in direct coordination with a baccalaureate institution.

140 (5) *Marshall university community and technical college.*
141 — Senate Bill 653 created an implementation board charged
142 with the responsibility to develop a plan, to be recommended to
143 the commission, for the most effective and efficient method to
144 deliver comprehensive community and technical college
145 education to the citizens and employers of the responsibility
146 areas of Marshall university, West Virginia state college and
147 West Virginia university institute of technology. Pursuant to the
148 recommendation of the implementation board and of the
149 commission, Marshall university community and technical
150 college shall become an independently accredited community
151 and technical college. It should serve Cabell, Kanawha, Mason,
152 Putnam and Wayne counties. The new community and technical
153 college is developed on the base of the existing component
154 community and technical college of Marshall university.
155 Subject to the provisions of this section, the president and the
156 governing board of Marshall university are responsible,
157 according to a plan approved by the commission, for
158 step-by-step implementation of the new independently accred-
159 ited community and technical college which adheres to the
160 essential conditions pursuant to section three of this article.
161 Subject to the provisions of section twelve of this article, the
162 community and technical college will remain administratively
163 linked to Marshall university. Nothing herein shall be construed
164 to require Marshall university to discontinue any associate
165 degree program in areas of particular institutional strength
166 which are closely articulated to their baccalaureate programs

167 and missions or which are of a high-cost nature and can best be
168 provided in direct coordination with a baccalaureate institution.

169 (6) *Shepherd community and technical college.* — Shep-
170 herd community and technical college shall become an inde-
171 pendently accredited community and technical college. It
172 should serve Jefferson, Berkeley and Morgan counties. The new
173 community and technical college is developed on the base of
174 the existing component community and technical college of
175 Shepherd college. Subject to the provisions of this section, the
176 president and the governing board of Shepherd college are
177 responsible, according to a plan approved by the commission,
178 for step-by-step implementation of the new independently
179 accredited community and technical college which adheres to
180 the essential conditions pursuant to section three of this article.
181 Subject to the provisions of section twelve of this article, the
182 community and technical college will remain administratively
183 linked to Shepherd college. Nothing herein shall be construed
184 to require Shepherd college to discontinue any associate degree
185 program in areas of particular institutional strength which are
186 closely articulated to their baccalaureate programs and missions
187 or which are of a high-cost nature and can best be provided in
188 direct coordination with a baccalaureate institution.

189 (7) *West Virginia state community and technical college.* —
190 Senate Bill 653 created an implementation board charged with
191 the responsibility to develop a plan, to be recommended to the
192 commission, for the most effective and efficient method to
193 deliver comprehensive community and technical college
194 education to the citizens and employers of the responsibility
195 areas of Marshall university, West Virginia state college and
196 West Virginia university institute of technology. Pursuant to the
197 recommendation of the implementation board and of the
198 commission, West Virginia state community and technical
199 college shall become an independently accredited community
200 and technical college. It should serve Kanawha, Putnam and

201 Clay counties. The new community and technical college is
202 developed on the base of the existing component community
203 and technical college of West Virginia state college. Subject to
204 the provisions of this section, the president and the governing
205 board of West Virginia state college are responsible, according
206 to a plan approved by the commission, for step-by-step imple-
207 mentation of the new independently accredited community and
208 technical college which adheres to the essential conditions
209 pursuant to section three of this article. Subject to the provi-
210 sions of section twelve of this article, the community and
211 technical college will remain administratively linked to West
212 Virginia state college. Nothing herein shall be construed to
213 require West Virginia state college to discontinue any associate
214 degree program in areas of particular institutional strength
215 which are closely articulated to their baccalaureate programs
216 and missions or which are of a high-cost nature and can best be
217 provided in direct coordination with a baccalaureate institution.

218 (8) *West Virginia university institute of technology.* —
219 Senate Bill 653 created an implementation board charged with
220 the responsibility to develop a plan, to be recommended to the
221 commission, for the most effective and efficient method to
222 deliver comprehensive community and technical college
223 education to the citizens and employers of the responsibility
224 areas of Marshall university, West Virginia state college and
225 West Virginia university institute of technology. Pursuant to the
226 recommendation of the implementation board and of the
227 commission, West Virginia university institute of technology
228 community and technical college shall become an independ-
229 ently accredited community and technical college. It should
230 serve Fayette, Clay, Kanawha, Raleigh and Nicholas counties.
231 The new community and technical college is developed on the
232 base of the existing component community and technical
233 college of West Virginia university institute of technology.
234 Subject to the provisions of this section, the president and the

235 governing board of West Virginia university institute of
236 technology are responsible, according to a plan approved by the
237 commission, for step-by-step implementation of the new
238 independently accredited community and technical college
239 which adheres to the essential conditions pursuant to section
240 three of this article. Subject to the provisions of section twelve
241 of this article, the community and technical college will remain
242 administratively linked to West Virginia university institute of
243 technology. Nothing herein shall be construed to require West
244 Virginia university institute of technology to discontinue any
245 associate degree program in areas of particular institutional
246 strength which are closely articulated to their baccalaureate
247 programs and missions or which are of a high-cost nature and
248 can best be provided in direct coordination with a baccalaureate
249 institution.

ARTICLE 5. HIGHER EDUCATION BUDGETS AND EXPENDITURES.

§18B-5-4. Purchase or acquisition of materials, supplies, equipment and printing.

§18B-5-8. Report card on West Virginia business.

§18B-5-4. Purchase or acquisition of materials, supplies, equipment and printing.

1 (a) The commission and each governing board, through the
2 vice chancellor for administration, shall purchase or acquire all
3 materials, supplies, equipment and printing required for that
4 governing board or the commission, as appropriate, and the
5 state institutions of higher education under their jurisdiction.
6 The commission shall adopt rules governing and controlling
7 acquisitions and purchases in accordance with the provisions of
8 this section. Such rules shall assure that the governing boards:

9 (1) Do not preclude any person from participating and
10 making sales thereof to the governing board or to the commis-
11 sion except as otherwise provided in section five of this article:
12 *Provided*, That the providing of consultant services such as

13 strategic planning services will not preclude or inhibit the
14 governing boards or the commission from considering any
15 qualified bid or response for delivery of a product or a com-
16 modity because of the rendering of those consultant services;

17 (2) Shall establish and prescribe specifications, in all proper
18 cases, for materials, supplies, equipment and printing to be
19 purchased;

20 (3) Shall adopt and prescribe such purchase order, requisiti-
21 tion or other forms as may be required;

22 (4) Shall negotiate for and make purchases and acquisitions
23 in such quantities, at such times and under contract, in the open
24 market or through other accepted methods of governmental
25 purchasing as may be practicable in accordance with general
26 law;

27 (5) Shall advertise for bids on all purchases exceeding
28 twenty-five thousand dollars, to purchase by means of sealed
29 bids and competitive bidding or to effect advantageous pur-
30 chases through other accepted governmental methods and
31 practices: *Provided*, That for printing services, bids shall be
32 advertised by written notification of such bids to any print shop,
33 affiliated with an institution of higher education and operated
34 by classified employees, on all purchases exceeding five
35 thousand dollars;

36 (6) Shall post notices of all acquisitions and purchases for
37 which competitive bids are being solicited in the purchasing
38 office of the specified institution involved in the purchase, at
39 least two weeks prior to making such purchases and ensure that
40 the notice is available to the public during business hours;

41 (7) Shall provide for purchasing in the open market;

42 (8) Shall make provision for vendor notification of bid
43 solicitation and emergency purchasing; and

44 (9) Shall provide that competitive bids are not required for
45 purchases of five thousand dollars or less.

46 (b) The commission or each governing board, through the
47 vice chancellor for administration, may issue a check in
48 advance to a company supplying postage meters for postage
49 used by that board, the commission and by the state institutions
50 of higher education under their jurisdiction.

51 (c) When a purchase is to be made by bid, any or all bids
52 may be rejected. However, all purchases based on advertised
53 bid requests shall be awarded to the lowest responsible bidder
54 taking into consideration the qualities of the articles to be
55 supplied, their conformity with specifications, their suitability
56 to the requirements of the governing boards, the commission
57 and delivery terms: *Provided*, That the preference for resident
58 vendors as provided in section thirty-seven, article three,
59 chapter five-a of this code shall apply to the competitive bids
60 made pursuant to this section.

61 (d) The governing boards and the commission shall
62 maintain a purchase file, which shall be a public record and
63 open for public inspection. After the award of the order or
64 contract, the governing boards and the commission shall
65 indicate upon the successful bid that it was the successful bid
66 and shall further indicate why bids are rejected and, if the
67 mathematical low vendor is not awarded the order or contract,
68 the reason therefor. No records in the purchase file shall be
69 destroyed without the written consent of the legislative auditor.
70 Those files in which the original documentation has been held
71 for at least one year and in which the original documents have
72 been reproduced and archived on microfilm or other equivalent
73 method of duplication may be destroyed without the written

74 consent of the legislative auditor. All files, no matter the
75 storage method, shall be open for inspection by the legislative
76 auditor upon request.

77 (e) The commission also shall adopt rules to prescribe
78 qualifications to be met by any person who is to be employed
79 as a buyer pursuant to this section. These rules shall require that
80 no person may be employed as a buyer unless that person, at the
81 time of employment, either is:

82 (1) A graduate of an accredited college or university; or

83 (2) Has at least four years' experience in purchasing for any
84 unit of government or for any business, commercial or indus-
85 trial enterprise.

86 (f) Any person making purchases and acquisitions pursuant
87 to this section shall execute a bond in the penalty of fifty
88 thousand dollars, payable to the state of West Virginia, with a
89 corporate bonding or surety company authorized to do business
90 in this state as surety thereon, in form prescribed by the
91 attorney general and conditioned upon the faithful performance
92 of all duties in accordance with sections four through eight of
93 this article and the rules of the interim governing board and the
94 commission. In lieu of separate bonds for such buyers, a blanket
95 surety bond may be obtained. Any such bond or bonds shall be
96 filed with the secretary of state. The cost of any such bond or
97 bonds shall be paid from funds appropriated to the applicable
98 governing board or commission.

99 (g) All purchases and acquisitions shall be made in consid-
100 eration and within limits of available appropriations and funds
101 and in accordance with applicable provisions of article two,
102 chapter five-a of this code, relating to expenditure schedules
103 and quarterly allotments of funds.

104 (h) The governing boards and the commission may make
105 requisitions upon the auditor for a sum to be known as an
106 advance allowance account, in no case to exceed five percent of
107 the total of the appropriations for the governing board or the
108 commission, and the auditor shall draw a warrant upon the
109 treasurer for such accounts; and all such advance allowance
110 accounts shall be accounted for by the applicable governing
111 board or commission once every thirty days or more often if
112 required by the state auditor.

113 (i) Contracts entered into pursuant to this section shall be
114 signed by the applicable governing board or the commission in
115 the name of the state and shall be approved as to form by the
116 attorney general: *Provided*, That a contract in which the total
117 does not exceed five thousand dollars and for which the
118 attorney general has not responded within fifteen days of
119 presentation of the contract, the contract shall be deemed
120 approved: *Provided, however*, That a contract or a change order
121 for that contract which in total does not exceed fifty thousand
122 dollars and which uses terms and conditions or standardized
123 forms previously approved by the attorney general and does not
124 make substantive changes in the terms and conditions of the
125 contract does not require approval by the attorney general:
126 *Provided further*, That the attorney general shall make a list of
127 those changes which he or she deems to be substantive and the
128 list, and any changes thereto, shall be published in the state
129 register. A contract that exceeds fifteen thousand dollars shall
130 be filed with the state auditor: *And provided further*, That upon
131 request, the governing boards or the commission shall make all
132 contracts available for inspection by the state auditor. The
133 governing board or the commission, as appropriate, shall
134 prescribe the amount of deposit or bond to be submitted with a
135 bid or contract, if any, and the amount of deposit or bond to be
136 given for the faithful performance of a contract.

137 (j) If the governing board or the commission purchases or
138 contracts for materials, supplies, equipment and printing
139 contrary to the provisions of sections four through seven of this
140 article or the rules pursuant thereto, such purchase or contract
141 shall be void and of no effect.

142 (k) Any governing board or the commission, as appropriate,
143 may request the director of purchases to make available, from
144 time to time, the facilities and services of that department to the
145 governing boards or the commission in the purchase and
146 acquisition of materials, supplies, equipment and printing and
147 the director of purchases shall cooperate with that governing
148 board or the commission, as appropriate, in all such purchases
149 and acquisitions upon such request.

150 (l) Each governing board or the commission, as appropriate,
151 shall permit private institutions of higher education to join as
152 purchasers on purchase contracts for materials, supplies and
153 equipment entered into by that governing board or the commis-
154 sion. Any private school desiring to join as purchasers on such
155 purchase contracts shall file with that governing board or the
156 commission an affidavit signed by the president of the institu-
157 tion of higher education or a designee requesting that it be
158 authorized to join as purchaser on purchase contracts of that
159 governing board or the commission, as appropriate, and
160 agreeing that it will be bound by such terms and conditions as
161 that governing board or the commission may prescribe and that
162 it will be responsible for payment directly to the vendor under
163 each purchase contract.

164 (m) Notwithstanding any other provision of this code to the
165 contrary, the governing boards and the commission, as appro-
166 priate, may make purchases from the federal government or
167 from federal government contracts if the materials, supplies,
168 equipment or printing to be purchased is available from the
169 federal government or from a federal contract and purchasing

170 from the federal government or from a federal government
171 contract would be the most financially advantageous manner of
172 making the purchase.

173 (n) An independent performance audit of all purchasing
174 functions and duties which are performed at any institution of
175 higher education shall be performed each fiscal year. The joint
176 committee on government and finance shall conduct the
177 performance audit and the governing boards and the commis-
178 sion, as appropriate, shall be responsible for paying the cost of
179 the audit from funds appropriated to the governing boards or the
180 commission.

181 (o) The governing boards shall require each institution
182 under their respective jurisdictions to notify and inform every
183 vendor doing business with that institution of the provisions of
184 section fifty-four, article three, chapter five-a of this code, also
185 known as the "prompt pay act of 1990".

186 (p) Consultant services, such as strategic planning services,
187 may not preclude or inhibit the governing boards or the
188 commission from considering any qualified bid or response for
189 delivery of a product or a commodity because of the rendering
190 of those consultant services.

191 (q) After the commission has granted approval for lease-
192 purchase arrangements by the governing boards, a governing
193 board may enter into lease-purchase arrangements for capital
194 improvements, including equipment. Any lease-purchase
195 arrangement so entered shall constitute a special obligation of
196 the state of West Virginia. The obligation under a lease-
197 purchase arrangement so entered may be from any funds legally
198 available to the institution and must be cancelable at the option
199 of the governing board or institution at the end of any fiscal
200 year. The obligation, any assignment or securitization thereof,
201 shall never constitute an indebtedness of the state of West

202 Virginia or any department, agency or political subdivision
203 thereof, within the meaning of any constitutional provision or
204 statutory limitation, and shall not be a charge against the
205 general credit or taxing powers of the state or any political
206 subdivision thereof; and such facts shall be plainly stated in any
207 lease-purchase agreement. Further, the lease-purchase agree-
208 ment shall prohibit assignment or securitization without consent
209 of the lessee and the approval of the attorney general of West
210 Virginia. Proposals for any arrangement must be requested in
211 accordance with the requirements of this section and any rules
212 or guidelines of the commission. In addition, any lease-pur-
213 chase agreement must be approved by the attorney general of
214 West Virginia. The interest component of any lease-purchase
215 obligation shall be exempt from all taxation of the state of West
216 Virginia, except inheritance, estate and transfer taxes. It is the
217 intent of the Legislature that if the requirements set forth in the
218 internal revenue code of one thousand nine hundred eighty-six,
219 as amended, and any regulations promulgated pursuant thereto
220 are met, the interest component of any lease-purchase obliga-
221 tion also shall be exempt from the gross income of the recipient
222 for purposes of federal income taxation and may be designated
223 by the governing board or the president of the institution as a
224 bank-qualified obligation.

§18B-5-8. Report card on West Virginia business.

1 The policy commission shall make an annual report to the
2 finance committees of the House of Delegates and the Senate
3 regarding the entities with which each of the governing boards
4 contracted in the previous year. This report shall be submitted
5 on or before the fifteenth day of January of each year and shall
6 be cumulative in nature. The report shall include, but not be
7 limited to, information regarding the number of out-of-state
8 entities with which each governing board contracted; the
9 number of in-state firms with which each governing board
10 contracted; the dollar amount of each contract; the equipment,

- 11 commodity or service for which each contract was let; and the
- 12 policy commission's recommendations, if any, on the manner
- 13 in which the purchasing procedures could be improved.

ARTICLE 6. ADVISORY COUNCILS OF FACULTY.

§18B-6-1. Institutional boards of advisors for regional campuses and administratively linked community and technical colleges.

§18B-6-2a. State advisory council of faculty.

§18B-6-4a. State advisory councils of classified employees.

§18B-6-1. Institutional boards of advisors for regional campuses and administratively linked community and technical colleges.

1 (a) Effective the first day of July, two thousand, there is
2 established at each regional campus and administratively-linked
3 community and technical college, excluding centers and
4 branches thereof, an institutional board of advisors: *Provided*,
5 That the institutional board of advisors shall not be appointed
6 for administratively linked community and technical colleges
7 until provided for in their compact.

8 (1) For the transition year beginning on the first day of July,
9 two thousand, through the thirtieth day of June, two thousand
10 one, only, the lay members of the institutional board of advisors
11 established for each of the regional campuses of West Virginia
12 university are appointed by the president of the respective
13 institution. Effective the first day of July, two thousand one, the
14 lay members of the institutional boards of advisors for the
15 regional campuses are appointed by the board of governors.

16 (2) The lay members of the institutional board of advisors
17 established for the administratively linked community and
18 technical colleges are appointed by the West Virginia council
19 for community and technical college education.

20 (b) The board of advisors consists of fifteen members,
21 including a full-time member of the faculty with the rank of
22 instructor or above duly elected by the faculty; a member of the
23 student body in good academic standing, enrolled for college
24 credit work and duly elected by the student body; a member
25 from the institutional classified employees duly elected by the
26 classified employees; and twelve lay persons appointed
27 pursuant to subsection (a) of this section who have demon-
28 strated a sincere interest in and concern for the welfare of that
29 institution and who are representative of the population of its
30 responsibility district and fields of study. At least eight of the
31 twelve lay persons appointed shall be residents of the state. Of
32 the lay members who are residents of the state, at least two shall
33 be alumni of the institution and no more than a simple majority
34 may be of the same political party.

35 (c) The student member shall serve for a term of one year
36 beginning upon appointment in July, two thousand, and ending
37 on the thirtieth day of April, two thousand one. Thereafter the
38 term shall begin on the first day of May. The member from the
39 faculty and the classified employees shall serve for a term of
40 two years beginning upon appointment in July, two thousand,
41 and ending on the thirtieth day of April, two thousand two.
42 Thereafter the term shall begin on the first day of May; and the
43 twelve lay members shall serve terms of four years each
44 beginning upon appointment in July, two thousand. Thereafter
45 the term shall begin on the first day of May. All members are
46 eligible to succeed themselves for no more than one additional
47 term. A vacancy in an unexpired term of a member shall be
48 filled for the remainder of the unexpired term within thirty days
49 of the occurrence thereof in the same manner as the original
50 appointment or election. Except in the case of a vacancy, all
51 elections shall be held and all appointments shall be made no
52 later than the thirtieth day of April preceding the commence-
53 ment of the term.

54 (d) Each board of advisors shall hold a regular meeting at
55 least quarterly, commencing in May of each year. Additional
56 meetings may be held upon the call of the chairperson, presi-
57 dent of the institution or upon the written request of at least five
58 members. A majority of the members constitutes a quorum for
59 conducting the business of the board of advisors.

60 (e) One of the twelve lay members shall be elected as
61 chairperson by the board of advisors in May of each year:
62 *Provided*, That the chairperson elected in two thousand shall be
63 elected in July. No member may serve as chairperson for more
64 than two consecutive years.

65 (f) The president of the institution shall make available
66 resources of the institution for conducting the business of the
67 board of advisors. The members of the board of advisors shall
68 be reimbursed for all reasonable and necessary expenses
69 actually incurred in the performance of their official duties
70 under this section upon presentation of an itemized sworn
71 statement thereof. All expenses incurred by the boards of
72 advisors and the institutions under this section shall be paid
73 from funds allocated to the institutions for that purpose.

74 (g) The board of advisors shall review, prior to the submis-
75 sion by the president to its governing board, all proposals of the
76 institution in the areas of mission, academic programs, budget,
77 capital facilities and such other matters as requested by the
78 president of the institution or its governing board or otherwise
79 assigned to it by law. The board of advisors shall comment on
80 each such proposal in writing, with such recommendations for
81 concurrence therein or revision or rejection thereof as it
82 considers proper. The written comments and recommendations
83 shall accompany the proposal to the governing board and the
84 governing board shall include the comments and recommenda-
85 tions in its consideration of and action on the proposal. The
86 governing board shall promptly acknowledge receipt of the

87 comments and recommendations and shall notify the board of
88 advisors in writing of any action taken thereon.

89 (h) The board of advisors shall review, prior to their
90 implementation by the president, all proposals regarding
91 institution-wide personnel policies. The board of advisors may
92 comment on the proposals in writing.

93 (i) The board of advisors shall provide advice and assis-
94 tance to the president in establishing closer connections
95 between higher education and business, labor, government,
96 community and economic development organizations to give
97 students greater opportunities to experience the world of work,
98 such as business and community service internships, appren-
99 ticeships and cooperative programs; to communicate better and
100 serve the current work force and work force development needs
101 of their service area, including the needs of nontraditional
102 students for college-level skills upgrading and retraining and
103 the needs of employers for specific programs of limited
104 duration; and to assess the performance of the institution's
105 graduates and assist in job placement.

106 (j) Upon the occurrence of a vacancy in the office of
107 president of the institution, the board of advisors shall serve as
108 a search and screening committee for candidates to fill the
109 vacancy under guidelines established by the commission
110 pursuant to the provisions of section six, article one-b of this
111 chapter. When serving as a search and screening committee, the
112 board of advisors and its governing board are each authorized
113 to appoint up to three additional persons to serve on the
114 committee as long as the search and screening process is in
115 effect. The three additional appointees of the board of advisors
116 shall be faculty members of the institution. Only for the
117 purposes of the search and screening process, the additional
118 members shall possess the same powers and rights as the
119 regular members of the board of advisors, including reimburse-

120 ment for all reasonable and necessary expenses actually
121 incurred. Following the search and screening process, the
122 committee shall submit the names of at least three candidates to
123 the president of the sponsoring institution for consideration and
124 appointment. If the president rejects all candidates submitted,
125 the committee shall submit the names of at least three addi-
126 tional candidates and this process shall be repeated until the
127 president appoints one of the candidates submitted. The
128 governing board shall provide all necessary staff assistance to
129 the board of advisors in its role as a search and screening
130 committee.

131 (k) The boards of advisors shall develop a master plan for
132 each administratively linked community and technical college.
133 The ultimate responsibility for developing and updating the
134 master plans at the institutional level resides with the institu-
135 tional board of advisors, but the ultimate responsibility for
136 approving the final version of the institutional master plans,
137 including periodic updates, resides with the commission. The
138 plan shall include, but not be limited to, the following:

139 (1) A detailed demonstration of how the master plan will be
140 used to meet the goals and objectives of the institutional
141 compact;

142 (2) A well-developed set of goals outlining missions,
143 degree offerings, resource requirements, physical plant needs,
144 personnel needs, enrollment levels and other planning
145 determinates and projections necessary in such a plan to assure
146 that the needs of the institution's area of responsibility for a
147 quality system of higher education are addressed;

148 (3) Documentation of the involvement of the commission,
149 institutional constituency groups, clientele of the institution,
150 and the general public in the development of all segments of the
151 institutional master plan.

152 The plan shall be established for periods of not less than
153 three nor more than six years and shall be revised periodically
154 as necessary, including recommendations on the addition or
155 deletion of degree programs as, in the discretion of the board of
156 advisors, may be necessary.

§18B-6-2a. State advisory council of faculty.

1 (a) Effective the first day of July, two thousand, there is
2 hereby established the state advisory council of faculty. For the
3 purposes of this section, the state advisory council of faculty
4 shall be referred to as the “council”.

5 (b) During the month of April of each odd-numbered year,
6 beginning in the year two thousand one, each president or other
7 administrative head of a state institution of higher education,
8 including, but not limited to, Potomac state college of West
9 Virginia university, West Virginia university at Parkersburg,
10 West Virginia university institute of technology, Robert C.
11 Byrd health sciences Charleston division of West Virginia
12 university and the Marshall university graduate college, at the
13 direction of the council and in accordance with procedures
14 established by the council, shall convene a meeting or otherwise
15 institute a balloting process to elect one faculty to serve on the
16 council. Terms of the members of the council shall be for two
17 years and shall begin on the first day of July of each
18 odd-numbered year. Members of the council shall be eligible to
19 succeed themselves.

20 (c) The council shall meet at least once each quarter. One
21 of the quarterly meetings shall be during the month of July, at
22 which meeting the council shall elect a chairperson: *Provided*,
23 That the chairperson shall serve no more than two consecutive
24 terms as chair. No member may vote by proxy at the election.
25 In the event of a tie in the last vote taken for such election, a
26 member authorized by the council shall select the chairperson

27 by lot from the names of those persons tied. Immediately
28 following the election of a chairperson, the council shall elect,
29 in the manner prescribed by this section for the election of a
30 chairperson, a member of the council to preside over meetings
31 of the council in the chairperson's absence. Should the chairper-
32 son vacate the position, the council shall meet and elect a new
33 chairperson to fill the unexpired term within thirty days
34 following the vacancy.

35 (d) The council, through its chairperson and in any appro-
36 priate manner, shall communicate to the commission, through
37 the chancellor, matters of higher education in which the faculty
38 members may have an interest.

39 (e) The commission shall meet annually between the
40 months of October and December with the council to discuss
41 matters of higher education in which the faculty members or the
42 commission may have an interest.

43 (f) Members of the council shall serve without compensa-
44 tion, but shall be entitled to reimbursement for actual and
45 necessary expenses incurred in the performance of their official
46 duties from funds allocated to the state institution of higher
47 education served.

48 (g) The council shall cause to be prepared minutes of its
49 meetings, which minutes shall be available, upon request, to
50 any faculty member of a state institution of higher education
51 represented on the council.

§18B-6-4a. State advisory councils of classified employees.

1 (a) Effective the first day of July, two thousand, there is
2 hereby established the state advisory council of classified
3 employees. For the purposes of this section, the state advisory
4 council of classified employees shall be referred to as the
5 "council".

6 (b) During the month of April of each odd-numbered year,
7 beginning in the year two thousand one, each president or other
8 administrative head of a state institution of higher education,
9 including, but not limited to, Potomac state college of West
10 Virginia university, West Virginia university at Parkersburg,
11 West Virginia university institute of technology, Robert C.
12 Byrd health sciences Charleston division of West Virginia
13 university and the Marshall university graduate college, at the
14 direction of the council and in accordance with procedures
15 established by the council, shall convene a meeting or otherwise
16 institute a balloting process to elect one classified employee to
17 serve on the state advisory council. Terms of the members of
18 the council shall be for two years and shall begin on the first
19 day of July of each odd-numbered year and members of the
20 council shall be eligible to succeed themselves. For the pur-
21 poses of this section the term "institution of higher education"
22 includes the facilities and staff supervised by the vice chancel-
23 lor for administration employed by the commission and the
24 West Virginia network for educational telecomputing.

25 (c) The council of classified employees shall meet at least
26 once each quarter. One of the quarterly meetings shall be during
27 the month of July, at which meeting the council shall elect a
28 chairperson: *Provided*, That the chair shall serve no more than
29 two consecutive terms as chair. No member may vote by proxy
30 at the election. In the event of a tie in the last vote taken for
31 such election, a member authorized by the council shall select
32 the chairperson by lot from the names of those persons tied.
33 Immediately following the election of a chairperson, the council
34 shall elect, in the manner prescribed by this section for the
35 election of a chairperson, a member of the council to preside
36 over meetings of the council in the chairperson's absence.
37 Should the chairperson vacate the position, the council shall
38 meet and elect a new chairperson to fill the unexpired term
39 within thirty days following the vacancy.

40 (d) The council, through its chairperson and in any appro-
41 priate manner, shall communicate to the commission, through
42 the chancellor, matters of higher education in which the
43 classified employees may have an interest.

44 (e) The commission shall meet annually, between the
45 months of October and December, with the council to discuss
46 matters of higher education in which the classified employees
47 or the commission may have an interest.

48 (f) Members of the council shall serve without compensa-
49 tion, but shall be entitled to reimbursement for actual and
50 necessary expenses incurred in the performance of their official
51 duties from funds allocated to the state institution of higher
52 education served.

53 (g) The council shall cause to be prepared minutes of its
54 meetings, which minutes shall be available, upon request, to
55 any classified employee of a state institution of higher educa-
56 tion represented on the council.

ARTICLE 7. PERSONNEL GENERALLY.

§18B-7-4. Notice to probationary faculty members of retention or nonretention; hearing.

1 (a) The president or other administrative head of each state
2 institution of higher education shall give written notice to
3 probationary faculty members concerning their retention or
4 nonretention for the ensuing academic year: (1) Not later than
5 the first day of March for those probationary faculty members
6 who are in their first academic year of service; (2) not later than
7 the fifteenth day of December for those probationary faculty
8 members who are in their second academic year of service; and
9 (3) at least one year before the expiration of an appointment for
10 those probationary faculty members who have been employed
11 two or more years with the institution. Such notice to those

12 probationary faculty members not being retained shall be by
13 certified mail, return receipt requested.

14 (b) Upon request of the probationary faculty member not
15 retained, the president or other administrative head of the
16 institution shall within ten days, and by certified mail, inform
17 the probationary faculty member of the reasons for
18 nonretention. Any probationary faculty member who desires to
19 appeal the decision shall utilize the grievance procedure
20 established in article six-a, chapter twenty-nine of this code. If
21 it is concluded that the reasons for nonretention are arbitrary or
22 capricious or without a factual basis, the faculty member shall
23 be retained for the ensuing academic year.

24 (c) The term "probationary faculty member" shall be
25 defined according to rules promulgated by the governing
26 boards. The rights herein provided to probationary faculty
27 members are in addition to, and not in lieu of, other rights
28 afforded them by other rules and other provisions of law.

ARTICLE 9. CLASSIFIED EMPLOYEE SALARY SCHEDULE AND CLASSIFICATION SYSTEM.

§18B-9-1. Legislative purpose.

§18B-9-2. Definitions.

§18B-9-3. Higher education classified employee annual salary schedule.

§18B-9-4. Establishment of personnel classification system; assignment to classification and to salary schedule.

§18B-9-5. Classified employee salary.

§18B-9-7. Conferences regarding personnel classification.

§18B-9-8. Hirings after effective date.

§18B-9-1. Legislative purpose.

1 The purpose of the Legislature in the enactment of this
2 article is to require the commission to establish, control,
3 supervise and manage a complete, uniform system of personnel
4 classification in accordance with the provisions of this article

5 for all employees other than faculty and nonclassified employ-
6 ees at state institutions of higher education.

§18B-9-2. Definitions.

1 As used in this article:

2 (a) "Classified employee or employee" means any regular
3 full-time or regular part-time employee of a governing board or
4 the commission, including all employees of the West Virginia
5 network for educational telecomputing, who hold a position that
6 is assigned a particular job title and pay grade in accordance
7 with the personnel classification system established by this
8 article or by the commission;

9 (b) "Nonclassified employee" means an individual who is
10 responsible for policy formation at the department or institu-
11 tional level, or reports directly to the president, or is in a
12 position considered critical to the institution by the president
13 pursuant to policies adopted by the governing board: *Provided,*
14 That the percentage of personnel placed in the category of
15 "nonclassified" at any given institution shall not exceed ten
16 percent of the total number of employees of that institution who
17 are eligible for membership in any state retirement system of
18 the state of West Virginia or other retirement plan authorized
19 by the state: *Provided, however,* That an additional ten percent
20 of the total number of employees of that institution as defined
21 in this subsection may be placed in the category of
22 "nonclassified" if they are in a position considered critical to
23 the institution by the president. Final approval of such place-
24 ment shall be with the appropriate governing board;

25 (c) "Job description" means the specific listing of duties
26 and responsibilities as determined by the appropriate governing
27 board or the commission and associated with a particular job
28 title;

29 (d) "Job title" means the name of the position or job as
30 defined by the appropriate governing board or the commission;

31 (e) "Merit increases and salary adjustments" means the
32 amount of additional salary increase allowed on a merit basis or
33 to rectify salary inequities or accommodate competitive market
34 conditions in accordance with rules established by the govern-
35 ing boards or the commission;

36 (f) "Pay grade" means the number assigned by the commis-
37 sion to a particular job title and refers to the vertical column
38 heading of the salary schedule established in section three of
39 this article;

40 (g) "Personnel classification system" means the process of
41 job categorization adopted by the commission by which job
42 title, job description, pay grade and placement on the salary
43 schedule are determined;

44 (h) "Salary" means the amount of compensation paid
45 through the state treasury per annum to a classified employee;

46 (i) "Schedule" or "salary schedule" means the grid of
47 annual salary figures established in section three of this article;
48 and

49 (j) "Years of experience" means the number of years a
50 person has been an employee of the state of West Virginia and
51 refers to the horizontal column heading of the salary schedule
52 established in section three of this article. For the purpose of
53 placement on the salary schedule, employment for nine months
54 or more equals one year of experience, but no classified
55 employee may accrue more than one year of experience during
56 any given fiscal year. Employment for less than full time or less
57 than nine months during any fiscal year shall be prorated. In
58 accordance with rules established by the commission, a
59 classified employee may be granted additional years of experi-

60 ence not to exceed the actual number of years of prior, relevant
61 work or experience at accredited institutions of higher educa-
62 tion other than state institutions of higher education.

§18B-9-3. Higher education classified employee annual salary schedule.

1 (a) There is hereby established a state annual salary
2 schedule for classified employees consisting of a minimum
3 annual salary for each pay grade in accordance with years of
4 experience: *Provided*, That payment of the minimum salary
5 shall be subject to the availability of funds, and nothing in this
6 article shall be construed to guarantee payment to any classified
7 employee of the salary indicated on the schedule at the actual
8 years of experience absent specific legislative appropriation
9 therefor. The minimum salary herein indicated shall be prorated
10 for classified employees working less than thirty-seven and
11 one-half hours per week. Despite any differences in salaries that
12 may occur, a classified employee is equitably compensated in
13 relation to other classified employees in the same paygrade if
14 the following conditions exist:

15 (1) His or her annual salary is at least the minimum salary
16 that was required for his or her pay grade and years of service
17 on the first day of July two thousand, on the salary schedule
18 included in this section immediately prior to the effective date
19 of this act; and

20 (2) Progress is being made by the institution in meeting the
21 salary goals set out in this article.

22 (b) The commission shall report to the legislative oversight
23 commission on education accountability on the first day of
24 December, two thousand one, and each year thereafter on the
25 progress of the governing boards toward funding the classified
26 employees' salary schedule established pursuant to section

27 three, article nine of this chapter. The report shall include, but
 28 not be limited to, a detailed comparison of funding on individ-
 29 ual campuses and specifically shall compare the status of
 30 funding for exempt and nonexempt classified employees
 31 pursuant to subsection (c), section four of this article.

32 (c) The commission shall conduct a study and report to the
 33 legislative oversight commission on education accountability
 34 by the first day of December, two thousand one, on the feasibil-
 35 ity of considering location differential costs as part of the
 36 compensation package for classified employees.

37 (d) Nothing in this section may be construed to require an
 38 appropriation by the Legislature in excess of the legislative
 39 funding priorities as set forth in this chapter.

40 **HIGHER EDUCATION CLASSIFIED EMPLOYEE**
 41 **ANNUAL SALARY SCHEDULE**
 42 **YEARS OF EXPERIENCE**

43	PAY	0	1	2	3	4	5	6	7	8
44	GRADE									
45	1	12,809	13,094	13,385	13,677	13,968	14,274	14,580	14,900	15,221
46	2	13,465	13,764	14,070	14,376	14,696	15,017	15,352	15,687	16,036
47	3	14,164	14,478	14,798	15,133	15,483	15,832	16,182	16,546	16,925
48	4	14,908	15,250	15,599	15,949	16,313	16,692	17,085	17,478	17,872
49	5	15,696	16,066	16,444	16,837	17,231	17,624	18,046	18,469	18,906
50	6	16,556	16,954	17,362	17,784	18,207	18,644	19,081	19,547	20,013
51	7	17,489	17,915	18,352	18,804	19,255	19,721	20,202	20,697	21,192
52	8	18,495	18,949	19,416	19,896	20,391	20,901	21,411	21,950	22,489
53	9	19,559	20,056	20,566	21,091	21,615	22,168	22,722	23,290	23,887
54	10	19,916	20,421	20,938	21,484	22,029	22,602	23,176	23,763	24,379
55	11	21,107	21,665	22,239	22,812	23,400	24,015	24,645	25,288	25,945
56	12	22,436	23,022	23,624	24,253	24,896	25,554	26,225	26,924	27,638
57	13	23,837	24,477	25,134	25,805	26,505	27,218	27,945	28,701	29,470
58	14	25,363	26,057	26,771	27,498	28,253	29,022	29,806	30,631	31,470
59	15	27,015	27,764	28,533	29,330	30,141	30,981	31,834	32,715	33,624
60	16	28,821	29,624	30,449	31,316	32,197	33,092	34,030	34,981	35,974
61	17	30,767	31,638	32,533	33,470	34,421	35,400	36,421	37,456	38,519
62	18	32,868	33,820	34,799	35,806	36,841	37,904	39,009	40,142	41,303
63	19	37,613	38,718	39,855	41,022	42,219	43,460	44,747	46,064	47,410

64	20	40,265	41,471	42,712	43,984	45,301	46,647	48,038	49,460	50,941
65	21	43,171	44,478	45,824	47,216	48,637	50,103	51,614	53,170	54,786
66	22	46,332	47,754	49,220	50,731	52,272	53,873	55,534	57,224	58,975
67	23	49,777	51,330	52,931	54,561	56,252	58,002	59,797	61,653	63,568
68	24	53,552	55,234	56,970	58,750	60,605	62,505	64,465	66,485	68,579
69	25	57,462	59,483	61,383	63,328	65,348	67,427	69,567	71,781	74,070

70										
71	PAY	9	10	11	12	13	14	15		
	GRADE									
72	1	15,541	15,876	16,226	16,575	16,939	17,304	17,682		
73	2	16,386	16,750	17,129	17,507	17,886	18,294	18,687		
74	3	17,304	17,697	18,090	18,498	18,920	19,343	19,780		
75	4	18,279	18,702	19,139	19,576	20,027	20,493	20,959		
76	5	19,343	19,794	20,260	20,741	21,222	21,717	22,227		
77	6	20,479	20,974	21,469	21,994	22,518	23,057	23,596		
78	7	21,717	22,241	22,780	23,334	23,902	24,484	25,081		
79	8	23,042	23,610	24,193	24,805	25,416	26,043	26,684		
80	9	24,484	25,096	25,737	26,378	27,048	27,732	28,417		
81	10	25,008	25,638	26,295	26,980	27,666	28,379	29,106		
82	11	26,617	27,316	28,015	28,757	29,498	30,267	31,064		
83	12	28,365	29,120	29,890	30,687	31,498	32,323	33,176		
84	13	30,267	31,078	31,918	32,771	33,652	34,561	35,484		
85	14	32,323	33,204	34,114	35,051	36,002	36,981	38,002		
86	15	34,561	35,512	36,505	37,512	38,547	39,624	40,715		
87	16	36,981	38,030	39,093	40,198	41,331	42,492	43,694		
88	17	39,624	40,757	41,918	43,121	44,352	45,611	46,925		
89	18	42,506	43,736	44,995	46,296	47,639	49,023	50,450		
90	19	48,801	50,238	51,719	53,230	54,801	56,416	58,062		
91	20	52,452	54,023	55,623	57,284	58,990	60,755	62,550		
92	21	56,431	58,137	59,902	61,712	63,568	65,482	67,472		
93	22	60,785	62,640	64,555	66,530	68,579	70,674	72,828		
94	23	65,527	67,562	69,656	71,826	74,040	76,344	78,708		
95	24	70,734	72,948	75,237	77,601	80,039	82,552	85,156		
96	25	76,419	78,842	81,356	83,944	86,607	89,360	92,202		

§18B-9-4. Establishment of personnel classification system; assignment to classification and to salary schedule.

- 1 (a) The commission shall implement an equitable system of
- 2 job classifications, with the advice and assistance of staff
- 3 councils and other groups representing classified employees,
- 4 each classification to consist of related job titles and corre-
- 5 sponding job descriptions for each position within a classifica-

6 tion, together with the designation of an appropriate pay grade
7 for each job title, which system shall be the same for corre-
8 sponding positions of the commission and in institutions under
9 all governing boards. The equitable system of job classification
10 and the rules establishing it which were in effect immediately
11 prior to the effective date of this section are hereby transferred
12 to the jurisdiction and authority of the commission and shall
13 remain in effect unless modified or rescinded by the commis-
14 sion.

15 (b) Any classified staff salary increases distributed within
16 state institutions of higher education on the first day of July,
17 two thousand one, shall be in accordance with the uniform
18 employee classification system and a salary policy adopted by
19 the interim governing board and approved by the commission.
20 Any classified salary increases distributed within a state
21 institution of higher education after the first day of July, two
22 thousand one, shall be in accordance with the uniform classifi-
23 cation system and a uniform and equitable salary policy
24 adopted by each individual board of governors. Each salary
25 policy shall detail the salary goals of the institution and the
26 process whereby the institution will achieve or progress toward
27 achievement of placing each classified employee at his or her
28 minimum salary on the schedule established pursuant to section
29 three of this article.

30 (c) No classified employee defined as nonexempt from the
31 wage and hour provisions of the Fair Labor Standards Act of
32 1938, as amended, may be paid an annual salary in excess of
33 the salary established by the salary schedule for his or her
34 paygrade and years of experience. Classified employees defined
35 as exempt from the wage and hour provisions of the Fair Labor
36 Standards Act of 1938, as amended, may receive a salary in
37 excess of the salary established by the salary schedule for his or
38 her paygrade and years of experience but only if all such
39 exempt employees at the institution are receiving at least the

40 minimum salary for their pay grade and years of experience as
41 established for them by the salary schedule: *Provided*, That no
42 exempt classified employee may receive a salary in excess of
43 the highest salary provided for his or her paygrade in the salary
44 schedule.

§18B-9-5. Classified employee salary.

1 (a) Commencing with the fiscal year beginning on the first
2 day of July, one thousand nine hundred ninety-eight, and each
3 fiscal year thereafter, each classified employee with three or
4 more years of experience shall receive an annual salary increase
5 equal to fifty dollars times the employee's years of experience:
6 *Provided*, That the annual salary increase may not exceed the
7 amount granted for the maximum of twenty years of experi-
8 ence. These incremental increases are in lieu of any salary
9 increase received pursuant to section two, article five, chapter
10 five of this code; are in addition to any across-the-board,
11 cost-of-living or percentage salary increases which may be
12 granted in any fiscal year by the Legislature; and shall be paid
13 in like manner as the annual payment to eligible state employ-
14 ees of the incremental salary increases based on years of service
15 under the provisions of section two, article five, chapter five of
16 this code.

17 (b) Any classified employee may receive merit increases
18 and salary adjustments in accordance with policies established
19 by the board of governors: *Provided*, That merit raises may be
20 granted only pursuant to a rule adopted by the board of gover-
21 nors, and approved by the chancellor, which provides a fair and
22 equitable basis for granting merit raises pursuant to regular
23 evaluations based upon reasonable performance standards.

24 (c) The current annual salary of any classified employee
25 may not be reduced by the provisions of this article nor by any
26 other action inconsistent with the provisions of this article, and

27 nothing in this article may be construed to prohibit promotion
28 of any classified employee to a job title carrying a higher pay
29 grade if the promotion is in accordance with the provisions of
30 this article and the personnel classification system established
31 by the appropriate governing board.

§18B-9-7. Conferences regarding personnel classification.

1 The president of the institution or the designees charged
2 with responsibility to develop any personnel recommendations
3 for inclusion in the institution's annual report to its governing
4 board shall meet and confer during development of the recom-
5 mendations with any classified employee who: (1) May be
6 affected by proposed recommendations to its governing board;
7 or (2) has requested a change in job title.

§18B-9-8. Hirings after effective date.

1 Any individual hired as a full-time classified employee
2 after the effective date of this section shall be assigned to a
3 placement on the salary schedule which is appropriate to such
4 individual's classification, job title, pay grade and years of
5 experience: *Provided*, That nothing in this section shall be
6 construed to guarantee to a newly hired classified employee
7 payment of the salary prescribed in section three of this article.

**ARTICLE 10. FEES AND OTHER MONEY COLLECTED AT STATE
INSTITUTIONS OF HIGHER EDUCATION.**

§18B-10-1. Enrollment, tuition and other fees at education institutions; refund of fees.

§18B-10-8. Collection; disposition and use of additional registration fee; creation of special capital improvements funds; revenue bonds.

§18B-10-1. Enrollment, tuition and other fees at education institutions; refund of fees.

1 (a) Each governing board shall fix tuition and other fees for
2 each school term for the different classes or categories of
3 students enrolling at each state institution of higher education
4 under its jurisdiction and may include among such fees any one
5 or more of the following:

6 (1) Health service fees;

7 (2) Infirmary fees;

8 (3) Student activities, recreational, athletic and extracurric-
9 ular fees, which fees may be used to finance a students'
10 attorney to perform legal services for students in civil matters
11 at such institutions: *Provided*, That such legal services shall be
12 limited only to those types of cases, programs or services
13 approved by the administrative head of such institution where
14 such legal services are to be performed; and

15 (4) Graduate center fees and branch college fees, or either,
16 if the establishment and operations of graduate centers or
17 branch colleges are otherwise authorized by law.

18 (b) All fees collected at any graduate center or at any
19 branch college shall be paid into special funds and shall be used
20 solely for the maintenance and operation of the graduate center
21 or branch college at which they were collected: *Provided*, That
22 the commission shall set tuition and fee goals for residents at
23 each institution after examining tuition and fees at the institu-
24 tions' peers: *Provided, however*, That, effective the first day of
25 July, two thousand one, tuition and fees for nonresident,
26 undergraduate students shall, at a minimum, cover actual
27 instructional costs as determined in accordance with commis-
28 sion policy: *Provided further*, That students enrolled in under-
29 graduate courses offered at off-campus locations shall pay an
30 off-campus instruction fee and shall not pay the athletic fee and
31 the student activity fee.

32 (c) The off-campus instruction fee shall be used solely for
33 the support of off-campus courses offered by the institution.
34 Off-campus locations for each institution shall be defined by
35 the appropriate governing board. The schedule of all fees, and
36 any changes therein, shall be entered in the minutes of the
37 meeting of the appropriate governing board, and the board shall
38 file with the legislative auditor a certified copy of such schedule
39 and changes.

40 (d) In addition to the fees mentioned in the preceding
41 paragraph, each governing board may impose and collect a
42 student union building fee. All such building fees collected at
43 an institution shall be paid into a special student union building
44 fund for such institution, which is hereby created in the state
45 treasury, and shall be used only for the construction, operation
46 and maintenance of a student union building or a combination
47 student union and dining hall building or for the payment of the
48 principal of and interest on any bond issued to finance part or
49 all of the construction of a student union building or a combina-
50 tion student union and dining hall building or the renovation of
51 an existing structure for use as a student union building or a
52 combination student union and dining hall building, all as more
53 fully provided in section ten of this article. Any moneys in such
54 funds not needed immediately for such purposes may be
55 invested in any such bonds or other securities as are now or
56 hereafter authorized as proper investments for state funds.

57 (e) The boards shall establish the rates to be charged
58 full-time students enrolled during a regular academic term.

59 (1) For fee purposes, a full-time undergraduate student is
60 one enrolled for twelve or more credit hours in a regular term,
61 and a full-time graduate student is one enrolled for nine or more
62 credit hours in a regular term.

63 (2) Undergraduate students taking fewer than twelve credit
64 hours in a regular term shall have their fees reduced pro rata
65 based upon one twelfth of the full-time rate per credit hour, and
66 graduate students taking fewer than nine credit hours in a
67 regular term shall have their fees reduced pro rata based upon
68 one ninth of the full-time rate per credit hour.

69 (3) Fees for students enrolled in summer terms or other
70 nontraditional time periods shall be prorated based upon the
71 number of credit hours for which the student enrolls in accor-
72 dance with the above provisions.

73 (f) All fees are due and payable by the student upon
74 enrollment and registration for classes except as provided for in
75 this subsection:

76 (1) The governing boards shall permit fee payments to be
77 made in up to three installments over the course of the aca-
78 demic term: *Provided*, That all fees must be paid prior to the
79 awarding of course credit at the end of the academic term.

80 (2) The governing boards also shall authorize the accep-
81 tance of credit cards or other payment methods which may be
82 generally available to students for the payment of fees: *Pro-*
83 *vided*, That the governing boards may charge the students for
84 the reasonable and customary charges incurred in accepting
85 credit cards and other methods of payment.

86 (3) If a governing board determines that the finances of any
87 student were affected adversely by a legal work stoppage that
88 commenced on or after the first day of January, one thousand
89 nine hundred ninety-three, it may allow the student an addi-
90 tional six months to pay the fees for any academic term:
91 *Provided*, That the governing board shall determine on a
92 case-by-case basis if the finances of a student were affected
93 adversely.

94 (g) On or before the first day of July, two thousand one, the
95 chancellor for higher education shall review policy series
96 twenty-two of the governing boards, related to assessment,
97 payment and refund of fees and determine whether a new rule
98 should be adopted regarding the refund of any fees upon the
99 voluntary or involuntary withdrawal from classes of any
100 student. The rules shall comply with all applicable state and
101 federal laws and shall be uniformly applied throughout the
102 system.

103 (h) In addition to the fees mentioned in the preceding
104 subsections, each governing board may impose, collect and
105 distribute a fee to be used to finance a nonprofit, stu-
106 dent-controlled public interest research group: *Provided*, That
107 the students at such institution demonstrate support for the
108 increased fee in a manner and method established by that
109 institution's elected student government: *Provided, however*,
110 That such fees shall not be used to finance litigation against the
111 institution.

112 (i) Any proposed fee increase which would become
113 effective during the transition year beginning on the first day of
114 July, two thousand, and ending on the thirtieth day of June, two
115 thousand one, and which has been approved by the governing
116 board, shall then be submitted by the governing board to the
117 secretary for education and the arts for approval. Such approval
118 shall be granted only upon the certification that such institution
119 requesting a fee increase is in compliance with the strategic
120 plans required to be submitted, pursuant to section one-b, article
121 one of this chapter. Notice, in the form of a report, shall be
122 provided by the chancellor to the legislative oversight commis-
123 sion on education accountability describing such fee increases
124 and showing how such increases compare with the average
125 tuition and fees charged at comparable peer institutions in
126 member states of the southern regional education board.

127 (j) Effective the first day of July, two thousand one, tuition
128 and fees rates shall be determined in accordance with subsec-
129 tions (k), (l) and (m) of this section.

130 (k) Effective the first day of July, two thousand one,
131 institutions shall retain tuition and fee revenues not pledged for
132 bonded indebtedness or other purposes in accordance with a
133 revised tuition policy adopted by the respective governing
134 boards and approved by the commission. The revised tuition
135 policy shall:

136 (1) Provide a basis for establishing nonresident tuition and
137 fees;

138 (2) Allow institutions to charge different tuition and fees for
139 different programs; and

140 (3) Establish methodology, where applicable, to ensure that,
141 within the appropriate time period under the compact, commu-
142 nity and technical college tuition rates for community and
143 technical college students in all independently accredited
144 community and technical colleges will be commensurate with
145 the tuition and fees charged by their peer institutions.

146 (l) No penalty shall be imposed by the commission upon
147 any institution based upon the number of nonresidents who
148 attend the institution unless the commission determines that
149 admission of nonresidents to any institution or program of study
150 within the institution is impeding unreasonably the ability of the
151 resident students to attend the institution or participate in the
152 programs of the institution. The institutions shall report
153 annually to the commission on the numbers of out-of-state
154 residents and such other enrollment information as the commis-
155 sion may request.

156 (m) Tuition and fee increases of the governing boards are
157 subject to rules adopted by the commission pursuant to subsec-
158 tion (a), section four, article one-b of this chapter.

**§18B-10-8. Collection; disposition and use of additional registra-
tion fee; creation of special capital improvements
funds; revenue bonds.**

1 (a) In addition to all other fees imposed by the governing
2 boards, there is hereby imposed and the governing boards are
3 hereby directed to provide for the collection of an additional
4 registration fee from all students enrolled in any state institution
5 of higher education under its jurisdiction in the amounts
6 hereinafter provided.

7 (1) For full-time students at each state institution of higher
8 education, the additional registration fee shall be fifty dollars
9 per semester. The governing boards have authority to increase
10 such additional registration fee at institutions of higher educa-
11 tion under its jurisdiction for students who are nonresidents of
12 this state.

13 (2) For all part-time students and for all summer school
14 students, the governing boards shall impose and collect such fee
15 in proportion to, but not exceeding, that paid by full-time
16 students.

17 (b) The fee imposed by this section is in addition to the
18 maximum fees allowed to be collected under the provision of
19 section one of this article and may not be limited thereby.
20 Refunds of such fee may be made in the same manner as any
21 other fee collected at state institutions of higher education.

22 (c) There is created in the state treasury a special capital
23 improvements fund for each state institution of higher educa-
24 tion and the commission into which shall be paid all proceeds
25 of the additional registration fees collected from students at all

26 state institutions of higher education pursuant to this section to
27 be expended by the commission and governing boards for the
28 payment of the principal of or interest on any revenue bonds
29 issued by the board of regents or the succeeding governing
30 boards for which such registration fees were pledged prior to
31 the enactment of this section.

32 (d) The governing boards may make expenditures from any
33 of the special capital improvements funds established in this
34 section to finance, in whole or in part, together with any federal,
35 state or other grants or contributions, any one or more of the
36 following projects:

37 (1) The acquisition of land or any rights or interest therein;

38 (2) The construction or acquisition of new buildings;

39 (3) The renovation or construction of additions to existing
40 buildings;

41 (4) The acquisition of furnishings and equipment for any
42 such buildings; and

43 (5) The construction or acquisition of any other capital
44 improvements or capital education facilities at such state
45 institutions of higher education, including any roads, utilities or
46 other properties, real or personal, or for other purposes neces-
47 sary, appurtenant or incidental to the construction, acquisition,
48 financing and placing in operation of such buildings, capital
49 improvements or capital education facilities.

50 (e) The governing boards, in their discretion, may use the
51 moneys in such special capital improvements funds to finance
52 the costs of the above purposes on a cash basis, or the commis-
53 sion, upon request of institutions or governing boards, singly or
54 jointly, may from time to time issue revenue bonds of the state
55 as provided in this section to finance all or part of such pur-
56 poses and pledge all or any part of the moneys in such special

57 funds for the payment of the principal of and interest on such
58 revenue bonds, and for reserves therefor. Any pledge of such
59 special funds for such revenue bonds shall be a prior and
60 superior charge on such special funds over the use of any of the
61 moneys in such funds to pay for the cost of any of such pur-
62 poses on a cash basis: *Provided*, That any expenditures from
63 such special funds, other than for the retirement of revenue
64 bonds, may only be made by the commission or governing
65 boards to meet the cost of a predetermined capital improve-
66 ments program for one or more of the state institutions of
67 higher education, in such order of priority as was agreed upon
68 by the governing board or boards and the commission and
69 presented to the governor for inclusion in the annual budget
70 bill, and only with the approval of the Legislature as indicated
71 by direct appropriation for the purpose.

72 (f) Such revenue bonds may be authorized and issued from
73 time to time by the commission or governing boards to finance,
74 in whole or in part, the purposes provided in this section in an
75 aggregate principal amount not exceeding the amount which the
76 commission determines can be paid as to both principal and
77 interest and reasonable margins for a reserve therefor from the
78 moneys in such special funds.

79 (g) The issuance of such revenue bonds shall be authorized
80 by a resolution adopted by the governing board receiving the
81 proceeds and the commission, and such revenue bonds shall
82 bear such date or dates, mature at such time or times not
83 exceeding forty years from their respective dates; be in such
84 form either coupon or registered, with such exchangeability and
85 interchangeability privileges; be payable in such medium of
86 payment and at such place or places, within or without the state;
87 be subject to such terms of prior redemption at such prices not
88 exceeding one hundred five per centum of the principal amount
89 thereof; and shall have such other terms and provisions as
90 determined by the governing board receiving the proceeds and

91 the commission. Such revenue bonds shall be signed by the
92 governor and by the chancellor of the commission or the chair
93 of the governing boards authorizing the issuance thereof, under
94 the great seal of the state, attested by the secretary of state, and
95 the coupons attached thereto shall bear the facsimile signature
96 of the chancellor of the commission or the chair of the appropriate governing boards. Such revenue bonds shall be sold in such
97 manner as the commission or governing board determines is for
98 the best interests of the state.
99

100 (h) The commission or governing boards may enter into
101 trust agreements with banks or trust companies, within or
102 without the state, and in such trust agreements or the resolutions
103 authorizing the issuance of such bonds may enter into valid and
104 legally binding covenants with the holders of such revenue
105 bonds as to the custody, safeguarding and disposition of the
106 proceeds of such revenue bonds, the moneys in such special
107 funds, sinking funds, reserve funds, or any other moneys or
108 funds; as to the rank and priority, if any, of different issues of
109 revenue bonds by the commission or governing boards under
110 the provisions of this section; as to the maintenance or revision
111 of the amounts of such additional registration fees, and the
112 terms and conditions, if any, under which such additional
113 registration fees may be reduced; and as to any other matters or
114 provisions which are deemed necessary and advisable by the
115 commission or governing boards in the best interests of the
116 state and to enhance the marketability of such revenue bonds.

117 (i) After the issuance of any of such revenue bonds, the
118 additional registration fees at the state institutions of higher
119 education may not be reduced as long as any of such revenue
120 bonds are outstanding and unpaid except under such terms,
121 provisions and conditions as shall be contained in the resolution,
122 trust agreement or other proceedings under which such
123 revenue bonds were issued. Such revenue bonds shall be and
124 constitute negotiable instruments under the uniform commercial

125 code of this state; shall, together with the interest thereon, be
126 exempt from all taxation by the state of West Virginia, or by
127 any county, school district, municipality or political subdivision
128 thereof; and such revenue bonds may not be deemed to be
129 obligations or debts of the state, and the credit or taxing power
130 of the state may not be pledged therefor, but such revenue
131 bonds shall be payable only from the revenue pledged therefor
132 as provided in this section.

133 (j) Additional revenue bonds may be issued by the commis-
134 sion or governing boards pursuant to this section and financed
135 by additional revenues or funds dedicated from other sources.
136 It is the intent of the Legislature to authorize over a five-year
137 period beginning on the seventeenth day of June, two thousand,
138 additional sources of revenue and funds to effect such funding
139 for capital improvement.

140 (k) Funding of system-wide and campus-specific revenue
141 bonds under any other section of this code is hereby continued
142 and authorized pursuant to the terms of this section. Revenues
143 of any state institution of higher education pledged to the
144 repayment of any bonds issued pursuant to this code shall
145 remain the responsibility of that institution.

146 (l) Any revenue bonds proposed to be issued under this
147 section or article twelve-b, chapter eighteen of this code must
148 be first approved by the commission.

149 (m) Revenue bonds issued pursuant to article twelve-b,
150 chapter eighteen of this code may be issued by the commission
151 or governing boards, either singly or jointly.

152 (n) Fees pledged for repayment of revenue bonds issued
153 under this section or article twelve-b, chapter eighteen prior to
154 the effective date of this section shall be transferred to the
155 commission in a manner prescribed by the commission. The
156 commission shall have the authority to transfer funds from the

157 accounts of institutions pledged for the repayment of revenue
158 bonds issued prior to the effective date of this section, or issued
159 subsequently by the commission upon the request of institu-
160 tions, if an institution fails to transfer the pledged revenues to
161 the commission in a timely manner.

ARTICLE 11A. STATE AUTISM TRAINING CENTER.

§18B-11A-1. Purpose.

§18B-11A-2. Definitions.

§18B-11A-3. Powers and duties of board of governors and state autism center.

§18B-11A-4. Responsibilities of center.

§18B-11A-5. Rules and regulations.

§18B-11A-6. Advisory board.

§18B-11A-7. Trainee team; expense.

§18B-11A-1. Purpose.

1 The purpose of the Legislature in the enactment of this
2 article is to establish and develop an autism training center in
3 the state of West Virginia with a highly skilled, interdisciplin-
4 ary, appropriately experienced staff which will train teachers,
5 parents, guardians and others important to the autistic person's
6 education and training. The center is established and operated
7 by the Marshall university board of governors or its designees.

§18B-11A-2. Definitions.

1 For the purposes of this article:

2 (a) "Board" means the Marshall university board of
3 governors;

4 (b) "Center" means the autism training center;

5 (c) "Client" means a person with the primary diagnosis of
6 autism or autistic-like behavior; and

7 (d) "Expenses" means those reasonable and customary
8 expenditures related to training and treatment of eligible clients
9 as defined in the rules and regulations promulgated by the
10 center.

**§1 8B-11A -3 . Powers and duties of board of governors and state
autism center.**

1 The board of governors is authorized to operate a state
2 autism training center, including either the acquisition by
3 purchase, lease, gift or otherwise, of necessary lands, and the
4 construction of necessary buildings; the expansion, remodeling,
5 altering or equipping of necessary buildings; and the making of
6 contracts by the board of trustees with any state, county or
7 municipal agency, or nonprofit institution, providing for the
8 equipment, expenses, compensation of personnel, operation and
9 maintenance of any facility of such agency or institution
10 utilized for the purposes of this article. The board or its
11 designees may make and enter into all contracts and agreements
12 necessary and incidental to the performance of its powers and
13 duties under this section, and may cooperate with other agen-
14 cies of the state, county and federal governments.

§18B-11A-4. Responsibilities of center.

1 The center shall, through appropriate identification,
2 evaluation, education, individual training and treatment
3 programs for clients, offer appropriate education and training
4 for professional personnel and family members or guardians.

§18B-11A-5. Rules and regulations.

1 The board, after consultation with the center, shall make
2 and adopt rules, regulations and standards for the establishment,
3 operation, cost reimbursement, fees for services, maintenance
4 and government control of the center established pursuant to
5 this article, including such rules, regulations and standards as

6 may be necessary for cooperation under and compliance with
7 any existing or future federal statutes pertaining to grants-in-aid
8 for client training or facilities and such other rules and regula-
9 tions as may be necessary to effectuate the purposes of this
10 article.

§18B-11A-6. Advisory board.

1 The board of governors shall appoint a board of West
2 Virginia citizens to advise the center director on matters of
3 policy. The advisory board shall be composed of fifty percent
4 parents or guardians of clients eligible for the center's program;
5 forty percent persons from professional fields related to autism,
6 such as special education, psychology, hearing and speech,
7 neurology and pediatrics; and ten percent knowledgeable lay
8 citizens such as legislators or other lay community leaders. The
9 director of the center shall be an ex officio nonvoting member
10 of the advisory board.

§18B-11A-7. Trainee team; expense.

1 The primary method of providing services through the
2 center is by the use of trainee teams. A trainee team shall
3 consist of an eligible client, a professional chosen by the
4 primary local service agency and the client's parent or parents
5 or guardian.

6 The center may charge agencies such fees and reimburse
7 trainee team or client expenses as provided by rules and
8 regulations. The center may also provide for reasonable and
9 customary expenses in excess of fees charged sending agencies
10 for each trainee team or otherwise eligible client, including
11 child care for other children of attending parents and others as
12 specified in rules and regulations.

ARTICLE 14. MISCELLANEOUS.

§18B-14-5a. Authorization for sale lease back.

1 Notwithstanding any other provisions of this code to the
2 contrary and upon approval of the commission before incurring
3 any obligations, the governing boards are hereby authorized and
4 empowered to sell any building which is on unencumbered real
5 property to which the board holds title and lease back the same
6 building and deposit the net proceeds of the transaction into a
7 special revenue account in the state treasury to be appropriated
8 by the Legislature for the use of the institution at which the real
9 property is located: *Provided*, That prior to such action the
10 appropriate governing board shall have the property appraised
11 by two licensed appraisers and shall not sell the property for
12 less than the average of the two appraisals: *Provided, however*,
13 That prior to such action, the governing board shall retain
14 independent financial and legal services to examine fully all
15 aspects of the transaction. Such sale may only be made to a
16 special purpose entity which exists primarily for the purpose of
17 supporting the institution at which the building is located.

**CHAPTER 18C. STUDENT LOANS;
SCHOLARSHIPS AND STATE AID.****ARTICLE 5. HIGHER EDUCATION GRANT PROGRAM.****§18C-5-4. Powers and duties of senior administrator.**

1 Subject to the provisions of this article and within the limits
2 of appropriations made by the Legislature, the senior adminis-
3 trator is authorized and empowered to: (1) Prepare and super-
4 vise the issuance of public information concerning the grant
5 program; (2) prescribe the form and regulate the submission of
6 applications for grants; (3) administer or contract for the
7 administration of such examinations as may be prescribed by
8 the senior administrator; (4) select qualified recipients of
9 grants; (5) award grants; (6) accept grants, gifts, bequests and
10 devises of real and personal property for the purposes of the

11 grant program; (7) administer federal and state financial loan
12 programs; (8) cooperate with approved institutions of higher
13 education in the state and their governing boards in the adminis-
14 tration of the grant program; (9) make the final decision
15 pertaining to residency of an applicant for grant or renewal of
16 grant; (10) employ or engage such professional and administra-
17 tive employees as may be necessary to assist the senior admin-
18 istrator in the performance of the duties and responsibilities,
19 who shall serve at the will and pleasure and under the direction
20 and control of the senior administrator; (11) employ or engage
21 such clerical and other employees as may be necessary to assist
22 the senior administrator in the performance of the duties and
23 responsibilities, who shall be under the direction and control of
24 the senior administrator; (12) prescribe the duties and fix the
25 compensation of all such employees; and (13) administer the
26 adult part-time student higher education grant program estab-
27 lished under section seven of this article.

CHAPTER 29A. STATE ADMINISTRATIVE PROCEDURES ACT.

ARTICLE 3A. HIGHER EDUCATION RULE MAKING.

§29A-3A-1. Definitions.

§29A-3A-12. Submission of legislative rules to the legislative oversight commission on education accountability.

§29A-3A-19. Severability of legislative rules.

§29A-3A-1. Definitions.

1 As used in this article:

2 (a) "Commission" means the legislative oversight commis-
3 sion on education accountability;

4 (b) "Board" means the higher education policy commission
5 or the chancellor as defined in chapter eighteen-b of this code,
6 or both, or any successor agency or officer. "Board" also means

7 any other entity directed by this code to promulgate a rule or
8 rules in accordance with this article, but this definition shall
9 apply solely for the purpose of promulgating the rule or rules
10 required to be promulgated in accordance with this article.

**§29A-3A-12. Submission of legislative rules to the legislative
oversight commission on education accountability.**

1 (a) When the board finally approves a proposed legislative
2 rule for submission to the Legislature, pursuant to the provi-
3 sions of section ten of this article, the board shall submit to the
4 legislative oversight commission on education accountability at
5 its offices or at a regular meeting of such commission fifteen
6 copies of the following:

7 (1) The full text of the legislative rule as finally approved
8 by the board, with new language underlined and with language
9 to be deleted from any existing rule stricken-through but clearly
10 legible;

11 (2) A brief summary of the content of the legislative rule
12 and a description and a copy of any existing rule which the
13 agency proposes to amend or repeal;

14 (3) A statement of the circumstances which require the rule;

15 (4) A fiscal note containing all information included in a
16 fiscal note for either house of the Legislature and a statement of
17 the economic impact of the rule on the state or its residents; and

18 (5) Any other information which the commission may
19 request or which may be required by law.

20 (b) The commission shall review each proposed legislative
21 rule and, in its discretion, may hold public hearings thereon.
22 Such review shall include, but not be limited to, a determination
23 of:

24 (1) Whether the board has exceeded the scope of its
25 statutory authority in approving the proposed legislative rule;

26 (2) Whether the proposed legislative rule is in conformity
27 with the legislative intent of the statute which the rule is
28 intended to implement, extend, apply, interpret or make
29 specific;

30 (3) Whether the proposed legislative rule conflicts with any
31 other provision of this code or with any other rule adopted by
32 the same or a different agency;

33 (4) Whether the proposed legislative rule is necessary to
34 fully accomplish the objectives of the statute under which the
35 proposed rule was promulgated;

36 (5) Whether the proposed legislative rule is reasonable,
37 especially as it affects the convenience of the general public or
38 of persons particularly affected by it;

39 (6) Whether the proposed legislative rule could be made
40 less complex or more readily understandable by the general
41 public; and

42 (7) Whether the proposed legislative rule was promulgated
43 in compliance with the requirements of this article and with any
44 requirements imposed by any other provision of this code.

45 (c) After reviewing the legislative rule, the commission
46 shall recommend that the Legislature:

47 (1) Authorize the board to promulgate the legislative rule;
48 or

49 (2) Authorize the board to promulgate part of the legislative
50 rule; or

51 (3) Authorize the board to promulgate the legislative rule
52 with certain amendments; or

53 (4) Recommend that the rule be withdrawn.

54 The commission shall file notice of its action in the state
55 register and with the board proposing the rule: *Provided*, That
56 when the commission makes the recommendations of subdivi-
57 sion (2), (3) or (4) of this subsection, the notice shall contain a
58 statement of the reasons for such recommendation.

59 (d) When the commission recommends that a rule be
60 authorized, in whole or in part, by the Legislature, the commis-
61 sion shall instruct its staff or the office of legislative services to
62 draft a bill authorizing the board to promulgate all or part of the
63 legislative rule. If the commission recommends that the rule not
64 be authorized, it shall include in its report a draft of a bill
65 authorizing promulgation of the rule together with a recommen-
66 dation. Any draft bill prepared under this section shall contain
67 a legislative finding that the rule is within the legislative intent
68 of the statute which the rule is intended to implement, extend,
69 apply or interpret and shall be available for any member of the
70 Legislature to introduce to the Legislature.

§29A-3A-19. Severability of legislative rules.

1 Unless there is a provision in a legislative rule specifying
2 that the provisions thereof shall not be severable, the provisions
3 of every legislative rule, whether enacted before or subsequent
4 to the effective date of this section, shall be severable so that if
5 any provision of any rule section or amendment thereto is held
6 to be unconstitutional or void, the remaining provisions of the
7 rule shall remain valid, unless the court finds the valid provi-
8 sions are so essentially and inseparably connected with, and so

9 dependent upon, the unconstitutional or void provision that the
10 court cannot presume the Legislature would have enacted the
11 remaining valid provisions without the unconstitutional or void
12 one, or unless the court finds the remaining valid provisions,
13 standing alone, are incomplete and are incapable of being
14 executed in accordance with the legislative intent: *Provided,*
15 That if any legislative rule has its own severability clause, then
16 that severability clause shall govern and control with respect to
17 that section, in lieu of the provisions of this section. The
18 provisions of this section shall be fully applicable to all future
19 amendments to legislative rules, with like effect as if the
20 provisions of this section were set forth in extenso and every
21 such amendment were reenacted as a part thereof, unless such
22 amendment to the legislative rule contains its own severability
23 clause.

CHAPTER 111

(H. B. 2527 — By Delegates Williams, Stemple, Carmichael,
Shaver, Perry, Swartzmiller and Harrison)

[Passed April 12, 2001; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact article thirty, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section four, article ten, chapter thirty-eight of said code, all relating to qualified state tuition programs; creating the West Virginia college prepaid tuition and savings program act to succeed the West Virginia college prepaid tuition trust act; legislative findings and purpose;

defined terms; creating the West Virginia college prepaid tuition and savings program and board; board powers; continuing the prepaid tuition trust and fund; creating the savings plan trust and fund; renaming the prepaid tuition trust fund administrative account the college prepaid tuition and savings program administrative account and clarifying certain of its authorizations; reauthorizing the personal income tax modification; clarifying the reporting and audit requirements of the program; considerations for eligibility for state student financial aid; confidentiality requirements; authorization of rules; and adding savings plan fund payments to the list of property exempt from bankruptcy proceedings.

Be it enacted by the Legislature of West Virginia:

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

Chapter

18. Education.

38. Liens.

CHAPTER 18. EDUCATION.

ARTICLE 30. WEST VIRGINIA COLLEGE PREPAID TUITION AND SAVINGS PROGRAM ACT.

- §18-30-1. Title.
- §18-30-2. Legislative findings and purpose.
- §18-30-3. Definitions.
- §18-30-4. Creation of program; board; members; terms; compensation; proceedings generally.
- §18-30-5. Powers of the board.
- §18-30-6. West Virginia prepaid tuition trust.
- §18-30-7. West Virginia savings plan trust.

- §18-30-8. College prepaid tuition and savings program administrative account.
- §18-30-9. Income tax deduction for purchasers.
- §18-30-10. Reports and account; annual audit.
- §18-30-11. Financial aid eligibility.
- §18-30-12. Confidentiality.
- §18-30-13. Board of trustees; authorization of rules.

§18-30-1. Title.

- 1 This article is known and cited as the “West Virginia
- 2 College Prepaid Tuition and Savings Program Act”.

§18-30-2. Legislative findings and purpose.

- 1 The Legislature hereby finds and determines that enhancing
- 2 the accessibility and affordability of higher education for all
- 3 citizens of West Virginia will promote a well-educated and
- 4 financially secure population to the ultimate benefit of all
- 5 citizens of West Virginia, and that assisting individuals and
- 6 families in planning for future educational expenses by making
- 7 the tax incentives in 26 U.S.C. § 529 available to West Virgin-
- 8 ians are proper governmental functions and purposes of the
- 9 state.

- 10 The Legislature also finds that continuation of the prepaid
- 11 tuition plan and creation of a savings plan will further those
- 12 governmental functions and purposes. It is, therefore, the
- 13 legislative intent of this article to continue the prepaid tuition
- 14 plan and to enhance the plan by authorizing the creation of a
- 15 savings plan so that more students may attend eligible higher
- 16 education institutions.

§18-30-3. Definitions.

- 1 For the purposes of this article, the following terms have
- 2 the meanings ascribed to them, unless the context clearly
- 3 indicates otherwise or as otherwise provided in 26 U.S.C. §
- 4 529:

5 (a) "Account" means a prepaid tuition account or a savings
6 plan account established in accordance with this article.

7 (b) "Account owner" means the individual, corporation,
8 association, partnership, trust or other legal entity who enters
9 into a prepaid tuition contract and is obligated to make pay-
10 ments in accordance with the prepaid tuition contract or who
11 enters into a savings plan contract and invests money in a
12 savings plan account.

13 (c) "Beneficiary" means the individual designated as a
14 beneficiary at the time an account is established, the individual
15 designated as the beneficiary when beneficiaries are changed,
16 the individual entitled to receive distributions from an account,
17 and any individual designated by the account owner, his or her
18 agent or his or her estate in the event the beneficiary is unable
19 or unwilling to receive distributions under the terms of the
20 contract.

21 (d) "Board" means the board of trustees of the college
22 prepaid tuition and savings program as provided in section four
23 of this article.

24 (e) "Distribution" means any disbursement from an account
25 in accordance with 26 U.S.C. § 529.

26 (f) "Eligible educational institution" means an institution of
27 higher education that qualifies under 26 U.S.C. § 529 as an
28 eligible educational institution.

29 (g) "Prepaid tuition account" means an account established
30 by an account owner pursuant to this article in order for the
31 beneficiary to apply distributions in accordance with the
32 prepaid tuition plan.

33 (h) "Prepaid tuition contract" means a contract entered into
34 by the board and an account owner establishing a prepaid
35 tuition account.

36 (i) "Prepaid tuition plan" means the plan that contractually
37 guarantees payment of tuition at a West Virginia public eligible
38 educational institution.

39 (j) "Program" means the West Virginia college prepaid
40 tuition and savings program established under this article.

41 (k) "Qualified higher education expenses" mean higher
42 education expenses permitted under 26 U.S.C. § 529 for
43 enrollment or attendance of a beneficiary at an eligible educa-
44 tional institution.

45 (l) "Savings plan" means the plan that allows account
46 distributions for qualified higher educational expenses.

47 (m) "Savings plan account" means an account established
48 by an account owner pursuant to this article in order for the
49 beneficiary to apply distributions toward qualified higher
50 education expenses at eligible educational institutions.

51 (n) "Savings plan contract" means a contract entered into
52 by the board or its agent, if any, and an account owner estab-
53 lishing a savings plan account.

54 (o) "Treasurer" means the West Virginia state treasurer.

55 (p) "Tuition" means the quarter, semester or term under-
56 graduate charges imposed by an eligible educational institution
57 and all mandatory fees required as a condition of enrollment by
58 all students for full-time attendance.

**§18-30-4. Creation of program; board; members; terms; compen-
sation; proceedings generally.**

1 (a) The West Virginia college prepaid tuition and savings
2 program is hereby created. The program consists of a prepaid
3 tuition plan and a savings plan.

4 (b) The board of trustees of the prepaid tuition trust fund in
5 existence immediately prior to the effective date of this section
6 shall become the board of the college prepaid tuition and
7 savings program and all powers, rights and responsibilities of
8 the board of trustees of the prepaid tuition trust fund are
9 transferred to the board of the college prepaid tuition and
10 savings program. With the exception of the members of the
11 board appointed pursuant to the provisions of subdivision (3) of
12 subsection (c) of this section, the members of the board of
13 trustees of the prepaid tuition trust fund shall become the
14 members of the board of the college prepaid tuition and savings
15 program on the effective date of this section and shall, for all
16 purposes, serve the same terms that they would have served had
17 the board of trustees of the prepaid tuition trust fund continued.

18 (c) The board consists of nine members and includes the
19 following:

20 (1) The secretary of education and the arts, or his or her
21 designee;

22 (2) The state treasurer, or his or her designee;

23 (3) Two representatives of the higher education policy
24 commission, who may or may not be members of the higher
25 education policy commission, appointed by the commission
26 who serve as voting members of the board, one of whom shall
27 represent the interests of the universities of West Virginia and
28 one of whom shall represent the interests of the state colleges
29 and community and technical colleges of West Virginia. The
30 members appointed pursuant to the provisions of this subdivi-
31 sion shall assume the positions heretofore held by the represen-
32 tatives of the university system board of trustees and the state

33 college system board of directors in existence prior to July 1,
34 2000;

35 (4) Five other members, appointed by the governor, with
36 knowledge, skill and experience in an academic, business or
37 financial field, to be appointed as follows:

38 (A) A private citizen not employed by, or an officer of, the
39 state or any political subdivision of the state appointed from
40 one or more nominees of the speaker of the House of Delegates;

41 (B) A private citizen not employed by, or an officer of, the
42 state or any political subdivision of the state appointed from
43 one or more nominees of the president of the Senate;

44 (C) One member representing the interests of private
45 institutions of higher education located in this state appointed
46 from one or more nominees of the West Virginia association of
47 private colleges; and

48 (D) Two members representing the public.

49 (d) The public members and the member representing the
50 interests of private institutions of higher education are ap-
51 pointed by the governor with the advice and consent of the
52 Senate.

53 (e) Only state residents are eligible for appointment to the
54 board.

55 (f) Members appointed by the governor serve a term of five
56 years and are eligible for reappointment at the expiration of
57 their terms. In the event of a vacancy among appointed mem-
58 bers, the governor shall appoint a person representing the same
59 interests to fill the unexpired term. Of the initial appointments
60 to the board of trustees of the prepaid tuition trust fund in
61 existence immediately prior to the effective date of this section,
62 the governor shall appoint one member to a one-year term, one

63 member to a two-year term, one member to a three-year term,
64 one member to a four-year term, and one member to a five-year
65 term. Thereafter, all terms are five years.

66 (g) Members of the board serve without compensation. The
67 treasurer may pay all expenses, including travel expenses,
68 actually incurred by board members in the conduct of their
69 official duties. Expense payments are made from the college
70 prepaid tuition and savings program administrative account, and
71 are made at the same rate paid to state employees.

72 (h) The treasurer may provide support staff and office
73 space for the board.

74 (i) The treasurer is the chairman and presiding officer of
75 the board, and may appoint the employees the board considers
76 advisable or necessary. A majority of the members of the board
77 constitute a quorum for the transaction of the business of the
78 board.

§18-30-5. Powers of the board.

1 In addition to the powers granted by any other provision of
2 this article, the board has the powers necessary or appropriate
3 to carry out the provisions and objectives of this article, other
4 methods of financing post-secondary education as relate to the
5 program, and the powers delegated by any other law of the state
6 or any executive order of the state. The board may also:

7 (a) Adopt and amend bylaws;

8 (b) Sue and be sued;

9 (c) Execute contracts and other instruments for necessary
10 goods and services, employ necessary personnel and engage the
11 services of private consultants, actuaries, auditors, counsel,
12 managers, trustees, and any other contractor or professional

13 needed. Selection of these services is not subject to the provi-
14 sions of article three, chapter five-a of this code;

15 (d) Operate a prepaid tuition plan in accordance with this
16 article and 26 U.S.C. § 529;

17 (e) Operate a savings plan in accordance with this article
18 and 26 U.S.C. § 529;

19 (f) Develop and impose any requirements, policies,
20 procedures and guidelines to implement and manage the
21 program;

22 (g) Impose reasonable requirements for residency for
23 beneficiaries at the time of purchase of a prepaid tuition
24 contract. However, nothing in this subdivision establishes
25 residency requirements for matriculation at state eligible
26 educational institutions;

27 (h) Assess, collect and expend administrative fees, charges
28 and penalties;

29 (i) Authorize the assessment, collection and retention of
30 fees and charges against the amounts paid into and the earnings
31 on the trust funds by a financial institution, investment man-
32 ager, fund manager, West Virginia investment management
33 board, or other professional managing or investing the trust
34 funds and accounts;

35 (j) Invest and reinvest any of the funds and accounts under
36 the board's control with a financial institution, an investment
37 manager, a fund manager, the West Virginia investment
38 management board or other professional investing the funds and
39 accounts. Investments made under this article shall be made in
40 accordance with the provisions of article six-c, chapter forty-
41 four of this code, the West Virginia uniform prudent investor
42 act. No board member, nor any person, financial institution,

43 investment manager, fund manager or the West Virginia
44 investment management board to whom the board delegates any
45 of its investment authority who acts within the standard of care
46 set forth in this section is personally liable for losses suffered
47 by the program on investments made pursuant to this article;

48 (k) Solicit and accept gifts, including bequests or other
49 testamentary gifts made by will, trust or other disposition,
50 grants, loans, aid, and property, real or personal of any nature
51 and from any source, or to participate in any other way in any
52 federal, state or local governmental programs in carrying out
53 the purposes of this article. The board shall use the property
54 received to effectuate the desires of the donor, and shall convert
55 the property received into cash within ninety days of receipt;

56 (l) Propose legislative rules for promulgation in accordance
57 with the provisions of article three-a, chapter twenty-nine-a of
58 this code;

59 (m) Make all necessary and appropriate arrangements with
60 eligible educational institutions in order to fulfill its obligations
61 under the prepaid tuition contracts and the savings plan
62 contracts; and

63 (n) Establish a direct-support organization which is a West
64 Virginia corporation, not for profit, organized and operated to
65 receive, hold, invest and administer property and make expendi-
66 tures to or for the benefit of the purposes of this article, if the
67 board determines a need for the organization exists. The board
68 may authorize the direct-support organization to use program
69 facilities and property, except money. The board may invest
70 funds of the direct-support organization.

§18-30-6. West Virginia prepaid tuition trust.

1 (a) The "Prepaid Tuition Trust Fund" is continued within
2 the accounts held by the state treasurer for administration by the
3 board.

4 (b) The prepaid tuition trust fund shall receive all payments
5 from account owners on behalf of beneficiaries of prepaid
6 tuition contracts or from any other source, public or private.
7 Earnings derived from the investment of moneys in the prepaid
8 tuition trust fund shall remain in the prepaid tuition trust fund
9 held in trust in the same manner as payments, except as
10 refunded, applied for purposes of the beneficiaries, and applied
11 for purposes of maintaining and administering the prepaid
12 tuition plan.

13 (c) The corpus, assets and earnings of the prepaid tuition
14 trust fund do not constitute public funds of the state and are
15 available solely for carrying out the purposes of this article.
16 Any contract entered into by or any obligation of the board on
17 behalf of and for the benefit of the prepaid tuition plan does not
18 constitute a debt of the state, but is solely an obligation of the
19 prepaid tuition trust fund. The state has no obligation to any
20 designated beneficiary or any other person as a result of the
21 prepaid tuition plan. All amounts payable from the prepaid
22 tuition trust fund are limited to amounts available in the prepaid
23 tuition trust fund.

24 (d) Nothing in this article or in any prepaid tuition contract
25 is a promise or guarantee of admission to, continued enrollment
26 in, or graduation from an eligible educational institution.

27 (e) The requirements of the provisions of chapter thirty-
28 two of this code do not apply to the sale of a prepaid tuition
29 contract by the board, its employees and agents.

30 (f) The prepaid tuition plan and the prepaid tuition trust
31 fund shall continue in existence until terminated by the Legisla-
32 ture as it determines or by the board upon determining that
33 continued operation is infeasible. Upon termination of the plan

34 and after payment of all fees, charges, expenses and penalties,
35 the assets of the prepaid tuition trust fund are paid to current
36 account owners, to the extent possible, on a pro rata basis as
37 their interests may appear, and any unclaimed assets in the
38 program shall revert to the state in accordance with the uniform
39 unclaimed property act in article eight, chapter thirty-six of this
40 code.

41 (g) The board shall have the actuarial soundness of the
42 prepaid tuition trust fund evaluated annually to ensure that
43 sufficient funds are deposited in the prepaid tuition trust fund
44 to meet obligations. If the board finds that additional contribu-
45 tions are needed to preserve the actuarial soundness of the
46 prepaid tuition trust fund, it may adjust the terms of preexisting
47 and subsequent prepaid tuition contracts to ensure the prepaid
48 tuition trust fund's soundness: *Provided*, That any necessary
49 adjustment to preexisting contracts are only assessed on future
50 payments and not retroactively upon previous payments made
51 by the account owners or donors to the prepaid tuition trust
52 fund.

53 (h) The board shall build and maintain in the prepaid
54 tuition trust fund an actuarial surplus, at a level recommended
55 by the actuaries, to ensure appropriate funding for the trust
56 fund.

57 (i) On or before the first day of December of each year, the
58 chairman of the board shall submit to the governor the amount
59 of any deficiency certified by an actuary as needed to meet the
60 current obligations of the prepaid tuition trust fund for the next
61 fiscal year. Notwithstanding any provision of this code to the
62 contrary, the governor, after consultation with the budget
63 section of the finance division of the department of administra-
64 tion, may request an appropriation to the board in the amount
65 of the deficiency, to meet the current obligations of the prepaid
66 tuition trust fund, in the budget presented to the next session of

67 the Legislature for its consideration. The Legislature is not
68 required to make any appropriation pursuant to this subsection,
69 and the amount of the deficiency is not a debt or a liability of
70 the state. As used in this section, “current obligations of the
71 prepaid tuition trust fund” means amounts required for the
72 payment of contract distributions or other obligations of the
73 prepaid tuition trust fund, the maintenance of the fund, and
74 operating expenses for the current fiscal year. Nothing in this
75 subsection creates an obligation of state general revenue funds
76 or requires any level of funding by the Legislature.

77 (j) To fulfill the charitable and public purposes of this
78 article, neither the earnings nor the corpus of the prepaid tuition
79 trust fund is subject to taxation by the state or any of its
80 political subdivisions.

81 (k) Notwithstanding any provision of this code to the
82 contrary, money in the prepaid tuition trust fund is exempt from
83 creditor process and not subject to attachment, garnishment or
84 other process; is not available as security or collateral for any
85 loan, or otherwise subject to alienation, sale, transfer, assign-
86 ment, pledge, encumbrance or charge; and is not subject to
87 seizure, taking, appropriation or application by any legal or
88 equitable process or operation of law to pay any debt or liability
89 of any account owner, beneficiary or successor in interest.

§18-30-7. West Virginia savings plan trust.

1 (a) The board may establish a savings plan trust, and may
2 establish a savings plan trust fund account, titled the “Savings
3 Plan Trust Fund”, within the accounts held by the treasurer or
4 with a financial institution, an investment manager, a fund
5 manager, the West Virginia investment management board or
6 any other person for the purpose of managing and investing the
7 trust fund. Assets of the savings plan trust are held in trust for
8 account owners and beneficiaries.

9 (b) The savings plan trust fund shall receive all moneys
10 from account owners on behalf of beneficiaries of savings plan
11 contracts or from any other source, public or private. Earnings
12 derived from the investment of the moneys in the college
13 savings trust fund shall remain in the fund, held in trust in the
14 same manner as contributions, except as refunded, applied for
15 purposes of the beneficiaries, and applied for purposes of
16 maintaining and administering the savings plan.

17 (c) The corpus, assets and earnings of the savings plan trust
18 fund do not constitute public funds of the state and are available
19 solely for carrying out the purposes of this article. Any contract
20 entered into by or any obligation of the board on behalf of and
21 for the benefit of the savings plan does not constitute a debt or
22 obligation of the state, but is solely an obligation of the savings
23 plan trust fund. The state has no obligation to any designated
24 beneficiary or any other person as a result of the savings plan.
25 All amounts payable from the savings plan trust fund are
26 limited to amounts available in the fund.

27 (d) Nothing in this article or in any savings plan contract is
28 a promise or guarantee that the distributions available for a
29 beneficiary will cover the cost of qualified higher education
30 expenses at an eligible educational institution, or as a promise
31 or guarantee of admission to, continued enrollment in, or
32 graduation from an eligible higher education institution.

33 (e) The requirements of the provisions of chapter thirty-
34 two of this code do not apply to the sale of a savings plan
35 contract by the board, its employees and agents.

36 (f) The savings plan and any savings plan trust fund shall
37 continue in existence until terminated by the Legislature as it
38 determines or by the board upon determining that continued
39 operation is infeasible. Upon termination of the plan, the
40 balances of savings plan accounts, less any distributions,

41 refunds, fees, charges and penalties, are sent to account owners,
42 to the extent possible, and any unclaimed assets in the program
43 shall revert to the state in accordance with the uniform un-
44 claimed property act in article eight, chapter thirty-six of this
45 code.

46 (g) The state pledges to account owners and beneficiaries
47 of the savings plans that the state will not limit or alter the
48 rights under this article which are vested until the obligations
49 are met and discharged. However, nothing in this subsection
50 prohibits the Legislature from discontinuing or terminating a
51 savings plan.

52 (h) In order to fulfill the charitable and public purposes of
53 this article, neither the earnings nor the corpus of the savings
54 plan trust fund is subject to taxation by the state or any of its
55 political subdivisions.

56 (i) Notwithstanding any provision of this code to the
57 contrary, money in the savings plan trust fund is exempt from
58 creditor process and not subject to attachment, garnishment, or
59 other process; is not available as security or collateral for any
60 loan, or otherwise subject to alienation, sale, transfer, assign-
61 ment, pledge, encumbrance or charge; and is not subject to
62 seizure, taking, appropriation or application by any legal or
63 equitable process or operation of law to pay any debt or liability
64 of any account owner, beneficiary or successor in interest.

**§18-30-8. College prepaid tuition and savings program adminis-
trative account.**

1 There is hereby created a separate account within the state
2 treasurer's office titled the "college prepaid tuition and savings
3 program administrative account" for the purposes of imple-
4 menting, operating and maintaining the trust funds and program
5 created by this article. On the effective date of this section, all
6 moneys in the prepaid tuition trust fund administrative account

7 are hereby transferred to the college prepaid tuition and savings
8 program administrative account.

9 The administrative account shall receive all fees, charges
10 and penalties collected by the board. Expenditures from the
11 fund are authorized from collections subject to appropriations
12 made by the Legislature.

§18-30-9. Income tax deduction for purchasers.

1 As provided in section twelve-a, article twenty-one, chapter
2 eleven of this code, any payment made under a prepaid tuition
3 contract or other college savings plan administered by the
4 board, pursuant to the provisions of this article, is eligible for
5 a tax deduction.

§18-30-10. Reports and account; annual audit.

1 (a) In addition to any other requirements of this article, the
2 board shall:

3 (1) Provide annually summary information on the financial
4 condition of the prepaid tuition trust fund and statements on the
5 savings plan accounts to the respective account owners;

6 (2) Prepare, or have prepared, a quarterly report on the
7 status of the program, including the trust funds and the adminis-
8 trative account, and provide a copy of the report to the joint
9 committee on government and finance and the legislative
10 oversight commission on education accountability; and

11 (3) Prepare, or have prepared, an annual actuarial report of
12 the prepaid tuition trust fund and transmit a copy of the report
13 to the governor, the president of the Senate, the speaker of the
14 House of Delegates and the legislative oversight commission on
15 education accountability.

16 (b) All accounts of the board, including the trust funds, are
17 subject to an annual external audit by an accounting firm,

18 selected by the board, of which all members or partners
19 assigned to head the audit are members of the American
20 institute of certified public accountants. The audit shall comply
21 with the requirements of section thirty-three, article two,
22 chapter five-a of this code.

§18-30-11. Financial aid eligibility.

1 The calculations of a beneficiary's eligibility for state
2 student financial aid for higher education may not include or
3 consider the value of distributions available in a prepaid tuition
4 account or the value of distributions available in a savings plan
5 account.

§18-30-12. Confidentiality.

1 Any information that would tend to disclose the identity of
2 a beneficiary, account owner or donor is exempt from the
3 provisions of chapter twenty-nine-b of this code. Nothing in this
4 section prohibits disclosure or publication of information in a
5 statistical or other form which does not identify the individuals
6 involved or provide personal information. Account owners are
7 permitted access to their own personal information.

§18-30-13. Board of trustees; authorization of rules.

1 The legislative rules filed in the state register on the
2 thirtieth day of September, one thousand nine hundred ninety-
3 seven, modified by the board of trustees of the West Virginia
4 prepaid tuition trust fund to meet the objections of the legisla-
5 tive oversight commission on education accountability and
6 refiled in the state register on the thirtieth day of January, one
7 thousand nine hundred ninety-eight, relating to the West
8 Virginia prepaid tuition trust fund (rules for the West Virginia
9 prepaid tuition trust fund), are authorized.

CHAPTER 38. LIENS.**ARTICLE 10. FEDERAL TAX LIENS; ORDERS AND DECREES IN BANKRUPTCY.****§38-10-4. Exemptions of property in bankruptcy proceedings.**

1 Pursuant to the provisions of 11 U.S.C. § 522(b)(1), this
2 state specifically does not authorize debtors who are domiciled
3 in this state to exempt the property specified under the provi-
4 sions 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
17 dollars 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 may not exceed eight
23 thousand dollars.

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

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

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

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

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

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

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

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

49 (2) A veterans' benefit;

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

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

54 (5) A payment under a stock bonus, pension, profit sharing,
55 annuity or similar plan or contract on account of illness,

56 disability, death, age or length of service, to the extent reason-
57 ably necessary for the support of the debtor and any dependent
58 of the debtor, and funds on deposit in an individual retirement
59 account (IRA), including a simplified employee pension (SEP)
60 regardless of the amount of funds, unless:

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

64 (B) The payment is on account of age or length of service;

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

68 (D) With respect to an individual retirement account,
69 including a simplified employee pension, the amount is subject
70 to the excise tax on excess contributions under section 4973
71 and/or section 4979 of the Internal Revenue Code of 1986, or
72 any successor provisions, regardless of whether the tax is 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 the 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 or to the
94 savings plan trust fund, including earnings, in accordance with
95 article thirty, chapter eighteen of this code on behalf of any
96 beneficiary.



CHAPTER 112

(S. B. 439 — By Senator Mitchell)



[Passed April 13, 2001; in effect ninety days from passage. Approved by the Governor.]



AN ACT to amend and reenact section one, article five, chapter eighteen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to ending, as discipline, suspension from school as punishment for not attending class.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. AUTHORITY; RIGHTS; RESPONSIBILITY.

§18A-5-1. Authority of teachers and other school personnel; exclusion of pupils having infectious diseases; suspension or expulsion of disorderly pupils; corporal punishment abolished.

1 (a) The teacher shall stand in the place of the parent(s),
2 guardian(s) or custodian(s) in exercising authority over the
3 school and shall have control of all pupils enrolled in the school
4 from the time they reach the school until they have returned to
5 their respective homes, except that where transportation of
6 pupils is provided, the driver in charge of the school bus or
7 other mode of transportation shall exercise such authority and
8 control over the children while they are in transit to and from
9 the school.

10 (b) Subject to the rules of the state board of education, the
11 teacher shall exclude from the school any pupil or pupils known
12 to have or suspected of having any infectious disease, or any
13 pupil or pupils who have been exposed to such disease, and
14 shall immediately notify the proper health officer or medical
15 inspector of such exclusion. Any pupil so excluded shall not be
16 readmitted to the school until such pupil has complied with all
17 the requirements of the rules governing such cases or has
18 presented a certificate of health signed by the medical inspector
19 or other proper health officer.

20 (c) The teacher shall have authority to exclude from his or
21 her classroom or school bus any pupil who is guilty of disorderly
22 conduct; who in any manner interferes with an orderly
23 educational process; who threatens, abuses or otherwise
24 intimidates or attempts to intimidate a school employee or a

25 pupil; or who willfully disobeys a school employee; or who
26 uses abusive or profane language directed at a school employee.
27 Any pupil excluded shall be placed under the control of the
28 principal of the school or a designee. The excluded pupil may
29 be admitted to the classroom or school bus only when the
30 principal, or a designee, provides written certification to the
31 teacher that the pupil may be readmitted and specifies the
32 specific type of disciplinary action, if any, which was taken. If
33 the principal finds that disciplinary action is warranted, he or
34 she shall provide written and, if possible, telephonic notice of
35 such action to the parent(s), guardian(s) or custodian(s). When
36 a teacher excludes the same pupil from his or her classroom or
37 from a school bus three times in one school year, and after
38 exhausting all reasonable methods of classroom discipline
39 provided in the school discipline plan, the pupil may be
40 readmitted to the teacher's classroom only after the principal,
41 teacher and, if possible, the parent(s), guardian(s) or custo-
42 dian(s) of the pupil have held a conference to discuss the
43 pupil's disruptive behavior patterns, and the teacher and the
44 principal agree on a course of discipline for the pupil and
45 inform the parent(s), guardian(s) or custodian(s) of the course
46 of action. Thereafter, if the pupil's disruptive behavior persists,
47 upon the teacher's request, the principal may, to the extent
48 feasible, transfer the pupil to another setting.

49 (d) The Legislature finds that suspension from school is not
50 appropriate solely for a pupil's failure to attend class. There-
51 fore, no pupil may be suspended from school solely for not
52 attending class. Other methods of discipline may be used for the
53 pupil which may include, but are not limited to, detention, extra
54 class time or alternative class settings.

55 (e) Corporal punishment of any pupil by a school employee
56 is prohibited.

57 (f) The West Virginia board of education and county boards
58 of education shall adopt policies consistent with the provisions
59 of this section encouraging the use of alternatives to corporal
60 punishment, providing for the training of school personnel in
61 alternatives to corporal punishment and for the involvement of
62 parent(s), guardian(s) or custodian(s) in the maintenance of
63 school discipline. The county boards of education shall provide
64 for the immediate incorporation and implementation in the
65 schools of a preventive discipline program which may include
66 the responsible student program and a student involvement
67 program which may include the peer mediation program,
68 devised by the West Virginia board of education. Each board
69 may modify such programs to meet the particular needs of the
70 county. The county boards shall provide in-service training for
71 teachers and principals relating to assertive discipline proce-
72 dures and conflict resolution. The county boards of education
73 may also establish cooperatives with private entities to provide
74 middle educational programs which may include programs
75 focusing on developing individual coping skills, conflict
76 resolution, anger control, self-esteem issues, stress management
77 and decisionmaking for students and any other program related
78 to preventive discipline.

79 (g) For the purpose of this section: (1) "Pupil or student"
80 shall include any child, youth or adult who is enrolled in any
81 instructional program or activity conducted under board
82 authorization and within the facilities of or in connection with
83 any program under public school direction: *Provided*, That, in
84 the case of adults, the pupil-teacher relationship shall terminate
85 when the pupil leaves the school or other place of instruction or
86 activity; and (2) "teacher" shall mean all professional educators
87 as defined in section one, article one of this chapter and shall
88 include the driver of a school bus or other mode of transporta-
89 tion.

90 (h) Teachers shall exercise such other authority and
91 perform such other duties as may be prescribed for them by law
92 or by the rules of the state board of education not inconsistent
93 with the provisions of this chapter and chapter eighteen of this
94 code.

CHAPTER 113

**(H. B. 2898 — By Delegates Paxton, Shelton, Dempsey, Perry,
Carmichael, Romine and Canterbury)**

[Passed April 14, 2001; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, three and four, article three-d, chapter eighteen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to including funds to assist with modernization and procurement of equipment for workforce training programs in grants through the workforce development initiative grant program; updating obsolete references; requiring prior approval for sale, disposal or change in use of equipment upgraded or procured with grant funds; authorizing annual renewal for less than five years; establishing additional required element in mission of community and technical colleges accepting grant funds; authorizing required private match to be both cash and in-kind; requiring plan to collaborate with public schools to maximize use of existing personnel and equipment; and authorizing award of funds for qualified programs operated on collaborative basis and utilized by both secondary and post-secondary students at public school facilities.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3D. WORKFORCE DEVELOPMENT INITIATIVE.

§18B-3D-1. Legislative findings and intent.

§18B-3D-3. Mission of the workforce development initiative program.

§18B-3D-4. Grant application procedures.

§18B-3D-1. Legislative findings and intent.

1 (a) The Legislature finds that a recent statewide study of the
2 workforce training needs of employers throughout the state
3 provided a clear message from the business community:

4 (1) The needs of employers are rapidly changing and
5 training providers must be more responsive or the state econ-
6 omy will suffer;

7 (2) Information specific to West Virginia, once again
8 emphasizes the critical link between education and economic
9 development that empowering youth and adults with the
10 knowledge and skills they need to succeed in the competitive
11 work world also results in a workforce which enables busi-
12 nesses and communities to prosper;

13 (3) Although employers are generally satisfied with the
14 quality of the West Virginia workforce and the study provides
15 additional support that the measures adopted in the Jobs
16 Through Education Act will bring continued improvement,
17 workforce needs are not static, critical skill shortages currently
18 exist, and the establishment of a workforce development system
19 that responds more quickly to the evolving skill requirements
20 of employers is needed.

21 (b) The Legislature further finds that a study of community
22 and technical education in West Virginia performed by the

23 national center for higher education management systems called
24 attention to problems in providing needed workforce education
25 and found that there is a need to:

26 (1) Jump-start development of community college and
27 postsecondary workforce development initiatives;

28 (2) Provide incentives for existing public postsecondary
29 providers to respond jointly to both short and long-term needs
30 of employers and other clients;

31 (3) Provide funding for explicit incentives for partnerships
32 between employers and public postsecondary institutions to
33 develop comprehensive community college and workforce
34 development services; and

35 (4) Allocate funds competitively on the basis of proposals
36 submitted by providers.

37 (c) It is further the intent of the Legislature that the granting
38 of funds under this article will promote the development of
39 comprehensive community and technical colleges as set forth
40 in article three-c of this chapter.

41 (d) It is the intent of the Legislature through the grant of
42 funds under this article to provide limited seed money to
43 address some of the specific areas where improvement is
44 needed, including:

45 (1) Improving employer awareness and access to services
46 available through the state's education institutions;

47 (2) Providing designated professionals and resources to
48 support workforce education through the state's education
49 institutions;

50 (3) Assisting with the modernization and procurement of
51 equipment needed for workforce training programs: *Provided,*
52 That any equipment purchased or upgraded with grant funds
53 awarded under the provisions of this article may not be sold,
54 disposed of or used for purposes other than those specified in
55 the grant without prior approval of the council;

56 (4) Increasing the capacity of the state's education institu-
57 tions to respond rapidly to employer needs for workforce
58 education, and training on an on-going basis through the
59 development of a client-focused, visible point of contact for
60 program development and delivery, service referral and needs
61 assessment, such as a workforce development center; and

62 (5) Maximizing the use of available resources for
63 workforce education and training through partnerships with
64 public vocational, technical and adult education centers and
65 private training providers.

66 (e) It is further the intent of the Legislature that consider-
67 ation and partnering opportunities be given to small businesses
68 on an equal basis with larger businesses for the purposes of this
69 article and that the seed money will assist providers in becom-
70 ing self-sustaining through partnerships with business and
71 industry which will include cost-sharing initiatives and fees
72 charged for the use of services.

73 (f) The Legislature intends that grants of funds made under
74 the provisions of this article will be competitive among
75 applicants who meet all of the criteria established in this article
76 and such other criteria as may be specified by the council.
77 Subject to the availability of funds, more than one competition
78 may be held during the same fiscal year and the dollar range of
79 awards granted in successive competitions shall be prorated
80 based on the number of months remaining in the fiscal year.
81 Subject to annual review and justification, it is the intent of the
82 Legislature to renew grant awards made under this article each

83 year for not more than five years following the initial grant
84 award.

§18B-3D-3. Mission of the workforce development initiative program.

1 (a) The statewide mission of the workforce development
2 initiative program is to develop a strategy to strengthen the
3 quality of the state's workforce by linking the existing
4 postsecondary education capacity to the needs of business,
5 industry and other employers. Available funding will be used to
6 provide explicit incentives for partnerships between employers
7 and community and technical colleges to develop comprehen-
8 sive workforce development services. Funds will be granted on
9 the basis of proposals developed according to criteria estab-
10 lished by the council.

11 (b) The mission of any community and technical college
12 accepting a workforce development initiative grant is to:

13 (1) Become client-focused and develop programs that meet
14 documented employer needs;

15 (2) Involve and collaborate with employers in the develop-
16 ment of programs;

17 (3) Develop customized training programs that provide for
18 the changing needs of employers and that are offered at flexible
19 times and locations to accommodate employer scheduling;

20 (4) Develop partnerships with other public and private
21 providers, including small business development centers and,
22 vocational, technical and adult education centers, and with
23 business and labor, to fulfill the workforce development needs
24 of the service area;

25 (5) Establish cooperative arrangements with the public
26 school system for the seamless progression of students through
27 programs of study that begin at the secondary level and
28 conclude at the community and technical college level, particu-
29 larly with respect to career and technical education certificates,
30 associate of applied science and selected associate of science
31 degree programs for students seeking immediate employment,
32 individual entrepreneurship skills, occupational development,
33 skill enhancement and career mobility.

34 (6) Assist in the on-going assessment of the workforce
35 development needs of the service area; and

36 (7) Serve as a visible point of contact and referral for
37 services to meet the workforce development needs of the
38 service area.

§18B-3D-4. Grant application procedures.

1 (a) In order to participate in the workforce development
2 initiative grant program, a community and technical college
3 must meet the following conditions:

4 (1) Establish a consortia committee as required by section
5 seven, article three-c of this chapter. The consortia committee
6 or a subcommittee thereof shall participate in the development
7 of and approve applications for funding grants under the
8 provisions of this article, and shall approve the workforce
9 development initiative budget;

10 (2) Develop a plan to achieve measurable improvements in
11 the quality of the workforce within its service area over a five-
12 year period. The plan must be developed in partnership with
13 employers, local vocational schools, and other workforce
14 education providers;

15 (3) Establish a special revolving fund under the jurisdiction
16 of the consortia committee dedicated solely to workforce
17 development initiatives for the purposes provided in this article.

18 Any fees or revenues generated from workforce development
19 initiatives funded by a competitive grant shall be deposited into
20 this fund.

21 (b) To be eligible to receive a workforce development
22 initiative grant, a community and technical college must
23 provide at least the following information in its application:

24 (1) Identification of the specific business or business sector
25 training needs that will be met if a workforce development
26 initiative grant is received;

27 (2) A commitment from the private sector to provide a
28 match of one dollar, cash and in-kind, for each dollar of state
29 grant money received except in cases where the community and
30 technical college can demonstrate in the grant application that
31 it would be a hardship for the business being served to provide
32 such a match. In those cases only, the match required may be
33 reduced to one private dollar, cash and in-kind, for every three
34 dollars of state grant money provided. In the case of awards for
35 the modernization of procurement of equipment, the council
36 may establish a separate match requirement of up to one dollar,
37 cash and in-kind, for each dollar of state grant money received;

38 (3) An agreement to share with other community and
39 technical colleges any curricula developed using funds from a
40 workforce development initiative grant;

41 (4) A specific plan showing how the community and
42 technical college will collaborate with local postsecondary
43 vocational institutions to maximize the use of existing facilities,
44 personnel and equipment;

45 (5) An acknowledgment that acceptance of a grant under
46 the provisions of this article commits the community and
47 technical college and its consortia committee to such terms,
48 conditions and deliverables as is specified by the council in the

49 request for applications, including, but not limited to, the
50 measures by which the performance of the workforce develop-
51 ment initiative will be evaluated.

52 (c) Applications submitted by community and technical
53 colleges may be awarded funds for programs which meet the
54 requirements of this article that are operated on a collaborative
55 basis at facilities under the jurisdiction of the public schools
56 and utilized by both secondary and post-secondary students.

CHAPTER 114

(H. B. 3245 — By Delegates Mezzatesta, Williams, Stemple,
Fahey, Swartzmiller, Harrison and Carmichael)

[Passed April 14, 2001; in effect from passage. Approved by the Governor.]

AN ACT to amend article eleven, chapter eighteen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section six, relating to education; teacher education programs; establishing the national institute for teaching excellence; legislative findings and intent; report to legislative oversight commission on education accountability; creating the institute board; and board authorities and duties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 11. MISCELLANEOUS INSTITUTES AND CENTERS.**§18B-11-6. National institute for teaching excellence established.**

1 (a) *Findings* — The Legislature finds that:

2 (1) West Virginia has long been recognized for its high
3 quality teacher preparation program as a national center for
4 teacher excellence;

5 (2) Teaching education candidates from higher education
6 institutions in this state have proven to be highly marketable
7 nationwide due to the reputation this state has earned in
8 producing outstanding teacher education graduates; and

9 (3) West Virginia should utilize its reputation for excep-
10 tional achievement in this area by promoting our program to
11 prospective students in teacher education programs to attract
12 graduates nationwide for teaching positions in this state.

13 (b) *Intent* — It is the intent of the Legislature:

14 (1) To create a permanent institute which, as an organized
15 activity and on a continuous basis, will encourage and promote
16 excellence and public awareness of the quality teacher prepara-
17 tion programs in our state;

18 (2) To honor excellence in education, recognize exemplary
19 teacher education graduates throughout the state and the nation,
20 and recruit and supply for our public schools highly qualified
21 teachers.

22 (c) For the purposes of this section, the following words
23 have the meanings ascribed to them:

24 (1) “Board” means the board of the institute as established
25 by this section;

26 (2) "Chancellor" means the chief executive officer of the
27 higher education policy commission;

28 (3) "Institute" means the national institute for teaching
29 excellence established by this section;

30 (4) "Secretary" means the secretary of the department of
31 education and the arts; and

32 (5) "Superintendent" means the state superintendent of
33 schools.

34 (d) There is hereby established within the office of the
35 secretary the national institute for teaching excellence. The
36 institute shall be implemented by the secretary with the
37 assistance of the superintendent and the chancellor.

38 (e) There is established the board of the institute which has
39 the responsibility for developing, overseeing and implementing
40 the operations of the institute. The board shall consist of seven
41 members selected as follows:

42 (1) The secretary or a designee;

43 (2) The superintendent or a designee;

44 (3) The chancellor or a designee;

45 (4) One certified teacher, selected by the state board; and

46 (5) Three members selected by the secretary representing
47 West Virginia higher education institutions with approved
48 teacher education programs. Of the three members selected by
49 the secretary, one shall represent a state university, one shall
50 represent a public college, and one shall represent a private
51 college.

52 (f) Members of the board serve terms of two years each
53 and, at the expiration of their terms, may continue to serve until
54 their respective successors are appointed. The secretary shall
55 appoint a chairperson for the board from among the members
56 thereof for a term of two years. The chairperson may continue
57 to serve until his or her successor is appointed.

58 (g) The board has the following powers and duties:

59 (1) To design and develop the institute;

60 (2) To select annually a university or college within the
61 state to host the institute;

62 (3) To establish the application process, criteria and
63 qualifications, and annually to make the final selection of two
64 recent education graduates from each state to attend the institute
65 academy;

66 (4) To solicit, accept and expend for the purposes of this
67 section any contribution, grant or appropriation from any
68 source, and to pursue aggressively any federal or private
69 funding available for these purposes;

70 (5) To perform such other duties as considered necessary to
71 carry out the purposes of this section;

72 (6) To report by the first day of November, two thousand
73 one, and annually thereafter, to the legislative oversight
74 commission on education accountability on the progress of the
75 institute. The initial report shall contain at least the following
76 information:

77 (i) A design for administering a collaborative effort on the
78 part of West Virginia colleges and universities with an ap-
79 proved teacher education program to provide a week-long
80 summer academy for recent teacher education graduates
81 nationwide;

82 (ii) Provisions, including appropriate sources of funds, for
83 the institute to man an office throughout the year for the
84 purpose of publishing materials, pursuing grant moneys,
85 conducting research and providing data on excellence in teacher
86 education; and

87 (iii) Provision for developing a certificate of recognition to
88 be presented to each participant upon completion of the
89 academy.

90 (h) Nothing in this section requires any level of funding by
91 the Legislature or requires the board to implement the provi-
92 sions of this section unless federal funds and/or private moneys
93 have been secured for that purpose.

CHAPTER 115

(S. B. 724 — Originating in the Committee on Education)

[Passed April 12, 2001; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, two and three, article seventeen, chapter eighteen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section four, all relating to authorizing rules; board of trustees; board of directors; higher education policy commission; reduced tuition and fee program for state residents who are at least sixty-five years of age; and higher education finance policy.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 17. LEGISLATIVE RULES.

§18B-17-1. Legislative authorization; effective date of rules; technical deficiencies waived.

§18B-17-2. Board of trustees.

§18B-17-3. Board of directors.

§18B-17-4. Higher education policy commission.

§18B-17-1. Legislative authorization; effective date of rules; technical deficiencies waived.

1 (a) Under the provisions of article three-a, chapter twenty-
2 nine-a of the code of West Virginia, the Legislature expressly
3 authorizes the promulgation of the rules described in this
4 article, subject only to the limitations set forth with respect to
5 each rule in the section or sections of this chapter authorizing
6 its promulgation. The Legislature further declares that all rules
7 now or hereafter authorized in this article are within the
8 legislative intent of the statute which the rule is intended to
9 implement, extend, apply or interpret.

10 (b) The effective date of the legislative rules authorized in
11 this article is governed by the provisions of section fourteen,
12 article three-a, chapter twenty-nine-a of this code unless the
13 governing board promulgating the rules establishes an effective
14 date which is earlier than that provided by that section, in which
15 case the effective date established by the governing board shall
16 control, unless the Legislature, in the bill authorizing the rules,
17 establishes an effective date for the rules, in which case the
18 effective date established by the Legislature controls.

19 (c) The Legislature further declares each legislative rule
20 now or hereafter authorized under this article to have been
21 validly promulgated, notwithstanding any failure to comply
22 with any requirement of article three-a, chapter twenty-nine-a
23 of this code relating to the promulgation of rules at any stage of
24 the promulgation process prior to authorization by the Legisla-
25 ture in this article.

§18B-17-2. Board of trustees.

1 (a) The legislative rules filed in the state register on the
2 third day of December, one thousand nine hundred ninety-one,
3 modified by the board of trustees to meet the objections of the
4 legislative oversight commission on education accountability
5 and refiled in the state register on the twenty-first day of
6 January, one thousand nine hundred ninety-two, relating to the
7 board of trustees (report card), are authorized.

8 (b) The legislative rules filed in the state register on the
9 thirteenth day of July, one thousand nine hundred ninety-one,
10 relating to the board of trustees (equal opportunity and affirma-
11 tive action), are authorized.

12 (c) The legislative rules filed in the state register on the
13 eighth day of September, one thousand nine hundred ninety-
14 two, relating to the board of trustees (holidays), are authorized.

15 (d) The legislative rules filed in the state register on the
16 third day of April, one thousand nine hundred ninety-two,
17 relating to the board of trustees (alcoholic beverages on
18 campuses), are authorized.

19 (e) The legislative rules filed in the state register on the
20 fifteenth day of November, one thousand nine hundred ninety-
21 three, relating to the board of trustees (acceptance of advanced
22 placement credit), are authorized.

23 (f) The legislative rules filed in the state register on the
24 thirteenth day of December, one thousand nine hundred ninety-
25 three, modified by the board of trustees to meet the objections
26 of the legislative oversight commission on education account-
27 ability and refiled in the state register on the twenty-first day of
28 January, one thousand nine hundred ninety-four, relating to the
29 board of trustees (assessment, payment and refund of fees), are
30 authorized.

31 (g) The legislative rules filed in the state register on the first
32 day of November, one thousand nine hundred ninety-three,
33 modified by the board of trustees to meet the objections of the
34 legislative oversight commission on education accountability
35 and refiled in the state register on the twenty-first day of
36 December, one thousand nine hundred ninety-three, relating to
37 the board of trustees (personnel administration), are authorized.

38 (h) The legislative rules filed in the state register on the
39 twenty-seventh day of January, one thousand nine hundred
40 ninety-four, relating to the board of trustees (resource allocation
41 policy), are authorized.

42 (i) The legislative rules filed in the state register on the
43 fourth day of December, one thousand nine hundred ninety-
44 five, modified by the board of trustees to meet the objections of
45 the legislative oversight commission on education accountabil-
46 ity and refiled in the state register on the fifteenth day of
47 February, one thousand nine hundred ninety-six, relating to the
48 board of trustees (higher education report card), are authorized.

49 (j) The legislative rules filed in the state register on the
50 nineteenth day of December, one thousand nine hundred ninety-
51 seven, relating to the board of trustees (Underwood-Smith
52 teacher scholarship program), are authorized.

53 (k) The legislative rules filed in the state register on the
54 third day of September, one thousand nine hundred ninety-nine,

55 modified by the board of trustees to meet the objections of the
56 legislative oversight commission on education accountability
57 and refiled in the state register on the fourth day of November,
58 one thousand nine hundred ninety-nine, relating to the board of
59 trustees (higher education adult part-time student grant pro-
60 gram), are authorized.

61 (l) The legislative rules filed in the state register on the
62 fourth day of November, one thousand nine hundred ninety-
63 nine, modified by the board of trustees to meet the objections
64 of the legislative oversight commission on education account-
65 ability and refiled in the state register on the twenty-eighth day
66 of January, two thousand, relating to the board of trustees
67 (engineering, science and technology scholarship program), are
68 authorized.

69 (m) The legislative rules filed in the state register on the
70 eleventh day of August, two thousand, relating to the board of
71 trustees (reduced tuition and fee program for state residents
72 who are at least sixty-five years of age), are authorized.

§18B-17-3. Board of directors.

1 (a) The legislative rules filed in the state register on the
2 sixteenth day of December, one thousand nine hundred ninety-
3 one, modified by the board of directors to meet the objections
4 of the legislative oversight commission on education account-
5 ability and refiled in the state register on the twenty-first day of
6 January, one thousand nine hundred ninety-two, relating to the
7 board of directors (report card), are authorized.

8 (b) The legislative rules filed in the state register on the
9 twenty-seventh day of September, one thousand nine hundred
10 ninety-one, relating to the board of directors (equal opportunity
11 and affirmative action), are authorized.

12 (c) The legislative rules filed in the state register on the
13 fourth day of December, one thousand nine hundred ninety-one,
14 relating to the board of directors (holiday policy), are autho-
15 rized.

16 (d) The legislative rules filed in the state register on the
17 nineteenth day of March, one thousand nine hundred ninety-
18 two, as modified and refiled in the state register on the tenth
19 day of July, one thousand nine hundred ninety-two, relating to
20 the board of directors (presidential appointments, responsibili-
21 ties and evaluations), are authorized.

22 (e) The legislative rules filed in the state register on the
23 twentieth day of September, one thousand nine hundred ninety-
24 three, relating to the board of directors (acceptance of advanced
25 placement credit), are authorized.

26 (f) The legislative rules filed in the state register on the
27 tenth day of December, one thousand nine hundred ninety-
28 three, relating to the board of directors (resource allocation
29 policy), are authorized.

30 (g) The legislative rules filed in the state register on the
31 eighth day of December, one thousand nine hundred ninety-
32 three, modified by the board of directors to meet the objections
33 of the legislative oversight commission on education account-
34 ability and refiled in the state register on the eleventh day of
35 January, one thousand nine hundred ninety-four, relating to the
36 board of directors (assessment, payment and refund of fees), are
37 authorized.

38 (h) The legislative rules filed in the state register on the first
39 day of November, one thousand nine hundred ninety-three,
40 modified by the board of directors to meet the objections of the
41 legislative oversight commission on education accountability
42 and refiled in the state register on the twenty-first day of
43 December, one thousand nine hundred ninety-three, relating to
44 the board of directors (personnel administration), are autho-
45 rized.

46 (i) The legislative rules filed in the state register on the
47 twenty-seventh day of October, one thousand nine hundred
48 ninety-four, modified by the board of directors to meet the
49 objections of the legislative oversight commission on education
50 accountability and refiled in the state register on the nineteenth
51 day of December, one thousand nine hundred ninety-four,
52 relating to the board of directors (proprietary, correspondence,
53 business, occupational and trade schools), are authorized.

54 (j) The legislative rules filed in the state register on the
55 eighteenth day of April, one thousand nine hundred ninety-five,
56 relating to the board of directors (contracts and consortium
57 agreements with public schools, private schools or private
58 industry), are authorized.

59 (k) The legislative rules filed in the state register on the
60 seventeenth day of November, one thousand nine hundred
61 ninety-five, modified by the board of directors to meet the
62 objections of the legislative oversight commission on education
63 accountability and refiled in the state register on the fourth day
64 of January, one thousand nine hundred ninety-six, relating to
65 the board of directors (higher education report cards), are
66 authorized.

67 (l) The legislative rules filed in the state register on the
68 nineteenth day of December, one thousand nine hundred ninety-
69 seven, relating to the board of directors (Underwood-Smith
70 teacher scholarship program), are authorized.

71 (m) The legislative rules filed in the state register on the
72 ninth day of December, one thousand nine hundred ninety-nine,
73 relating to the board of directors (increased flexibility for
74 freestanding community and technical colleges), are authorized.

75 (n) The legislative rules filed in the state register on the
76 third day of September, one thousand nine hundred ninety-nine,
77 modified by the board of directors to meet the objections of the
78 legislative oversight commission on education accountability
79 and refiled in the state register on the fourth day of November,

80 one thousand nine hundred ninety-nine, relating to the board of
81 directors (higher education adult part-time student grant
82 program), are authorized.

83 (o) The legislative rules filed in the state register on the
84 fourth day of November, one thousand nine hundred ninety-
85 nine, modified by the board of directors to meet the objections
86 of the legislative oversight commission on education account-
87 ability and refiled in the state register on the twenty-eighth day
88 of January, two thousand, relating to the board of directors
89 (engineering, science and technology scholarship program), are
90 authorized.

91 (p) The legislative rules filed in the state register on the
92 twelfth day of June, two thousand, relating to the board of
93 directors (reduced tuition and fee program for state residents
94 who are at least sixty-five years of age), are authorized.

§18B-17-4. Higher education policy commission.

1 The legislative rule filed in the state register on the second
2 day of February, two thousand one, and modified and refiled on
3 the third day of April, two thousand one, relating to the higher
4 education policy commission (higher education finance policy),
5 are authorized.

CHAPTER 116

**(Com. Sub. for H. B. 2897 — By Delegates Fahey, Hubbard, Morgan,
Mathews, Fox, L. Smith and Swartzmiller)**

[Passed April 14, 2001; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven, article five, chapter eighteen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to providing higher education adult part-time student grants to students enrolled in postsecondary certificate, industry recognized credential and other skill development programs of study in demand occupations; changing out-dated terms and references; clarifying definition for eligible institutions; adding definitions for eligible programs and courses, postsecondary certificate program, demand occupation, industry recognized credential program, and skill development program; modifying definitions, clarifying program parameters and eligibility requirements to accommodate newly authorized programs; requiring commission to develop a legislative rule for implementation including allocation of funds and guidelines for calculating grant amounts; and authorizing emergency rule.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. HIGHER EDUCATION GRANT PROGRAM.

§18C-5-7. Higher education adult part-time student grant program.

1 (a) There is established the higher education adult part-time
2 student grant program, hereafter referred to as the HEAPS grant
3 program. The grant program established and authorized by this
4 section is administered by the vice chancellor for administra-
5 tion. Moneys appropriated or otherwise available for such
6 purpose shall be allocated by line item to an appropriate
7 account. Any moneys remaining in the fund at the close of a
8 fiscal year shall be carried forward for use in the next fiscal
9 year.

10 (b) As used in this section, the following terms have the
11 meanings ascribed to them:

12 (1) "Approved distance education" means a course of study
13 offered via electronic access that has been approved for
14 inclusion in the applicant's program of study by the eligible
15 institution of higher education at which the applicant is enrolled
16 or has been accepted for enrollment;

17 (2) "Part-time" means enrollment for not less than six nor
18 more than eleven semester or term hours: *Provided*, That for no
19 more than two semesters during the recipient's ten years of
20 eligibility, the recipient may be considered to be enrolled
21 part-time if he or she is enrolled for three or more semester or
22 term hours: *Provided, however*, That in the case of enrollment
23 in postsecondary certificate, industry recognized credential and
24 other skill development programs in demand occupations in this
25 state, "part-time" means enrollment on such basis as is estab-
26 lished for the program in which enrolled.

27 (3) "Satisfactory academic progress" means maintaining a
28 cumulative grade point average of at least 2.0 on a 4.0 grading
29 scale with a goal of obtaining a certificate, associate degree or
30 bachelor's degree. In the case of postsecondary certificate,
31 industry recognized credential and other skill development
32 programs, satisfactory academic progress means continuous
33 advancement toward completion of the program on the normal
34 schedule established for the program in which enrolled;

35 (4) "Eligible institution" means:

36 (A) Any community college; community and technical
37 college; adult technical preparatory education program or
38 training;

39 (B) Any state college or university, as those terms are
40 defined in section two, article one, chapter eighteen-b of this
41 code;

42 (C) Any approved institution of higher education as that
43 term is defined in section two of this article; and

44 (D) Any approved distance education, including world wide
45 web based courses;

46 (5) "Eligible program or programs" or "eligible course or
47 courses" means, in addition to programs and courses offered by
48 eligible institutions as defined in subdivision (4) of this
49 subsection:

50 (A) Programs and courses offered by any nationally
51 accredited degree granting institution of higher learning
52 permitted pursuant to section five, article three, chapter
53 eighteen-b of this code and approved by the joint commission
54 for vocational-technical occupational education; and

55 (B) Any postsecondary certificate, industry recognized
56 credential and other skill development programs of study as
57 defined in this section in a demand occupation in this state;

58 (6) "State resident" means a student who has lived in West
59 Virginia continuously for a minimum of twelve months
60 immediately preceding the date of application for a HEAPS
61 grant or renewal of a grant;

62 (7) "Postsecondary certificate program" means an orga-
63 nized program of study, approved by the joint commission for
64 vocational-technical occupational education, with defined
65 competencies or skill sets that may be offered for credit or non-
66 credit and which culminates in the awarding of a certificate:
67 *Provided*, That postsecondary certificate programs offered by
68 eligible institutions as defined in subdivision (4) of this

69 subsection do not require the approval of the joint commission
70 for vocational-technical occupational education;

71 (8) "Demand occupation" means any occupation having
72 documented verification from employers that job opportunities
73 in that occupation are currently available or are projected to be
74 available within a year within the state or regions of the state.
75 The joint commission for vocational-technical occupational
76 education shall prepare and update annually a list of occupa-
77 tions that they determine meet the requirements of this defini-
78 tion;

79 (9) "Industry recognized credential program" means an
80 organized program that meets nationally recognized standards
81 in a particular industry, is approved by the joint commission for
82 vocational-technical occupational education and which culmi-
83 nates in the awarding of a certification or other credential
84 commonly recognized in that industry: *Provided*, That industry
85 recognized credential programs offered by eligible institutions
86 as defined in subdivision (4) of this subsection do not require
87 the approval of the joint commission for vocational-technical
88 occupational education; and

89 (10) "Skill development program" means a structured
90 sequence or set of courses, approved by the joint commission
91 for vocational-technical occupational education, with defined
92 competencies that are designed to meet the specific skill
93 requirements of an occupation and which culminates in the
94 awarding of a certificate of completion that specifically lists the
95 competencies or skills mastered: *Provided*, That skill develop-
96 ment programs offered by eligible institutions as defined in
97 subdivision (4) of this subsection do not require the approval of
98 the joint commission.

99 (c) A person is eligible for consideration for a HEAPS grant
100 if the person:

101 (1) Demonstrates that he or she has applied for, accepted,
102 or both, other student financial assistance in compliance with
103 federal financial aid rules, including the federal Pell grant;

104 (2) Qualifies as an independent student according to current
105 federal financial aid criteria, unless the person is enrolling in a
106 postsecondary certificate, industry recognized credential or
107 other skill development program in a demand occupation in the
108 state and has graduated from high school within the past two
109 years;

110 (3) Demonstrates financial need for funds, as defined by
111 legislative rule;

112 (4) Has not been enrolled in a high school diploma pro-
113 gram, other than general education development (GED), for at
114 least the two preceding years, unless the person applies the
115 grant toward the cost of enrolling in a postsecondary certificate,
116 industry recognized credential or other skill development
117 program of study in a demand occupation in this state;

118 (5) Is a state resident and may not be considered a resident
119 of any other state;

120 (6) Is a United States citizen or permanent resident thereof;

121 (7) Is not incarcerated in a correctional facility;

122 (8) Is not in default on a higher education loan; and

123 (9) Is enrolled in a program of study at less than the
124 graduate level on a part-time basis in an eligible institution or
125 program of study and is making satisfactory academic progress
126 at the time of application: *Provided*, That the requirement that
127 the student be making satisfactory academic progress may not
128 preclude a HEAPS grant award to a student who has been

129 accepted for enrollment in an eligible institution or program of
130 study but has not yet been enrolled.

131 (d) Each HEAPS grant award is eligible for renewal until
132 the course of study is completed, but not to exceed an additional
133 nine years beyond the first year of the award.

134 (e) The higher education policy commission shall propose
135 a legislative rule pursuant to article three-a, chapter twenty-
136 nine-a of this code to implement the provisions of this section
137 which shall be filed with the legislative oversight commission
138 on education accountability by the first day of September, two
139 thousand one. The Legislature hereby declares that an emer-
140 gency situation exists and, therefore, the policy commission
141 may establish, by emergency rule, under the procedures of
142 article three-a, chapter twenty-nine-a of this code, a rule to
143 implement the provisions of this section, after approval by the
144 legislative oversight commission on education accountability.

145 (f) The legislative rule shall provide at least the following:

146 (1) That consideration of financial need, as required by
147 subdivision (3), subsection (c) of this section, include the
148 following factors:

149 (A) Whether the applicant has dependents as defined by
150 federal law;

151 (B) Whether the applicant has any personal hardship as
152 determined at the discretion of the vice chancellor for adminis-
153 tration; and

154 (C) Whether the applicant will receive any other source of
155 student financial aid during the award period.

156 (2) That an appropriate allocation process be provided for
157 distribution of funds directly to the eligible institutions or

158 programs based on the part-time enrollment figures of the prior
159 year;

160 (3) That not less than twenty-five percent of the funds
161 appropriated in any one fiscal year be used to make grants to
162 students enrolled in postsecondary certificate, industry recog-
163 nized credential and other skill development programs of study:
164 *Provided*, That after giving written notice to the legislative
165 oversight commission on education accountability, the vice
166 chancellor for administration may allocate less than twenty-five
167 percent of the funds for such grants;

168 (4) That any funds not expended by an eligible institution
169 or program at the end of each fiscal year shall be returned to the
170 vice chancellor for administration for distribution under the
171 provisions of this section; and

172 (5) That the amount of each HEAPS grant award be
173 determined using the following guidelines:

174 (A) The amount of any HEAPS grant awarded to a student
175 per semester, term hour or program for those students who are
176 enrolled in eligible institutions or programs operated under the
177 jurisdiction of an agency of the state or a political subdivision
178 thereof shall be based upon the following:

179 (i) Actual cost of tuition and fees;

180 (ii) The portion of the costs determined to be appropriate by
181 the commission; and

182 (iii) In addition to factors (i) and (ii) above, in determining
183 the amount of the award, the vice chancellor may consider the
184 demand for the program pursuant to subdivision (8), subsection
185 (b) of this section; and

186 (B) The amount of any HEAPS grant awarded to a student
187 who is enrolled in any other eligible institution, program or
188 course shall be no greater than the average amount for compara-
189 ble programs or courses as determined pursuant to the provi-
190 sions of paragraph (A) above.

191 (g) The vice chancellor for administration shall report
192 annually, by the first day of December, on the status of the
193 HEAPS grant program to the legislative oversight commission
194 on education accountability.

195 (h) The HEAPS grant program is subject to any provision
196 of this article not inconsistent with the provisions of this
197 section.

CHAPTER 117

**(Com. Sub. for H. B. 3066 — By Delegates Manuel, Mahan, Coleman,
Craig, C. White and Smirl)**

[Passed April 14, 2001; in effect September 1, 2001. Approved by the Governor.]

AN ACT to amend and reenact sections five and twenty-one, article one, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section six, article two of said chapter; to amend and reenact sections one, two, two-a, two-b, three, four, five, five-a, five-b, five-c, seven, nine, ten, eleven and twelve, article three of said chapter; to amend and reenact sections one, two, six, nine, eleven, eleven-a, twelve, fifteen, sixteen, seventeen, nineteen, nineteen-a, twenty, twenty-one, twenty-four, twenty-six, twenty-seven, twenty-eight

and thirty, article four-a of said chapter; to further amend said article by adding thereto a new section, designated section twenty-four-a; and to amend and reenact section twenty-three, article five of said chapter, all relating to election law reform; increasing authorized number of registered voters for certain precincts; removing limitations on the number of absentee paper ballots to be printed; expanding time period for voter registration; authorizing any registered voter to vote in person during absentee voting period; expanding absentee voting by mail and emergency absentee voting; transferring authority to conduct absentee voting from circuit clerks to county clerks and providing exceptions thereto; authorizing county commissions to designate area within county courthouse or annex for absentee voting; making certain technical revisions; expanding time period for absentee voting to Monday before election; clarifying time for absentee voting on Saturday before election; providing for contents of absentee ballots; providing for the acceptance of absentee ballots returned by mail or other express shipping service; providing for acceptance of absentee ballots received from certain uniform services and overseas voters; requiring that a set of emergency absentee ballot commissioners be persons of different registered party affiliations; prohibiting persons who have voted an absent voter's ballot from voting on election day; eliminating challenge to such ballot; clarifying authority to challenge certain ballots; prohibiting purchase of punch card voting system for any election subsequent to the general election in two thousand; providing for electronic voting systems by which votes may be recorded on a display screen by means of a stylus or by means of a touch; authorizing county commissions to share automatic tabulating equipment; and eliminating requirement that petition circulators be registered to vote in this state; clarifying requirement of both poll clerk signatures on absentee ballots.

Be it enacted by the Legislature of West Virginia:

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

Article

1. **General Provisions and Definitions.**
2. **Registration of Voters.**
3. **Voting by Absentees.**
- 4A. **Electronic Voting Systems.**
5. **Primary Elections and Nominating Procedures.**

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§3-1-5. Voting precincts and places established; number of voters in precincts; precinct map; municipal map.

§3-1-21. Printing of official and sample ballots; number; packaging and delivery, correction ballots.

§3-1-5. Voting precincts and places established; number of voters in precincts; precinct map; municipal map.

- 1 The precinct shall be the basic territorial election unit. The
- 2 county commission shall divide each magisterial district of the
- 3 county into election precincts, shall number the precincts, shall
- 4 determine and establish the boundaries thereof, and shall
- 5 designate one voting place in each precinct, which place shall
- 6 be established as nearly as possible at the point most convenient
- 7 for the voters of the precinct. Each magisterial district shall

8 contain at least one voting precinct and each precinct shall have
9 but one voting place therein.

10 Each precinct within any urban center shall contain not less
11 than three hundred nor more than one thousand five hundred
12 registered voters. Each precinct in a rural or less thickly settled
13 area shall contain not less than two hundred nor more than
14 seven hundred registered voters, unless upon a written finding
15 by the county commission that establishment of or retention of
16 a precinct of less than two hundred voters would prevent undue
17 hardship to the voters, the secretary of state determines that
18 such precinct be exempt from the two hundred voter minimum
19 limit. If, at any time the number of registered voters exceeds the
20 maximum number specified, the county commission shall
21 rearrange the precincts within the political division so that the
22 new precincts each contain a number of registered voters within
23 the designated limits. If a county commission fails to rearrange
24 the precincts as required, any qualified voter of the county may
25 apply for a writ of mandamus to compel the performance of this
26 duty: *Provided*, That when in the discretion of the county
27 commission, there is only one place convenient to vote within
28 the precinct and when there are more than seven hundred
29 registered voters within the existing precinct, the county
30 commission may designate two or more precincts with the same
31 geographic boundaries and which have voting places located
32 within the same building. The county commission shall
33 designate alphabetically the voters who will be eligible to vote
34 in each precinct so created. Each such precinct shall be operated
35 separately and independently with separate voting booths, ballot
36 boxes, election commissioners and clerks, and whenever
37 possible, in separate rooms. No two of such precincts may use
38 the same counting board.

39 In order to facilitate the conduct of local and special
40 elections and the use of election registration records therein,
41 precinct boundaries shall be established to coincide with the

42 boundaries of any municipality of the county and with the
43 wards or other geographical districts of the municipality except
44 in instances where found by the county commission to be
45 wholly impracticable so to do. Governing bodies of all municipi-
46 palities shall provide accurate and current maps of their
47 boundaries to the clerk of any county commission of a county
48 in which any portion of the municipality is located.

49 The provisions of this section are subject to the provisions
50 of section twenty-eight, article four of this chapter relating to
51 the number of voters in precincts in which voting machines are
52 used.

53 The county commission shall keep available at all times
54 during business hours in the courthouse at a place convenient
55 for public inspection a map or maps of the county and municipi-
56 palities with the current boundaries of all precincts.

**§3-1-21. Printing of official and sample ballots; number; packag-
ing and delivery, correction of ballots.**

1 (a) The board of ballot commissioners for each county shall
2 provide the ballots and sample ballots necessary for the conduct
3 of every election for public officers in which the voters of the
4 county participate.

5 (b) The persons who shall provide the ballots necessary for
6 the conduct of all other elections shall be:

7 (1) The secretary of state, for any statewide special election
8 ordered by the Legislature;

9 (2) The board of ballot commissioners, for any countywide
10 special election ordered by the county commission; or

11 (3) The board of education, for any special levy or bond
12 election ordered by the board of education; or

13 (4) The municipal board of ballot commissioners, for any
14 election conducted for or within a municipality, except an
15 election in which the matter affecting the municipality is placed
16 on the county ballot at a county election. Ballots other than
17 those caused to be printed by the proper authorities as specified
18 in this section shall not be cast, received or counted in any
19 election.

20 (c) When paper ballots are used, the total number of regular
21 official ballots printed shall equal one and one-twentieth times
22 the number of registered voters eligible to vote that ballot. The
23 circuit clerk shall determine the number of absentee official
24 ballots.

25 (d) The number of regular official ballots packaged for each
26 precinct shall equal the number of registered voters of the
27 precinct. The remaining regular official ballots shall be pack-
28 aged and delivered to the circuit clerk, who shall retain them
29 unopened until they are required for an emergency. Each
30 package of ballots shall be wrapped and sealed in a manner
31 which will immediately make apparent any attempt to open,
32 alter or tamper with the ballots contained therein. Each package
33 of ballots for a precinct shall be clearly labeled, in a manner
34 which cannot be altered, with the county name, the precinct
35 number, and the number of ballots contained therein. If the
36 packaging material conceals the face of the ballot, a sample
37 ballot identical to the official ballots contained therein shall be
38 securely attached to the outside of the package, or, in the case
39 of ballot cards, the type of ballot shall be included in the label.

40 (e) All absentee ballots necessary for the conduct of
41 absentee voting in all voting systems shall be delivered to the
42 circuit clerk of the appropriate county not later than the forty-
43 second day before the election. All official ballots in paper
44 ballot systems shall be delivered to the circuit clerk of the

45 appropriate county not later than twenty-eight days before the
46 election.

47 (f) Upon a finding of the board of ballot commissioners that
48 an official ballot contains an error which in the opinion of the
49 board is of sufficient magnitude as to confuse or mislead the
50 voters, the board shall cause the error to be corrected, either by
51 the reprinting of the ballots or by the use of stickers printed
52 with the correction and of suitable size to be placed over the
53 error without covering any other portion of the ballot.

ARTICLE 2. REGISTRATION OF VOTERS.

§3-2-6. Time of registration application before an election.

1 (a) Voter registration before an election shall close on the
2 twentieth day before the election, or on the first day thereafter
3 which is not a Saturday, Sunday or legal holiday.

4 (b) An application for voter registration, transfer of
5 registration, change of name or change of political party
6 affiliation submitted by an eligible voter by the close of voter
7 registration shall be effective for any subsequent primary,
8 general or special election if the following conditions are met:

9 (1) The application contains the required information as set
10 forth in subsection (c), section five of this article: *Provided,*
11 That incomplete applications for registration containing
12 information which are submitted within the required time may
13 be corrected within four days after the close of registration if
14 the applicant provides the required information; and

15 (2) The application is received by the appropriate clerk of
16 the county commission no later than the hour of the close of
17 registration or is otherwise submitted by the following dead-
18 lines:

19 (A) If mailed, the application shall be addressed to the
20 appropriate clerk of the county commission and postmarked by
21 the postal service no later than the date of the close of registra-
22 tion: *Provided*, That if the postmark is missing or illegible, the
23 application shall be presumed to have been mailed no later than
24 the close of registration if it is received by the appropriate clerk
25 of the county commission no later than the third day following
26 the close of registration;

27 (B) If accepted by a designated agency or motor vehicle
28 licensing office, the application shall be received by that agency
29 or office no later than the close of registration;

30 (C) If accepted through a registration outreach program, the
31 application shall be received by the clerk, deputy clerk or
32 registrar no later than the close of registration; and

33 (3) The verification notice required by the provisions of
34 section sixteen of this article mailed to the voter at the residence
35 indicated on the application is not returned as undeliverable.

ARTICLE 3. VOTING BY ABSENTEES.

§3-3-1. Persons eligible to vote absentee ballots.

§3-3-2. Authority to conduct absentee voting; absentee voting application; form.

§3-3-2a. Voting booths within public view to be provided; prohibition against display of campaign material.

§3-3-2b. Special absentee voting list.

§3-3-3. Voting an absentee ballot in person.

§3-3-4. Assistance to voter in voting an absent voter's ballot by personal appearance; penalties.

§3-3-5. Voting an absentee ballot by mail; penalties.

§3-3-5a. Processing federal postcard applications.

§3-3-5b. Procedures for voting a special write-in absentee ballot by qualified persons.

§3-3-5c. Procedures for voting an emergency absentee ballot by qualified voters.

§3-3-7. Delivery of absentee ballots to polling places.

§3-3-9. Voting in person after having received and after having voted an absent voter's ballot.

§3-3-10. Challenging of absent voters' ballots.

§3-3-11. Preparation, number and handling of absent voters' ballots.

§3-3-12. Rules, regulations, orders, instructions, forms, lists and records pertaining to absentee voting.

§3-3-1. Persons eligible to vote absentee ballots.

1 (a) Registered and other qualified voters of the county may
2 vote an absentee ballot pursuant to the provisions of this article.

3 (b) All registered and other qualified voters of the county
4 may vote an absentee ballot during the period of regular
5 absentee voting in person.

6 (c) Any registered voter or other qualified voter of the
7 county who will be absent from the county throughout the
8 regular period and available hours for voting in person because
9 of personal or business travel or employment and who will be
10 unable to receive an absentee ballot by mail at an address
11 outside the county during that absence may vote an absentee
12 ballot under special affidavit in person during the period of
13 special absentee voting in person.

14 (d) Registered voters and other qualified voters in the
15 county are authorized to vote an absentee ballot by mail in the
16 following circumstances:

17 (1) Any voter who is confined to a specific location and
18 prevented from voting in person throughout the period of voting
19 in person because of:

20 (A) Illness, injury or other medical reason;

21 (B) Physical disability or immobility due to extreme
22 advanced age; or

23 (C) Incarceration or home detention: *Provided*, That the
24 underlying conviction is not for a crime which is a felony or a
25 violation of section twelve, thirteen or sixteen, article nine of
26 this chapter, involving bribery in an election;

27 (2) Any voter who is absent from the county throughout the
28 period and available hours for voting in person because of:

29 (A) Personal or business travel;

30 (B) Attendance at a college, university or other place of
31 education or training; or

32 (C) Employment which because of hours worked and
33 distance from the county seat make voting in person impossi-
34 ble;

35 (3) Any voter absent from the county throughout the period
36 and available hours for voting in person and who is an absent
37 uniformed services voter or overseas voter, as defined by 42 U.
38 S. C. §1973, et seq., the Uniformed and Overseas Citizens
39 Absentee Voting Act of 1986, including members of the
40 uniformed services on active duty, members of the merchant
41 marine, spouses and dependents of those members on active
42 duty, and persons who reside outside the United States and are
43 qualified to vote in the last place in which the person was
44 domiciled before leaving the United States;

45 (4) Any voter who is required to dwell temporarily outside
46 the county and is absent from the county throughout the time
47 for voting in person because of:

48 (A) Serving as an elected or appointed federal or state
49 officer; or

50 (B) Serving in any other documented employment assign-
51 ment of specific duration of four years or less; and

52 (5) Any voter for whom the designated area for absentee
53 voting within the county courthouse or annex of the courthouse
54 and the voter's assigned polling place are inaccessible because
55 of his or her physical disability.

56 (e) Registered voters and other qualified voters in the
57 county may, in the following circumstances, vote an emergency
58 absentee ballot, subject to the availability of the services as
59 provided in this article:

60 (1) Any voter who is confined or expects to be confined in
61 a hospital or other duly licensed health care facility within the
62 county of residence or other authorized area, as provided in this
63 article, on the day of the election;

64 (2) Any voter who resides in a nursing home within the
65 county of residence and would be otherwise unable to vote in
66 person, providing the county commission has authorized the
67 services; and

68 (3) Any voter who is working as a replacement poll worker
69 and is assigned to a precinct out of his or her voting district, if
70 the assignment was made after the period for voting an absentee
71 ballot in person has expired.

**§3-3-2. Authority to conduct absentee voting; absentee voting
application; form.**

1 (a) Absentee voting is to be supervised and conducted by
2 the proper official for the political division in which the
3 election is held, in conjunction with the ballot commissioners
4 appointed from each political party, as follows:

5 (1) For any election held throughout the county, within a
6 political subdivision or territory other than a municipality, or
7 within a municipality when the municipal election is conducted
8 in conjunction with a county election, the clerk of the county
9 commission: *Provided*, That if the clerk of the county commis-
10 sion and the clerk of the circuit court jointly petition the county
11 commission setting forth their agreement that the clerk of the
12 circuit court should continue to supervise and conduct the
13 absentee voting, the county commission shall designate the

14 clerk of the circuit court to supervise and conduct the absentee
15 voting; or

16 (2) The municipal recorder or other officer authorized by
17 charter or ordinance provisions to conduct absentee voting, for
18 any election held entirely within the municipality, or in the case
19 of annexation elections, within the area affected. The terms
20 "clerk" or "circuit clerk" or "official designated to supervise
21 and conduct absentee voting" used elsewhere in this article
22 means municipal recorder or other officer in the case of
23 municipal elections.

24 (b) A person authorized and desiring to vote an absentee
25 ballot in any primary, general or special election is to make
26 application in writing in the proper form to the proper official
27 as follows:

28 (1) The completed application is to be on a form prescribed
29 by the secretary of state, and is to contain the name, date of
30 birth and political affiliation of the voter, residence address
31 within the county, the address to which the ballot is to be
32 mailed, the authorized reason, if any, for which the absentee
33 ballot is requested, and, if the reason is illness or hospitaliza-
34 tion, the name and telephone number of the attending physician,
35 the signature of the voter to a declaration made under the
36 penalties for false swearing as provided in section three, article
37 nine of this chapter that the statements and declarations
38 contained in the application are true, any additional information
39 which the voter is required to supply, any affidavit which may
40 be required, and an indication as to whether it is an application
41 for voting in person or by mail; or

42 (2) For any person authorized to vote an absentee ballot
43 under the provisions of 42 U. S. C. §1973, et seq., the Uni-
44 formed and Overseas Citizens Absentee Voting Act of 1986,
45 the completed application may be on the federal postcard

46 application for absentee ballot form issued under authority of
47 that act; or

48 (3) For any person unable to obtain the official form for
49 absentee balloting at a reasonable time before the deadline for
50 an application for an absentee ballot by mail is to be received
51 by the proper official, the completed application may be in a
52 form set out by the voter, provided all information required to
53 meet the provisions of this article is set forth and the application
54 is signed by the voter requesting the ballot.

§3-3-2a. Voting booths within public view to be provided; prohibition against display of campaign material.

1 Throughout the period of absentee voting in person, the
2 official designated to supervise and conduct absentee voting
3 shall make the following provisions for voting:

4 (1) The official shall provide a sufficient number of voting
5 booths or devices appropriate to the voting system at which
6 voters may prepare their ballots. The booths or devices are to be
7 in an area separate from but within clear view of the public
8 entrance area of the official's office or other area designated by
9 the county commission for absentee voting, and are to be
10 arranged to ensure the voter complete privacy in casting the
11 ballot.

12 (2) The official shall make the voting area secure from
13 interference with the voter and shall ensure that voted and
14 unvoted ballots are at all times secure from tampering. No
15 person, other than a person lawfully assisting the voter accord-
16 ing to the provisions of this chapter, may be permitted to come
17 within five feet of the voting booth while the voter is voting. No
18 person, other than the officials or employees of the official
19 designated to supervise and conduct absentee voting or mem-

20 bers of the board of ballot commissioners assigned to conduct
21 absentee voting, may enter the area or room set aside for voting.

22 (3) The official designated to supervise and conduct
23 absentee voting shall request the county commission designate
24 another area within the county courthouse or any annex of the
25 courthouse as a portion of the official's office for the purpose
26 of absentee voting in the following circumstances:

27 (A) If the voting area is not accessible to voters with
28 physical disabilities;

29 (B) If the voting area is not within clear view of the public
30 entrance of the office of the official designated to supervise and
31 conduct absentee voting;

32 (C) If the voting area is not accessible, except by way of a
33 metal detector; or

34 (D) If there is no suitable area for absentee voting within
35 the office.

36 Any designated area is subject to the same requirements as
37 the regular absentee voting area.

38 (4) No person may do any electioneering, nor may any
39 person display or distribute in any manner, or authorize the
40 display or distribution of, any literature, posters or material of
41 any kind which tends to influence the voting for or against any
42 candidate or any public question on the property of the county
43 courthouse or any annex facilities during the entire period of
44 regular in person absentee voting. The official designated to
45 supervise and conduct absentee voting is hereby authorized to
46 remove the material and to direct the sheriff of the county to
47 enforce the prohibition.

§3-3-2b. Special absentee voting list.

1 (a) Any person who is registered and otherwise qualified to
2 vote and who is permanently and totally physically disabled and
3 who is unable to vote in person at the polls in an election may
4 apply to the official designated to supervise and conduct
5 absentee voting for placement on the special absentee voting
6 list.

7 (b) The application is to be on a form prescribed by the
8 secretary of state which is to include the voter's name and
9 signature, residence address, a statement that the voter is
10 permanently and totally physically disabled and would be
11 unable to vote in person at the polls in any election, a descrip-
12 tion of the nature of that disability, and a statement signed by a
13 physician to that effect.

14 (c) Upon receipt of a properly completed application, the
15 official designated to supervise and conduct absentee voting
16 shall enter the name on the special absentee voting list, which
17 is to be maintained in a secure and permanent record. The
18 person's name will remain active on the list until: (1) The
19 person requests in writing that his or her name be removed; (2)
20 the person removes his or her residence from the county, is
21 purged from the voter registration books or otherwise becomes
22 ineligible to vote; (3) a ballot mailed to the address provided on
23 the application is returned undeliverable by the United State
24 postal service; or (4) the death of the person.

25 (d) The official designated to supervise and conduct
26 absentee voting shall mail an application for an absentee ballot
27 by mail to each person active on the special absentee voting list
28 not later than forty-two days before each election.

§3-3-3. Voting an absentee ballot in person.

1 (a) Regular absentee voting in person is to be conducted
2 during regular business hours beginning on the fifteenth day

3 before the election and continuing through the Monday before
4 the election for any election held on a Tuesday, or continuing
5 through the day before the election for any election held on
6 another day. For any election held on a Tuesday, regular
7 absentee voting in person is to be available from nine a. m. to
8 five p. m. on the Saturday before the election.

9 (b) Special absentee voting in person for persons eligible to
10 vote an absentee ballot under the provisions of subsection (c),
11 section one of this article is to be conducted during regular
12 business hours in the office of the official designated to
13 supervise and conduct absentee voting beginning on the forty-
14 second day before the election and continuing until the first day
15 when regular absentee voting in person begins. Any person
16 seeking to vote absentee under this subsection is to first give an
17 affidavit, on a form prescribed by the secretary of state, stating
18 under oath the specific circumstances which prevent voting
19 absentee during the period for regular absentee voting in person
20 or by mail.

21 (c) Upon oral request, the official designated to supervise
22 and conduct absentee voting shall provide the voter with the
23 appropriate application for voting absentee in person, as
24 provided in this article. The voter shall complete and sign the
25 application in his or her own handwriting or, if the voter is
26 unable to complete the application because of illiteracy or
27 physical disability, the person assisting the voter and witnessing
28 the mark of the voter shall sign his or her name in the space
29 provided.

30 (d) Upon completion, the application is to be immediately
31 returned to the official designated to supervise and conduct
32 absentee voting, who shall determine:

33 (1) Whether the application has been completed as required
34 by law;

35 (2) Whether the applicant is duly registered to vote in the
36 precinct of his or her residence, and, in a primary election, is
37 qualified to vote the ballot of the political party requested; and

38 (3) Whether the applicant is authorized for the reasons
39 given in the application to vote an absentee ballot by personal
40 appearance during the special absentee voting period at the time
41 of the application.

42 (e) If the official designated to supervise and conduct
43 absentee voting determines the conditions provided in subsec-
44 tion (d) of this section have not been met, or has evidence that
45 any of the information contained in the application is not true,
46 the clerk shall challenge the voter's absentee ballot as provided
47 in this article.

48 (f) The official designated to supervise and conduct
49 absentee voting shall provide each person voting an absentee
50 ballot in person the following items to be printed as prescribed
51 by the secretary of state:

52 (1) One of each type of official absentee ballot the voter is
53 eligible to vote, prepared according to law;

54 (2) For all punch card and paper ballot voting and for
55 optical scan ballots voted after election supplies are delivered
56 to the election supply commissioner, one envelope, unsealed,
57 which may have no marks except the designation "Absent
58 Voter's Ballot Envelope No. 1" and printed instructions to the
59 voter;

60 (3) For all punch card and paper ballot voting and for
61 optical scan ballots voted after election supplies are delivered
62 to the election supply commissioner, one envelope, unsealed,
63 designated "Absent Voter's Ballot Envelope No. 2"; and

64 (4) For optical scan voting systems, ballots, a secrecy
65 sleeve and access to a ballot box secured by two locks with
66 keys kept by the president of the county commission and the
67 county clerk.

68 (g) The voter shall enter the voting booth alone and there
69 mark the ballot: *Provided*, That the voter may have assistance
70 in voting according to the provisions of section four of this
71 article. After the voter has voted the ballot or ballots, the punch
72 card and paper absentee voter shall: (1) Place the ballot or
73 ballots in envelope No. 1 and seal that envelope; (2) place the
74 sealed envelope No. 1 in envelope No. 2 and seal that envelope;
75 (3) complete and sign the forms on envelope No. 2; and (4)
76 return that envelope to the official designated to supervise and
77 conduct the absentee voting.

78 (h) Upon receipt of the sealed envelope, the official
79 designated to supervise and conduct the absentee voting shall:

80 (1) Enter onto the envelope any other required information;

81 (2) Enter the challenge, if any, to the ballot;

82 (3) Enter the required information into the permanent
83 record of persons applying for and voting an absentee ballot in
84 person; and

85 (4) Place the sealed envelope in a secure location in the
86 official's office, to remain until delivered to the polling place
87 or, in the case of a challenged ballot, to the board of canvassers.

**§3-3-4. Assistance to voter in voting an absent voter's ballot by
personal appearance; penalties.**

1 (a) Any registered voter, who requires assistance to vote by
2 reason of blindness, disability, advanced age or inability to read
3 and write, may be given assistance by a person of the voter's
4 choice: *Provided*, That the assistance may not be given by the

5 voter's present or former employer or agent of that employer or
6 by the officer or agent of a labor union of which the voter is a
7 past or present member.

8 (b) Any voter who requests assistance in voting an absent
9 voter's ballot but who is determined by the official designated
10 to supervise and conduct absentee voting not to be qualified for
11 assistance under the provisions of this section and section
12 thirty-four, article one of this chapter may vote a challenged
13 absent voter's ballot with the assistance of any person autho-
14 rized to render assistance pursuant to this section. The official
15 designated to supervise and conduct absentee voting shall in
16 this case challenge the absent voter's ballot on the basis of his
17 or her determination that the voter is not qualified for assis-
18 tance.

19 (c) Any one or more of the election commissioners or poll
20 clerks in the precinct to which an absent voter's ballot has been
21 sent may challenge the ballot on the ground that the voter
22 received assistance in voting it when in his or their opinion: (1)
23 The person who received the assistance in voting the absent
24 voter's ballot did not require assistance; or (2) the person who
25 provided the assistance in voting did not make an affidavit as
26 required by this section. The election commissioner or poll
27 clerk or commissioners or poll clerks making a challenge shall
28 enter the challenge and reason for the challenge on the form and
29 in the manner prescribed or authorized by this article.

30 (d) Before entering the voting booth or compartment, the
31 person who intends to provide a voter assistance in voting shall
32 make an affidavit, the form of which is to be prescribed by the
33 secretary of state, that he or she will not in any manner request,
34 or seek to persuade, or induce the voter to vote any particular
35 ticket or for any particular candidate or for or against any public
36 question, and that he or she will not keep or make any memo-
37 randum or entry of anything occurring within the voting booth

38 or compartment, and that he or she will not, directly or indi-
39 rectly, reveal to any person the name of any candidate voted for
40 by the voter, or which ticket he or she had voted, or how he or
41 she had voted on any public question, or anything occurring
42 within the voting booth or compartment or voting machine
43 booth, except when required pursuant to law to give testimony
44 as to the matter in a judicial proceeding.

45 (e) In accordance with instructions issued by the secretary
46 of state, the official designated to supervise and conduct
47 absentee voting shall provide a form entitled "List of Assisted
48 Voters", prescribed by the secretary of state, which list is to be
49 divided into two parts. Part A is to be entitled "Unchallenged
50 Assisted Voters" and Part B is to be entitled "Challenged
51 Assisted Voters." Under Part A the official designated to
52 supervise and conduct absentee voting shall enter the name of
53 each voter receiving unchallenged assistance in voting an
54 absent voter's ballot, the address of the voter assisted, the
55 nature of the disability which qualified the voter for assistance
56 in voting an absent voter's ballot, the name of the person
57 providing the voter with assistance in voting an absent voter's
58 ballot, the fact that the person rendering the assistance in voting
59 made and subscribed to the oath required by this section, and
60 the signature of the official designated to supervise and conduct
61 absentee voting certifying to the fact that he or she had deter-
62 mined that the voter who received assistance in voting an absent
63 voter's ballot was qualified to receive the assistance under the
64 provisions of this section. Under Part B the official designated
65 to supervise and conduct absentee voting shall enter the name
66 of each voter receiving challenged assistance in voting, the
67 address of the voter receiving challenged assistance, the reason
68 for the challenge, and the name of the person providing the
69 challenged voter with assistance in voting. At the close of the
70 period provided for voting an absent voter's ballot by personal
71 appearance, the official designated to supervise and conduct
72 absentee voting shall make and subscribe to an oath on the list

73 that the list is correct in all particulars; if no voter has been
74 assisted in voting an absent voter's ballot as provided in this
75 section, the official designated to supervise and conduct
76 absentee voting shall make and subscribe to an oath of that fact
77 on the list. The "List of Assisted Voters" is to be available for
78 public inspection in the office of the official designated to
79 supervise and conduct absentee voting during regular business
80 hours throughout the period provided for voting an absent
81 voter's ballot by personal appearance, and unless otherwise
82 directed by the secretary of state, the official shall transmit the
83 list, together with the affidavits, applications and absent voters'
84 ballots, to the precincts on election day.

85 (f) Following the election, the affidavits required by this
86 section from persons providing assistance in voting, together
87 with the "List of Assisted Voters", are to be returned by the
88 election commissioners to the clerk of the county commission
89 along with the election supplies, records and returns, who shall
90 make the oaths and list available for public inspection and who
91 shall preserve the oaths and list for twenty-two months or, if
92 under order of the court, until their destruction or other disposi-
93 tion is authorized or directed by the court.

94 (g) Any person making an affidavit required under the
95 provisions of this section who knowingly swears falsely in the
96 affidavit, or any person who counsels or advises, aids or abets
97 another in the commission of false swearing under this section,
98 is guilty of a misdemeanor and, upon conviction thereof, shall
99 be fined not more than one thousand dollars or confined in the
100 county or regional jail for a period of not more than one year,
101 or both .

102 (h) Any person who provides a voter assistance in voting an
103 absent voter's ballot in the office of the official designated to
104 supervise and conduct absentee voting who is not qualified or
105 permitted by this section to provide assistance is guilty of a

106 misdemeanor and, upon conviction thereof, shall be fined not
107 more than one thousand dollars or imprisoned in the county or
108 regional jail for a period of not more than one year, or both.

109 (i) Any official designated to supervise and conduct
110 absentee voting, election commissioner or poll clerk who
111 authorizes or allows a voter to receive or to have received
112 unchallenged assistance in voting an absent voter's ballot when
113 the voter is known to the official designated to supervise and
114 conduct absentee voting or election commissioner or poll clerk
115 not to be or have been authorized by the provisions of this
116 section to receive or to have received assistance in voting is
117 guilty of a misdemeanor and, upon conviction thereof, shall be
118 fined not more than one thousand dollars or imprisoned in the
119 county or regional jail for a period of not more than one year,
120 or both.

121 (j) The term "physical disability" as used in this section
122 means blindness or a degree of blindness as will prevent the
123 voter from seeing the names on the ballot, or amputation of
124 both hands, or a disability of both hands that neither can be
125 used to make cross marks on the absent voter's ballot.

§3-3-5. Voting an absentee ballot by mail; penalties.

1 (a) Upon oral or written request, the official designated to
2 supervise and conduct absentee voting shall provide to any
3 voter of the county, in person, by mail or by facsimile, if the
4 official has access to facsimile equipment, the appropriate
5 application for voting absentee by mail, as provided in this
6 article. The voter shall complete and sign the application in his
7 or her own handwriting or, if the voter is unable to complete the
8 application because of illiteracy or physical disability, the
9 person assisting the voter and witnessing the mark of the voter
10 shall sign his or her name in the space provided.

11 (b) Completed applications for voting an absentee ballot by
12 mail is to be accepted when received by the official designated
13 to supervise and conduct absentee voting in person, by mail or
14 by facsimile, if the official has access to facsimile equipment,
15 within the following times:

16 (1) For persons eligible to vote an absentee ballot under the
17 provisions of subdivision (3), subsection (d), section one of this
18 article, relating to absent uniformed services and overseas
19 voters, not earlier than the first day of January of an election
20 year, or eighty-four days preceding the election, whichever is
21 earlier, and not later than the sixth day preceding the election,
22 which application is to, upon the voter's request, be accepted as
23 an application for the ballots for all elections in the calendar
24 year; and

25 (2) For all other persons eligible to vote an absentee ballot
26 by mail, not earlier than eighty-four days preceding the election
27 and not later than the sixth day preceding the election.

28 (c) Upon acceptance of a completed application, the official
29 designated to supervise and conduct absentee voting shall
30 determine whether the following requirements have been met:

31 (1) The application has been completed as required by law;

32 (2) The applicant is duly registered to vote in the precinct
33 of his or her residence and, in a primary election, is qualified to
34 vote the ballot of the political party requested;

35 (3) The applicant is authorized for the reasons given in the
36 application to vote an absentee ballot by mail;

37 (4) The address to which the ballot is to be mailed is an
38 address outside the county if the voter is applying to vote by
39 mail under the provisions of subdivision (2)(A), (2)(B), (3) or
40 (4), subsection (d), section one of this article;

41 (5) The applicant is not making his or her first vote after
42 having registered by postcard registration or, if the applicant is
43 making his or her first vote after having registered by postcard
44 registration, the applicant is exempt from these requirements;
45 and

46 (6) No regular and repeated pattern of applications for an
47 absentee ballot by mail for the reason of being out of the county
48 during the entire period of voting in person exists to suggest
49 that the applicant is no longer a resident of the county.

50 (d) If the official designated to supervise and conduct
51 absentee voting determines the required conditions have not
52 been met, or has evidence that any of the information contained
53 in the application is not true, the official shall give notice to the
54 voter that the voter's absentee ballot will be challenged as
55 provided in this article, and shall enter that challenge.

56 (e) Within one day after the official designated to supervise
57 and conduct absentee voting has both the completed application
58 and the ballot, the official shall mail to the voter at the address
59 given on the application the following items as prescribed by
60 the secretary of state:

61 (1) One of each type of official absentee ballot the voter is
62 eligible to vote, prepared according to law;

63 (2) One envelope, unsealed, which may have no marks
64 except the designation "Absent Voter's Ballot Envelope No. 1"
65 and printed instructions to the voter;

66 (3) One postage paid envelope, unsealed, designated
67 "Absent Voter's Ballot Envelope No. 2";

68 (4) Instructions for voting absentee by mail; and

69 (5) Any other supplies required for voting in the particular
70 voting system.

71 (f) The voter shall mark the ballot alone: *Provided*, That the
72 voter may have assistance in voting according to the provisions
73 of section six of this article. After the voter has voted the ballot
74 or ballots, the voter shall: (1) Place the ballot or ballots in
75 envelope no. 1 and seal that envelope; (2) place the sealed
76 envelope no. 1 in envelope no. 2 and seal that envelope; (3)
77 complete and sign the forms on envelope no. 2; and (4) return
78 that envelope to the official designated to supervise and conduct
79 absentee voting.

80 (g) Except as provided in subsection (h) of this section,
81 absentee ballots returned by United States mail or other express
82 shipping service are to be accepted if: (1) The ballot is received
83 by the official designated to supervise and conduct absentee
84 voting no later than the day after the election; or (2) the ballot
85 bears a postmark of the United States postal service dated no
86 later than election day and the ballot is received by the official
87 designated to supervise and conduct absentee voting no later
88 than the hour at which the board of canvassers convenes to
89 begin the canvass.

90 (h) Absentee ballots received through the United States
91 mail from persons eligible to vote an absentee ballot under the
92 provisions of subdivision (3), subsection (d), section one of this
93 article, relating to uniform services and overseas voters, are to
94 be accepted if the ballot is received by the official designated to
95 supervise and conduct absentee voting no later than the hour at
96 which the board of canvassers convenes to begin the canvass.

97 (i) Ballots received after the proper time which cannot be
98 accepted are to be placed unopened in an envelope marked for
99 the purpose and kept secure for twenty-two months following

100 the election, after which time they are to be destroyed without
101 being opened.

102 (j) Absentee ballots which are hand delivered are to be
103 accepted if they are received by the official designated to
104 supervise and conduct absentee voting no later than the day
105 preceding the election: *Provided*, That no person may hand
106 deliver more than two absentee ballots in any election, and any
107 person hand delivering an absentee ballot is required to certify
108 that he or she has not examined or altered the ballot. Any
109 person who makes a false certification violates the provisions
110 of article nine of this chapter and is subject to those provisions.

111 (k) Upon receipt of the sealed envelope, the official
112 designated to supervise and conduct absentee voting shall:

113 (1) Enter onto the envelope any other required information;

114 (2) Enter the challenge, if any, to the ballot;

115 (3) Enter the required information into the permanent
116 record of persons applying for and voting an absentee ballot in
117 person; and

118 (4) Place the sealed envelope in a secure location in the
119 official's office, to remain until delivered to the polling place
120 or, in the case of a challenged ballot, to the board of canvassers.

§3-3-5a. Processing federal postcard applications.

1 When a federal postcard registration and absentee ballot
2 request (FPCA), as defined in subdivision (2), subsection (b),
3 section two of this article, is received by the official designated
4 to supervise and conduct absentee voting, the official shall
5 examine the application and take the following steps:

6 (1) The official shall first enter the name of the applicant in
7 the permanent absentee voter's record for each election for

8 which a ballot is requested, make a photocopy of the applica-
9 tion for each election for which a ballot is requested and place
10 the separate copies in secure files to be maintained for use in
11 the various elections.

12 (2) The official designated to supervise and conduct
13 absentee voting shall determine if the applicant is registered to
14 vote at the residence address listed in the voting residence
15 section of the application. If the applicant is not registered, or
16 not registered at the address given, the official shall deliver the
17 original FPCA to the clerk of the county commission for
18 processing, and the clerk of the county commission shall
19 process the application as an application for registration and, if
20 the application is received after the close of voter registration
21 for the next succeeding election, the official shall challenge the
22 absentee ballot for that election.

23 (3) Except as provided in subdivision (2) of this section, the
24 federal application for an absentee ballot received from a
25 person qualified to use the application as provided in section
26 two of this article is to be processed as all other applications
27 and the ballot or ballots for each election for which ballots are
28 requested by the applicant is to be mailed to the voter on the
29 first day on which both the application and the ballot are
30 available.

**§3-3-5b. Procedures for voting a special write-in absentee ballot
by qualified persons.**

1 (a) Notwithstanding any other provisions of this chapter, a
2 person qualified to vote an absentee ballot in accordance with
3 subdivision (3), subsection (d), section one of this article may
4 apply not earlier than the first day of January of an election year
5 for a special write-in absentee ballot for a primary or general
6 election, in conjunction with the application for a regular
7 absentee ballot or ballots. If the application is received after the

8 forty-ninth day preceding the election, the official designated to
9 supervise and conduct absentee voting shall honor only the
10 application for local, state and federal offices in general, special
11 and primary elections.

12 (b) The application for a special write-in absentee ballot
13 may be made on the federal postcard application form.

14 (c) In order to qualify for a special write-in absentee ballot,
15 the voter must state that he or she is unable to vote by regular
16 absentee ballot or in person due to requirements of military
17 service or due to living in isolated areas or extremely remote
18 areas of the world. This statement may be made on the federal
19 postcard application or on a form prepared by the secretary of
20 state and supplied and returned with the special write-in
21 absentee ballot.

22 (d) Upon receipt of the application within the time required,
23 the official designated to supervise and conduct absentee voting
24 shall issue the special write-in absentee ballot which is to be the
25 same ballot issued under the provisions of 42 U. S. C. §1973, et
26 seq., the Uniformed and Overseas Citizens Absentee Voting
27 Act of 1986. The ballot is to permit the elector to vote in a
28 primary election by indicating his or her political party affilia-
29 tion and the names of the specific candidates for each office,
30 and in a general election by writing in a party preference for
31 each office, the names of specific candidates for each office, or
32 the name of the person whom the voter prefers for each office.

33 (e) When a special federal write-in ballot is received by the
34 official designated to supervise and conduct absentee voting
35 from a voter: (1) Who mailed the write-in ballot from any
36 location within the United States; (2) who did not apply for a
37 regular absentee ballot; (3) who did not apply for a regular
38 absentee ballot by mail; or (4) whose application for a regular

39 absentee ballot by mail was received less than thirty days before
40 the election, the write-in ballot may not be counted.

41 (f) Any write-in absentee ballot must be received by the
42 official designated to supervise and conduct absentee voting
43 prior to the close of the polls on election day or it may not be
44 counted.

**§3-3-5c. Procedures for voting an emergency absentee ballot by
qualified voters.**

1 (a) Notwithstanding any other provision of this chapter, a
2 person qualified to vote an emergency absentee ballot, as
3 provided in subsection (e), section one of this article may vote
4 an emergency absentee ballot under the procedures established
5 in this section. The county commission may adopt a policy
6 extending the emergency absentee voting procedures to: (1)
7 Hospitals or other duly licensed health care facilities within an
8 adjacent county or within thirty-five miles of the county seat;
9 or (2) nursing homes within the county: *Provided*, That the
10 policy is to be adopted by the county commission at least ninety
11 days prior to the election that will be affected and a copy of the
12 policy is to be filed with the secretary of state.

13 (b) On or before the fifty-sixth day preceding the date on
14 which any election is to be held the official designated to
15 supervise and conduct absentee voting shall notify the county
16 commission of the number of sets of emergency absentee ballot
17 commissioners which he or she determines necessary to
18 perform the duties and functions pursuant to this section.

19 (c) A set of emergency absentee ballot commissioners at-
20 large shall consist of two persons with different political party
21 affiliations appointed by the county commission in accordance
22 with the procedure prescribed for the appointment of election
23 commissioners under the provisions of article one of this
24 chapter. Emergency absentee ballot commissioners have the

25 same qualifications and rights and take the same oath required
26 under the provisions of this chapter for commissioners of
27 elections. Emergency absentee ballot commissioners are to be
28 compensated for services and expenses in the same manner as
29 commissioners of election obtaining and delivering election
30 supplies under the provisions of section forty-four, article one
31 of this chapter.

32 (d) Upon request of the voter or a member of the voter's
33 immediate family or, when the county commission has adopted
34 a policy to provide emergency absentee voting services to
35 nursing home residents within the county, upon request of a
36 staff member of the nursing home, the official designated to
37 supervise and conduct absentee voting, upon receiving a proper
38 request for voting an emergency absentee ballot no earlier than
39 the seventh day next preceding the election and no later than
40 noon of election day, shall supply to the emergency absentee
41 ballot commissioners the application for voting an emergency
42 absentee ballot and the balloting materials. The emergency
43 absentee ballot application is to be prescribed by the secretary
44 of state and is to include the name, residence address and
45 political party affiliation of the voter, the date, location and
46 reason for confinement in the case of an emergency, and the
47 name of the attending physician.

48 (e) The application for an emergency absentee ballot is to
49 be signed by the person applying. If the person applying for an
50 emergency absentee ballot is unable to sign his or her applica-
51 tion because of illiteracy, he or she is to make his or her mark
52 on the signature line provided for an illiterate applicant which
53 mark is to be witnessed.

54 (f) A declaration is to be completed and signed by each of
55 the emergency absentee ballot commissioners, stating their
56 names, the date on which they appeared at the place of confine-

57 ment of the person applying for an emergency absentee ballot,
58 and the particulars of the confinement.

59 (g) At least one of the emergency absentee ballot commis-
60 sioners receiving the balloting materials shall sign a receipt
61 which is to be attached to the application form. Each of the
62 emergency absentee ballot commissioners shall deliver the
63 materials to the absent voter, await his or her completion of the
64 application and ballot and return the application and the ballot
65 to the official designated to supervise and conduct absentee
66 voting and, upon delivering the application and the voted ballot
67 to the official, sign an oath that no person other than the absent
68 voter voted the ballot. The application and the voted ballot are
69 to be returned to the official designated to supervise and
70 conduct absentee voting prior to the close of the polls on
71 election day. Any ballots received by the official after the time
72 that delivery may reasonably be made but before the closing of
73 the polls are to be delivered to the canvassing board along with
74 the absentee ballots challenged in accordance with the provi-
75 sions of section ten of this article.

76 (h) Upon receiving the application and emergency absentee
77 ballot, the official designated to supervise and conduct absentee
78 voting shall ascertain whether the application is complete,
79 whether the voter appears to be eligible to vote an emergency
80 absentee ballot, and whether the voter is properly registered to
81 vote with the office of the clerk of the county commission. If
82 the voter is found to be properly registered in the precinct
83 shown on the application, the ballot is to be delivered to the
84 precinct election commissioner pursuant to section seven of this
85 article. If the voter is found not to be registered or is otherwise
86 ineligible to vote an emergency ballot, then the ballot is to be
87 challenged for the appropriate reason provided for in section ten
88 of this article.

89 (i) If either or both of the emergency absentee ballot
90 commissioners should refuse to sign any application for voting
91 an emergency absentee ballot, then the voter may vote as an
92 emergency absentee and the ballot is to be challenged in
93 accordance with the provisions of section ten of this article, in
94 addition to those absentee ballots subject to challenge as
95 provided in that section.

96 (j) Any voter who receives assistance in voting an emer-
97 gency absentee ballot shall comply with the provisions of
98 section six of this article. Any other provisions of this chapter
99 relating to absentee ballots not altered by the provisions of this
100 section are to govern the treatment of emergency absentee
101 ballots.

§3-3-7. Delivery of absentee ballots to polling places.

1 (a) Except as otherwise provided in this article, the absentee
2 ballots of each precinct, together with the applications for the
3 absentee ballots, the affidavits made in connection with
4 assistance in voting, and any forms, lists and records as may be
5 designated by the secretary of state, are to be delivered in a
6 sealed carrier envelope to the election commissioner of the
7 precinct at the time he or she picks up the official ballots and
8 other election supplies as provided in section twenty-four,
9 article one of this chapter.

10 (b) For optical scan voting systems, all ballots voted before
11 the precinct supplies are delivered to the precinct supply
12 commissioner are to be deposited in the ballot box. The ballots
13 deposited in the ballot box shall be counted and merged with
14 the election day ballots at the counting center on election night.

15 (c) Absentee ballots received after the election commis-
16 sioner has picked up the official ballots and other election
17 supplies for the precinct are to be delivered to the election
18 commissioner of the precinct who has been designated pursuant

19 to section twenty-four, article one of this chapter, by the official
20 designated to supervise and conduct absentee voting in person,
21 or by messenger, before the closing of the polls, provided the
22 ballots are received by the official in time to make the delivery.
23 Any ballots received by the official after the time that delivery
24 may reasonably be made but within the time required as
25 provided in subsection (g), section five of this article, are to be
26 delivered to the board of canvassers along with the challenged
27 ballots.

**§3-3-9. Voting in person after having received and after having
voted an absent voter's ballot.**

1 (a) Any person who has applied for and received an absent
2 voter's ballot but has not voted and returned the same to the
3 official designated to supervise and conduct absentee voting
4 may vote in person at the polls on election day provided he or
5 she returns the absent voter's ballot to the election commission-
6 ers at the polling place. Upon return of the absent voter's ballot
7 the election commissioners shall destroy the ballot in the
8 presence of the voter, and one of the poll clerks shall make a
9 notation of this fact as directed by instructions issued by the
10 secretary of state. In the event the person does not return the
11 absent voter's ballot, he or she will have his or her vote
12 challenged by one or more of the election commissioners or
13 poll clerks.

14 (b) No person who has voted an absent voter's ballot may
15 vote in person on the day of the election.

§3-3-10. Challenging of absent voters' ballots.

1 (a) The official designated to supervise and conduct
2 absentee voting may challenge an absent voter's ballot on any
3 of the following grounds:

4 (1) That the application for an absent voter's ballot has not
5 been completed as required by law;

6 (2) That any statement or declaration contained in the
7 application for an absent voter's ballot is not true;

8 (3) That the applicant for an absent voter's ballot is not
9 registered to vote in the precinct of his or her residence as
10 provided by law;

11 (4) That the person voting an absent voter's ballot by
12 personal appearance in his or her office had assistance in voting
13 the ballot when the person was not qualified for voting assis-
14 tance because: (A) The affidavit of the person who received
15 assistance does not indicate a legally sufficient reason for
16 assistance; or (B) the person who received assistance did not
17 make an affidavit as required by this article; or (C) the person
18 who received assistance is not so illiterate as to have been
19 unable to read the names on the ballot or that he or she is not so
20 physically disabled as to have been unable to see or mark the
21 absent voter's ballot;

22 (5) That the person who voted an absent voter's ballot by
23 mail and received assistance in voting the ballot was not
24 qualified under the provisions of this article for assistance; and

25 (6) That the person has voted absentee by mail as a result
26 of being out of the county more than four consecutive times:
27 *Provided*, That the determination as to whether the person has
28 voted more than four consecutive times does not apply if the
29 person is a citizen residing out of the United States; or a
30 member, spouse or dependent of a member serving in the
31 uniformed services; or a college student living outside of his or
32 her home county.

33 (b) Any one or more of the election commissioners or poll
34 clerks in a precinct may challenge an absent voter's ballot on
35 any of the following grounds:

36 (1) That the application for an absent voter's ballot was not
37 completed as required by law;

38 (2) That any statement or declaration contained in the
39 application for an absent voter's ballot is not true;

40 (3) That the person voting an absent voter's ballot is not
41 registered to vote in the precinct of his or her residence as
42 provided by law;

43 (4) That the signatures of the person voting an absent
44 voter's ballot as they appear on his or her registration record,
45 his or her application for an absent voter's ballot, and the absent
46 voter's ballot envelope are not in the same handwriting;

47 (5) That the absent voter's ballot does not have the official
48 seal of the clerk of the circuit court and all signatures of
49 members of the board of ballot commissioners on it;

50 (6) That the person voting an absent voter's ballot by
51 personal appearance had assistance in voting the ballot when
52 the person was not qualified for assistance because: (A) The
53 affidavit of the person who received assistance does not
54 indicate a legally sufficient reason for assistance; or (B) the
55 person who received assistance did not make an affidavit as
56 required by this article; or (C) the person who received assis-
57 tance is not so illiterate as to have been unable to read the
58 names on the ballot or that he or she was not so physically
59 disabled as to have been unable to see or mark the absent
60 voter's ballot;

61 (7) That the person voted an absent voter's ballot by mail
62 and received assistance in voting the ballot when not qualified
63 under the provisions of this article for assistance;

64 (8) That the person who voted the absent voter's ballot
65 voted in person at the polls on election day;

66 (9) That the person voted an absent voter's ballot under
67 authority of subdivision (3), subsection (d), section one of this
68 article and is or was present in the county in which he or she is
69 registered to vote between the opening and closing of the polls
70 on election day;

71 (10) That the person who voted an absent voter's ballot had
72 died before election day; and

73 (11) On any other ground or for any reason on which or for
74 which the ballot of a voter voting in person at the polls on
75 election day may be challenged.

76 No challenge may be made to any absent voter ballot if the
77 voter was registered and qualified to vote pursuant to the
78 provisions of subsection (b), section one of this article.

79 (c) Forms for, and the manner of, challenging an absent
80 voter's ballot under the provisions of this article are to be
81 prescribed by the secretary of state.

82 (d) Absent voters' ballots challenged by the official
83 designated to supervise and conduct absentee voting under the
84 provisions of this article are to be transmitted by the official
85 directly to the county commission sitting as a board of canvass-
86 ers. The absent voters' ballots challenged by the election
87 commissioners and poll clerks under the provisions of this
88 article may not be counted by the election officials but are to be
89 transmitted by them to the county commission sitting as a board
90 of canvassers. Action by the board of canvassers on challenged

91 absent voters' ballots is to be governed by the provisions of
92 section forty-one, article one of this chapter.

§3-3-11. Preparation, number and handling of absent voters' ballots.

1 (a) Absent voters' ballots are to be in all respects like other
2 ballots. Not less than seventy days before the date on which any
3 primary, general or special election is to be held, unless a lesser
4 number of days is provided for in any specific election law in
5 which case the lesser number of days applies, the clerks of the
6 circuit courts of the several counties shall estimate and deter-
7 mine the number of absent voters' ballots of all kinds which
8 will be required in their respective counties for that election.
9 The ballots for the election of all officers, or the ratification,
10 acceptance or rejection of any measure, proposition or other
11 public question to be voted on by the voters, are to be prepared
12 and printed under the direction of the board of ballot commis-
13 sioners constituted as provided in article one of this chapter.
14 The several county boards of ballot commissioners shall
15 prepare and have printed, in the number they may determine,
16 absent voters' ballots that are to be printed under their direc-
17 tions as provided in this chapter, and those ballots are to be
18 delivered to the clerk of the circuit court of the county not less
19 than forty-two days before the day of the election at which they
20 are to be used. Before any ballot is mailed or delivered, the
21 clerk of the circuit court shall affix his or her official seal and
22 he or she and the other members of the board of ballot commis-
23 sioners shall place their signatures near the lower left-hand
24 corner on the back of the ballot. The clerks of the circuit courts
25 are authorized to have their signatures affixed by a facsimile
26 printed on the back of absentee ballots, by a facsimile signature
27 stamp, or by signing their original signatures. An absent voter's
28 ballot not containing the seal and signatures is invalid and is
29 subject to challenge by any election commissioner or poll clerk.

30 (b) The official designated to supervise and conduct
31 absentee voting shall be primarily responsible for the mailing,
32 receiving, delivering and otherwise handling of all absent
33 voters' ballots. He or she shall keep a record, as may be
34 prescribed by the secretary of state, of all ballots so delivered
35 for the purpose of absentee voting, as well as all ballots, if any,
36 marked before him or her, and shall deliver to the commissioner
37 of election to whom the ballots for the precinct are delivered
38 and at the time of the delivery of those ballots a certificate
39 stating the number of ballots delivered or mailed to absent
40 voters, and those marked before him or her, if any, and the
41 names of the voters to whom those ballots have been delivered
42 or mailed, or by whom they have been marked, if marked
43 before him or her.

§3-3-12. Rules, regulations, orders, instructions, forms, lists and records pertaining to absentee voting.

1 (a) The secretary of state shall make, amend and rescind
2 rules, regulations, orders and instructions, and prescribe forms,
3 lists and records, and consolidation of forms, lists and records
4 as may be necessary to carry out the policy of the Legislature
5 as contained in this article and as may be necessary to provide
6 for an effective, efficient and orderly administration of the
7 absentee voter law of this state. In the case of West Virginia
8 voters residing outside the continental United States, the
9 secretary of state shall promulgate rules and regulations
10 necessary to implement procedures relating to absentee voters
11 contained in 42 U. S. C. §1973, et seq., the Uniformed and
12 Overseas Citizens Absentee Voting Act of 1986 and shall
13 forward a copy of the act to all officials designated to supervise
14 and conduct absentee voting before the first day of January of
15 each even-numbered year.

16 (b) The secretary of state may establish special procedures
17 to allow absentee voting for those categories of registered

18 voters who, because of special circumstances, would otherwise
19 be unable to vote in the election.

20 (c) It is the duty of all officials designated to supervise and
21 conduct absentee voting, other county officers, and all election
22 commissioners and poll clerks to abide by the rules, regulations,
23 orders and instructions and to use the forms, lists and records
24 which may include or relate to:

25 (1) The consolidation of the two application forms provided
26 for in this article into one form;

27 (2) The size and form of absent voter’s ballot envelope nos.
28 1 and 2, and carrier envelopes;

29 (3) The information which is to be placed on absent voter’s
30 ballot envelope no. 1 and the forms and information which are
31 to be placed on absent voter’s ballot envelope no. 2;

32 (4) The forms and manner of making the challenges to
33 absentee ballots authorized by this article;

34 (5) The forms of, information to be contained in, and
35 consolidation of lists and records pertaining to applications for,
36 and voting of, absentee ballots and assistance to persons voting
37 absentee ballots;

38 (6) The supplying of application forms, envelopes, chal-
39 lenge forms, lists, records and other forms; and

40 (7) The keeping and security of voted absentee ballots in
41 the office of the official designated to supervise and conduct
42 absentee voting.

ARTICLE 4A. ELECTRONIC VOTING SYSTEMS.

§3-4A-1. Use of electronic voting systems authorized.

§3-4A-2. Definitions.

- §3-4A-6. Acquisition of vote recording devices by purchase or lease; acquisition of use of automatic tabulating equipment; counting centers.
- §3-4A-9. Minimum requirements of electronic voting systems.
- §3-4A-11. Ballot labels, instructions and other supplies; procedure and requirements.
- §3-4A-11a. Ballots tabulated electronically; arrangement, quantity to be printed, ballot stub numbers.
- §3-4A-12. Ballot label arrangement in vote recording devices; sealing of devices; record of identifying numbers.
- §3-4A-15. Instructions and help to voters; vote recording device models; facsimile diagrams; sample ballots; legal ballot advertisements.
- §3-4A-16. Delivery of vote recording devices; time, arrangement for voting.
- §3-4A-17. Check of vote recording devices before use; corrections; reserve vote recording devices.
- §3-4A-19. Conducting electronic voting system elections generally; duties of election officers; penalties.
- §3-4A-19a. Form of ballots; requiring the signatures of poll clerks; prohibiting the counting of votes cast on ballots without signatures.
- §3-4A-20. "Independent" voting in primary elections.
- §3-4A-21. Absent voter ballots; issuance, processing and tabulation.
- §3-4A-24. Voting by challenged voter.
- §3-4A-24a. Voting by challenged voter where touch-screen electronic voting systems are used.
- §3-4A-26. Test of automatic tabulating equipment.
- §3-4A-27. Proceedings at the central counting center.
- §3-4A-28. Post-election custody and inspection of vote recording devices; canvass and recounts.
- §3-4A-30. Adjustments in voting precincts where electronic voting system used.

§3-4A-1. Use of electronic voting systems authorized.

1 (a) Electronic voting systems may be used for the purpose
2 of registering or recording and computing votes cast in general,
3 special and primary elections: *Provided*, That the use thereof
4 shall be governed by the terms, conditions, restrictions and
5 limitations imposed by this article.

6 (b) Notwithstanding any other provision of this code, no
7 electronic voting system which utilizes a ballot or any vote
8 recording device by which votes are cast by means of perforat-

9 ing may be purchased for use in any election conducted
10 subsequent to the general election in the year two thousand.

§3-4A-2. Definitions.

1 As used in this article, unless otherwise specified:

2 (a) "Automatic tabulating equipment" means all apparatus
3 necessary to electronically count votes recorded on ballots and
4 tabulate the results;

5 (b) "Ballot" means a tabulating card or paper on which
6 votes may be recorded by means of perforating or marking with
7 electronically sensible ink or pencil or a screen upon which
8 votes may be recorded by means of a stylus or by means of
9 touch;

10 (c) "Ballot labels" means the cards, papers, booklet, pages
11 or other material showing the names of offices and candidates
12 and the statements of measures to be voted on, which are placed
13 on the vote recording device used for recording votes by means
14 of perforating, or which are displayed on a screen upon which
15 votes may be recorded by means of a stylus or by means of
16 touch;

17 (d) "Central counting center" means a facility equipped
18 with suitable and necessary automatic tabulating equipment,
19 selected by the county commission, for the electronic counting
20 of votes recorded on ballots;

21 (e) "Electronic voting system" is a means of conducting an
22 election whereby votes are recorded on ballots by means of an
23 electronically sensible marking ink, by perforating or are
24 recorded on equipment that registers votes on a computer disc,
25 or by touching a screen with a stylus or by means of touch, and
26 votes are subsequently counted by automatic tabulating
27 equipment at the central counting center;

28 (f) "Program deck" means the actual punch card deck or
29 decks, or a computer program disk, diskette, tape or other
30 programming media, containing the program for counting and
31 tabulating the votes, including the "application program deck";

32 (g) "Application program deck" means the punch card deck
33 or equivalent capacity in other program medias as provided,
34 containing specific options used and necessary to modify the
35 program of general application, to conduct and tabulate a
36 specific election according to applicable law;

37 (h) "Standard validation test deck" means a group of ballots
38 wherein all voting possibilities which can occur in an election
39 are represented; and

40 (i) "Vote recording device" means equipment in which
41 ballot labels and ballots are placed to allow a voter to record his
42 or her vote by perforating or equipment with a screen upon
43 which votes may be recorded by means of a stylus or by means
44 of touch.

**§3-4A-6. Acquisition of vote recording devices by purchase or
lease; acquisition of use of automatic tabulating
equipment; counting centers.**

1 (a) A county commission may acquire vote recording
2 devices by any one or any combination of the following
3 methods:

4 (1) By purchasing the same and paying the purchase price
5 in cash from funds available from the maximum general levy or
6 from any other lawful source; and

7 (2) By leasing the same under written contract of lease and
8 paying the rentals in cash from funds available from the
9 maximum general levy or any other lawful source.

10 (b) A county commission may acquire the use of automatic
11 tabulating equipment by leasing or renting the same under
12 written contract of lease or rental and paying the rentals
13 therefor in cash from funds available from the maximum
14 general levy or other lawful source.

15 (c) A county commission may enter into an agreement with
16 another county commission to share automatic tabulating
17 equipment if the automatic tabulating equipment may be
18 transported to the appropriate central counting centers. No
19 ballots may be transported for counting in any county other than
20 the county in which the votes were cast.

21 (d) A county commission is authorized to accept as a gift
22 the use of suitable automatic tabulating equipment.

23 (e) The county commission may also secure a counting
24 center.

§3-4A-9. Minimum requirements of electronic voting systems.

1 An electronic voting system of particular make and design
2 may not be approved by the state election commission or be
3 purchased, leased or used, by any county commission unless it
4 meets the following requirements:

5 (1) It secures or ensures the voter absolute secrecy in the act
6 of voting, or, at the voter's election, provides for open voting;

7 (2) It is constructed to ensure that no person, except in
8 instances of open voting, as provided for in this section, can see
9 or know for whom any voter has voted or is voting;

10 (3) It permits each voter to vote at any election for all
11 persons and offices for whom and which he or she is lawfully
12 entitled to vote, whether or not the name of any person appears
13 on a ballot or ballot label as a candidate; and it permits each

14 voter to vote for as many persons for an office as he or she is
15 lawfully entitled to vote for; and to vote for or against any
16 question upon which he or she is lawfully entitled to vote. The
17 automatic tabulating equipment used in electronic voting
18 systems is to reject choices recorded on any ballot if the number
19 of choices exceeds the number to which a voter is entitled;

20 (4) It permits each voter to deposit, write in, affix upon a
21 ballot, card, envelope or other medium to be provided for that
22 purpose, ballots containing the names of persons for whom he
23 or she desires to vote whose names do not appear upon the
24 ballots or ballot labels;

25 (5) It permits each voter to change his or her vote for any
26 candidate and upon any question appearing upon the ballots or
27 ballot labels up to the time when his or her ballot is deposited
28 in the ballot box or his or her ballot is cast by electronic means;

29 (6) It contains a program deck consisting of cards that are
30 sequentially numbered, or consisting of a computer program
31 disk, diskette, tape or other programming media containing
32 sequentially numbered program instructions and coded or
33 otherwise protected from tampering or substitution of the media
34 or program instructions by unauthorized persons, and capable
35 of tabulating all votes cast in each election;

36 (7) It contains two standard validation test decks approved
37 as to form and testing capabilities by the state election commis-
38 sion;

39 (8) It correctly records and counts accurately all votes cast
40 for each candidate and for and against each question appearing
41 upon the ballots or ballot labels;

42 (9) It permits each voter at any election other than primary
43 elections, by one mark or punch to vote a straight party ticket,
44 as provided in section five, article six of this chapter.

45 (10) It permits each voter in primary elections to vote only
46 for the candidates of the party for which he or she is legally
47 permitted to vote, and precludes him or her from voting for any
48 candidate seeking nomination by any other political party,
49 permits him or her to vote for the candidates, if any, for
50 nonpartisan nomination or election, and permits him or her to
51 vote on public questions;

52 (11) It, where applicable, is provided with means for
53 sealing or electronically securing the vote recording device to
54 prevent its use and to prevent tampering with ballot labels, both
55 before the polls are open or before the operation of the vote
56 recording device for an election is begun and immediately after
57 the polls are closed or after the operation of the vote recording
58 device for an election is completed;

59 (12) It has the capacity to contain the names of candidates
60 constituting the tickets of at least nine political parties, and
61 accommodates the wording of at least fifteen questions;

62 (13) Where vote recording devices are used, they:

63 (A) Are durably constructed of material of good quality and
64 in a workmanlike manner and in a form which makes it safely
65 transportable;

66 (B) Are so constructed with frames for the placing of ballot
67 labels that the labels upon which are printed the names of
68 candidates and their respective parties, titles of offices, and
69 wording of questions are reasonably protected from mutilation,
70 disfigurement or disarrangement, or are constructed to ensure
71 that the screens upon which appear the names of the candidates
72 and their respective parties, titles of offices, and wording of
73 questions are reasonably protected from any modification;

74 (C) Bear a number that will identify it or distinguish it from
75 any other machine;

76 (D) Are constructed to ensure that a voter may easily learn
77 the method of operating it and may expeditiously cast his or her
78 vote for all candidates of his or her choice, and upon any public
79 question;

80 (E) Are accompanied by a mechanically or electronically
81 operated instruction model which shows the arrangement of
82 ballot labels, party columns or rows, and questions;

83 (F) For electronic voting systems that utilize a screen upon
84 which votes may be recorded by means of a stylus or by means
85 of touch, are constructed to provide for the direct electronic
86 recording and tabulating of votes cast in a system specifically
87 designed and engineered for the election application;

88 (G) For electronic voting systems that utilize a screen upon
89 which votes may be recorded by means of a stylus or by means
90 of touch, are constructed to prevent any voter from voting for
91 more than the allowable number of candidates for any office, to
92 include an audible or visual signal, or both, warning any voter
93 who attempts to vote for more than the allowable number of
94 candidates for any office or who attempts to cast his or her
95 ballot prior to its completion, and are constructed to include a
96 visual or audible confirmation, or both, to the voter upon
97 completion and casting of the ballot;

98 (H) For electronic voting systems that utilize a screen upon
99 which votes may be recorded by means of a stylus or by means
100 of touch, are constructed to present the entire ballot to the voter,
101 in a series of sequential pages, and to ensure that the voter sees
102 all of the ballot options on all pages before completing his or
103 her vote and to allow the voter to review and change all ballot
104 choices prior to completing and casting his or her ballot;

105 (I) For electronic voting systems that utilize a screen upon
106 which votes may be recorded by means of a stylus or by means
107 of touch, are constructed to allow election commissioners to

108 spoil a ballot where a voter fails to properly cast his or her
109 ballot, has departed the polling place, and cannot be recalled by
110 a poll clerk to complete his or her ballot;

111 (J) For electronic voting systems that utilize a screen upon
112 which votes may be recorded by means of a stylus or by means
113 of touch, are constructed to allow election commissioners, poll
114 clerks, or both, to designate, mark or otherwise record chal-
115 lenged ballots;

116 (K) For electronic voting systems that utilize a screen upon
117 which votes may be recorded by means of a stylus or by means
118 of touch, consist of devices which are independent,
119 nonnetworked voting systems in which each vote is recorded
120 and retained within each device's internal nonvolatile electronic
121 memory, and contain an internal security, the absence of which
122 prevents substitution of any other device;

123 (L) For electronic voting systems that utilize a screen upon
124 which votes may be recorded by means of a stylus or by means
125 of touch, store each vote in no fewer than three separate,
126 independent, nonvolatile electronic memory components, and
127 that each device contains comprehensive diagnostics to ensure
128 that failures do not go undetected;

129 (M) For electronic voting systems that utilize a screen upon
130 which votes may be recorded by means of a stylus or by means
131 of touch, contain a unique, embedded internal serial number for
132 auditing purposes for each device used to activate, retain and
133 record votes;

134 (N) For electronic voting systems that utilize a screen upon
135 which votes may be recorded by means of a stylus or by means
136 of touch, are constructed to record all preelection, election and
137 postelection activities, including all ballot images and system

138 anomalies, in each device's internal electronic memory, and are
139 to be accessible in electronic or printed form;

140 (O) For electronic voting systems that utilize a screen upon
141 which votes may be recorded by means of a stylus or by means
142 of touch, are constructed with a battery backup system in each
143 device to, at a minimum, prevent the loss of any votes, as well
144 as all preelection, election and postelection activities, including
145 all ballot images and system anomalies, stored in the device's
146 internal electronic memory, and to allow voting to continue for
147 two hours of uninterrupted operation in case of an electrical
148 power failure; and

149 (P) For electronic voting systems that utilize a screen upon
150 which votes may be recorded by means of a stylus or by means
151 of touch, are constructed to prevent the loss of any votes, as
152 well as all preelection, election and postelection activities,
153 including all ballot images and system anomalies, stored in
154 each device's internal electronic memory, even in case of an
155 electrical and battery power failure.

§3-4A-11. Ballot labels, instructions and other supplies; procedure and requirements.

1 (a) The ballot commissioners of any county in which an
2 electronic voting system utilizing voting devices for registering
3 the voter's choices is to be used in any election shall cause to be
4 printed for use in the election the ballot cards and ballot labels,
5 as appropriate, for the electronic voting system, or shall cause
6 to be printed a reasonable facsimile of the screens as they
7 appear to the voter for the electronic voting system.

8 (1) The ballot labels are to be clearly printed in black ink on
9 clear white material of a size as will fit the vote recording
10 devices or as will be displayed on the screens as they appear to
11 the voter for the electronic voting system. Arrows are to be

12 printed on the ballot labels to indicate the place to punch the
13 ballot card, which may be to the right or left of the name or
14 proposition, or boxes are to be printed as they appear to the
15 voter on the screens for the electronic voting system.

16 (2) The ballot labels are to contain the party emblem and
17 are to clearly indicate the party designation of each candidate.
18 The titles of offices may be arranged on the ballot labels in
19 vertical columns or in a series of separate pages, and are to be
20 printed above or at the side of the names of candidates so as to
21 indicate clearly the candidates for each office and the number
22 to be elected. The names of candidates for each office are to be
23 printed in vertical columns or on separate pages, grouped by the
24 offices which they seek.

25 (3) For the primary election, the heading of the ballot, the
26 type faces, the names and arrangement of offices and the
27 printing of names and arrangement of candidates within each
28 office are to conform as nearly as possible to the provisions of
29 sections thirteen and thirteen-a, article five of this chapter.

30 (4) For the general election, the heading of the ballot, the
31 straight ticket positions, the instructions to straight ticket voters,
32 the type faces, the names and arrangement of offices and the
33 printing of names and the arrangement of candidates within
34 each office are to conform as nearly as possible to the provi-
35 sions of section two, article six of this chapter, except as
36 otherwise provided in this article. Except for electronic voting
37 systems that utilize a screen upon which votes may be recorded
38 by stylus or by means of touch, the secretary of state shall
39 assign uniform numbers to be used by all counties using
40 electronic voting for all straight party tickets and for all
41 candidates running for offices to be voted upon by all of the
42 voters of the state. After taking into account the numbers so
43 assigned by the secretary of state, the clerk of the circuit court
44 shall arrange the offices and the candidates within each office

45 as prescribed by section two, article six of this chapter, and
 46 shall assign the appropriate number for each candidate. When
 47 one candidate is to be elected and only two parties are on the
 48 ballot, the ballot label and the arrangement of the ballot are to
 49 conform as nearly as practical to the following example:

50	-----	-----
51	Democratic Ticket	Republican Ticket
52	-----	-----
53	For Governor	For Governor
54	(Vote for One)	(Vote for One)
55	-----	-----
56	(candidate's name) 10 —	
57	(residence, county)	
58		— 11 (candidate's name)
59		(residence, county)
60	-----	-----

61 When more than two parties are on the ballot for an office,
 62 the arrangement of the ballot is to be specified by the secretary
 63 of state, and may conform to the following example if practical:

64	-----	
65	For Governor	
66	(Vote for One)	
67	-----	
68	Democrat (candidate's name)	10 —
69	(residence, county)	
70	Republican (candidate's name)	11 —
71	(residence, county)	
72	People's (candidate's name)	12 —
73	(residence, county)	

74 The ballot label and the arrangement of the ballot for multi-
 75 candidate offices are to conform as nearly as practical to the
 76 following example:

77	-----	-----
78	Democratic Ticket	Republican Ticket
79	_____	_____
80	For House of Delegates	For House of Delegates
81	First Delegate District	First Delegate District
82	(Vote For Not More Than Two)	(Vote For Not More Than Two)
83	[If you marked a straight	[If you marked a straight
84	ticket and you mark any	ticket and you mark any
85	candidate in a different	candidate in a different
86	party for this office, you	party for this office, you
87	must mark all your choices	must mark all your choices
88	because your straight ticket	because your straight ticket
89	vote will not be counted	vote will not be counted
90	for this office.]	for this office.]
91	-----	-----
92	(candidate's name) 69 —	
93	(residence, county)	
94	_____	_____
95		— 70 (candidate's name)
96		(residence, county)
97	_____	_____
98	(candidate's name) 71 —	
99	(residence, county)	
100	_____	_____
101		— 72 (candidate's name)
102		(residence, county)

103 (5) Any nonpartisan office, including board of education
 104 and any question to be voted on is to be placed or displayed on
 105 a separate page or otherwise separated from the partisan ballots,
 106 constituting a separate ballot where required.

107 (6) In elections in which voters are authorized to vote for
 108 official write-in candidates whose names do not appear on the
 109 ballot label, there are to be provided, as described in this

110 section, a write-in position on the ballot label for the voter to
111 indicate his or her preference for a write-in candidate and a
112 form on the inside of the secrecy envelope to permit a voter to
113 enter the title of the office and the names of official write-in
114 candidates for whom he or she wishes to vote: *Provided*, That
115 if an electronic voting system that utilizes a screen upon which
116 votes may be recorded by means of a stylus or by means of
117 touch is used, the devices are to provide an alpha-numerical
118 screen which allows the voter to, by use of a stylus or by touch,
119 to enter the name of the write-in candidate for whom he or she
120 wishes to vote.

121 For an office to be filled by election in a primary, except
122 delegate to national convention, and for each office in a general
123 election, the ballot label is to include, following all candidates
124 for the office, a single numbered position with an arrow or box
125 indicating the location to punch the ballot card or touch the
126 screen to indicate a preference for a write-in candidate. The
127 following instructions are to be printed beside the arrow in at
128 least ten point type. "TO WRITE-IN FOR THIS OFFICE:
129 Punch here and put name of office and candidate on inside of
130 secrecy envelope. DO NOT put name here," or, if an electronic
131 voting system is used with screens upon which votes may be
132 recorded by means of a stylus or by means of touch, the word
133 "WRITE-IN" will appear beside a box indicating the location
134 for the voter to touch the screen and, when activated, another
135 screen is to appear allowing the voter to enter a write-in
136 candidate.

137 (7) In addition to all other equipment and supplies required
138 by the provisions of this article, the ballot commissioners shall
139 cause to be printed a supply of instruction cards, sample ballots,
140 facsimile diagrams of the vote recording device ballot and
141 official printed ballots or ballot cards adequate for the orderly
142 conduct of the election in each precinct in their county.

143 (b) The ballot commissioners shall provide all other
144 materials and equipment necessary to the conduct of the
145 election, including voting booths, appropriate facilities for the
146 reception and safekeeping of ballot cards, the ballots of
147 absentee and of challenged voters and of “independent” voters
148 who shall, in primary elections, cast their votes on nonpartisan
149 candidates and public questions submitted to the voters.

§3-4A-11a. Ballots tabulated electronically; arrangement, quantity to be printed, ballot stub numbers.

1 (a) The board of ballot commissioners in counties using
2 ballots upon which votes may be recorded by means of marking
3 with electronically sensible ink or pencil and which marks are
4 tabulated electronically shall cause the ballots to be printed or
5 displayed upon the screens of the electronic voting system for
6 use in elections.

7 (b) (1) The heading of the ballot, the arrangement of offices
8 in columns, the spaces for marking votes, the printing of
9 offices, instructions and candidates names are to conform as
10 nearly as possible to that prescribed in this chapter for paper
11 ballots, except that the secretary of state may prescribe neces-
12 sary modifications to accommodate the tabulating system.
13 Nonpartisan elections for board of education and any question
14 to be voted upon are to be separated from the partisan ballot and
15 separately headed in display type with a title clearly identifying
16 the purpose of the election, and constituting a separate ballot
17 wherever a separate ballot is required under the provisions of
18 this chapter.

19 (2) Both the face and the reverse side of the ballot may
20 contain the names of candidates, only if means to ensure the
21 secrecy of the ballot are provided and lines for the signatures of
22 the poll clerks on the ballot are printed on a portion of the ballot

23 which is deposited in the ballot box and upon which marks do
24 not interfere with the proper tabulation of the votes.

25 (3) The arrangement of candidates within each office is to
26 be determined in the same manner as for other electronic voting
27 systems, as prescribed in this chapter. On the general election
28 ballot for all offices, and on the primary election ballot only for
29 those offices to be filled by election, except delegate to national
30 convention, lines for entering write-in votes are to be provided
31 below the names of candidates for each office, and the number
32 of lines provided for any office shall equal the number of
33 persons to be elected, or three, whichever is fewer. The words
34 or "WRITE-IN, IF ANY" are to be printed, where applicable,
35 directly under each line for write-ins. The lines are to be
36 opposite a position to mark the vote.

37 (c) Except for electronic voting systems that utilize screens
38 upon which votes may be recorded by means of a stylus or by
39 means of touch, the primary election ballots are to be printed in
40 the color of ink specified by the secretary of state for the
41 various political parties, and the general election ballot is to be
42 printed in black ink. For electronic voting systems that utilize
43 screens upon which votes may be recorded by means of a stylus
44 or by means of touch, the primary ballots and the general
45 election ballot are to be printed in black ink. All ballots are to
46 be printed, where applicable, on white paper suitable for
47 automatic tabulation and are to contain a perforated stub at the
48 top or bottom of the ballot which is to be numbered sequentially
49 in the same manner as provided in this article for ballots upon
50 which votes are recorded by means of perforating or is to be
51 displayed on the screens of the electronic voting system upon
52 which votes are recorded by means of a stylus or touch. The
53 number of ballots printed and the packaging of ballots for the
54 precincts are to conform to the requirements for paper ballots
55 as provided in this chapter.

56 (d) In addition to the official ballots, the ballot commission-
57 ers shall provide all other materials and equipment necessary to
58 the proper conduct of the election.

**§3-4A-12. Ballot label arrangement in vote recording devices;
sealing of devices; record of identifying numbers.**

1 In counties using electronic voting systems utilizing vote
2 recording devices:

3 (1) The number of ballot labels printed, where applicable,
4 are to equal one and one-half times the total number of corre-
5 sponding vote recording devices to be used in the election. All
6 labels are to be delivered to the clerk of the county commission
7 at least thirty-five days prior to the election. The circuit clerk
8 shall immediately examine the ballot labels for accuracy and
9 assure that the appropriate ballot labels are designated for each
10 voting precinct.

11 (2) The total number of ballot cards printed and the number
12 packaged for each precinct and the requirements for ballot
13 colors and packaging are to conform as nearly as possible to the
14 requirements for paper ballots. Official ballot cards printed and
15 packaged for the various precincts are to be delivered to the
16 clerk of the circuit court at least twenty-eight days prior to the
17 election.

18 (3) The necessary number of ballot cards, ballot labels,
19 sample ballots, and other supplies necessary for absentee voting
20 are to be delivered to the clerk of the circuit court at least
21 forty-two days prior to the election. The clerk shall immediately
22 check the ballot labels to assure their accuracy and shall place
23 them in vote recording devices which are clearly designated for
24 the proper district or party, or both, for the purpose of absentee
25 voting.

26 (4) When the ballot labels are delivered to the clerk of the
27 county commission, the clerk shall place them in the vote
28 recording devices in the proper order. The clerk of the county
29 commission shall retain the remainder of the ballot labels for
30 each machine for use in an emergency.

31 (5) The clerk of the county commission shall then seal the
32 vote recording devices so as to prevent tampering with ballot
33 labels, and enter in an appropriate book, opposite the number of
34 each precinct, the identifying or distinguishing number of the
35 specific vote recording device or devices to be used in that
36 precinct.

**§3-4A-15. Instructions and help to voters; vote recording device
models; facsimile diagrams; sample ballots; legal
ballot advertisements.**

1 (a) For the instruction of the voters on any election day in
2 counties utilizing an electronic voting system where votes are
3 to be recorded by means of perforating, there is to be provided
4 for each polling place one instruction model for each vote
5 recording device: *Provided*, That for electronic voting systems
6 that utilize a screen upon which votes may be recorded by
7 means of a stylus or by means of touch, there is to be provided
8 for each polling place a sample ballot with each screen as they
9 shall appear on the devices, together with written instructions
10 regarding the operation of the devices. Each instruction model
11 is to be constructed so as to provide a replica of a vote record-
12 ing device, and is to contain the arrangement of the ballot
13 labels, party columns or rows, office columns or rows, and
14 questions. Fictitious names are to be inserted in the ballot labels
15 of the models. The models are to be located on the election
16 officers' tables or in some other place in which the voter must
17 pass to reach the vote recording device. Upon request, the
18 election officers shall offer instruction to each voter, before
19 voting, in the operation of the vote recording device by use of

20 the instruction model, and shall give ample opportunity to
21 operate the model himself or herself.

22 (b) The ballot commissioners shall also provide facsimile
23 ballots or ballot labels, as may be appropriate, at least two of
24 which, or complete sets of which, are to be posted on the walls
25 of each polling place. The facsimile diagrams are exact dia-
26 grams of the ballots or ballot labels or paper ballots or screens
27 to the end that the voter may become familiar with the location
28 of the parties, offices, candidates and questions as they appear
29 on the ballot to be used in his or her precinct.

30 (c) The ballot commissioners may, with the consent of the
31 county commission, or the county commission may, prepare
32 and mail to each qualified voter at the address shown on the
33 registration books a facsimile sample of the ballot or ballot
34 labels or screens for his or her precinct.

35 (d) In counties where an electronic voting system has been
36 adopted, the legal ballot advertisements required by articles five
37 and six of this chapter which specify the publication of a
38 facsimile sample ballot, are to consist of a facsimile of the
39 ballot or ballot labels or screens with the names of the candi-
40 dates and the offices for which they are running shown in their
41 proper positions.

**§3-4A-16. Delivery of vote recording devices; time, arrangement
for voting.**

1 The clerk of the county commission shall deliver or cause
2 to be delivered each vote recording device, where applicable,
3 and the package of ballots to the polling place where they are to
4 be employed. The delivery is to be made not less than one hour
5 prior to the opening of the polls and is to be made in the
6 presence of the precinct election commissioners. At the time of
7 the delivery of the vote recording device, where applicable, and
8 the ballots, the device is to be sealed to prevent its use prior to
9 the opening of the polls and any tampering with the ballot

10 labels; and the ballots are to be packaged and sealed to prevent
11 any tampering with the ballots. Immediately prior to the
12 opening of the polls on election day, the sealed packages of
13 ballots are to be opened, where applicable, and the seal of the
14 vote recording device is to be broken in the presence of the
15 precinct election commissioners, who shall certify in writing
16 signed by them to the clerk of the county commission, that the
17 devices, where applicable, and the ballots have been delivered
18 in their presence, that the devices and packages of ballots were
19 found to be sealed upon delivery, and that the seals have been
20 broken and the devices opened in their presence, as may be
21 appropriate. The election commissioners shall then cause the
22 vote recording device, where applicable, to be arranged in the
23 voting booth in a manner that the front of the vote recording
24 device on which the ballot labels appear will not be visible,
25 when the vote recording device is being operated, to any person
26 other than the voter if the voter elects to close the curtain,
27 screen or hood to the voting booth.

§3-4A-17. Check of vote recording devices before use; corrections; reserve vote recording devices.

1 In counties utilizing an electronic voting system where
2 votes are to be recorded by means of perforating or by touching
3 a screen with a stylus or by means of touch before permitting
4 the first voter to vote, the election commissioners shall examine
5 the vote recording devices to ascertain whether the ballot labels
6 are arranged as specified on the facsimile diagram furnished to
7 the precinct. If the ballot labels are arranged incorrectly, the
8 commissioners shall immediately notify the clerk of the county
9 commission of the foregoing facts in writing, indicating the
10 number of the device, and obtain from the clerk a reserve vote
11 recording device, and thereafter proceed to conduct the election.
12 Any reserve vote recording device so used is to be prepared for
13 use by the clerk or his or her duly appointed deputy and the
14 reserve vote recording device is to be prepared, inspected and

15 sealed, and delivered to the polling place wherein the seal is to
16 be broken and the device opened in the presence of the precinct
17 election commissioners who shall certify in writing signed by
18 them to the clerk of the county commission, that the reserve
19 vote recording device was found to be sealed upon delivery to
20 the polling place, that the seal was broken and the device
21 opened in their presence at the polling place. The vote record-
22 ing device found to have been with incorrect ballot labels is to
23 be returned immediately to the custody of the clerk who shall
24 then promptly cause the vote recording device to be repaired,
25 prepared and resealed in order that it may be used as a reserve
26 vote recording device if needed.

**§3-4A-19. Conducting electronic voting system elections gener-
ally; duties of election officers; penalties.**

1 (a) The election officers shall constantly and diligently
2 maintain a watch in order to see that no person votes more than
3 once and to prevent any voter from occupying the voting booth
4 for more than five minutes.

5 (b) In primary elections, before a voter is permitted to
6 occupy the voting booth, the election commissioner represent-
7 ing the party to which the voter belongs shall direct the voter to
8 the vote recording device or supply the voter with a ballot, as
9 may be appropriate, which will allow the voter to vote only for
10 the candidates who are seeking nomination on the ticket of the
11 party with which the voter is affiliated.

12 (c) The poll clerk shall issue to each voter when he or she
13 signs the pollbook a card or ticket numbered to correspond to
14 the number on the pollbook of the voter, and in the case of a
15 primary election, indicating the party affiliation of the voter,
16 which numbered card or ticket is to be presented to the election
17 commissioner in charge of the voting booth.

18 (d) One hour before the opening of the polls the precinct
19 election commissioners shall arrive at the polling place and set
20 up the voting booths in clear view of the election commission-
21 ers. Where applicable, they shall open the vote recording
22 devices, place them in the voting booths, examine them to see
23 that they have the correct ballots or ballot labels, where
24 applicable by comparing them with the sample ballots, and
25 determine whether they are in proper working order. They shall
26 open and check the ballots, supplies, records and forms, and
27 post the sample ballots or ballot labels and instructions to
28 voters. Upon ascertaining that all ballots, supplies, records and
29 forms arrived intact, the election commissioners shall certify
30 their findings in writing upon forms provided and collected by
31 the clerk of the county commission over their signatures to the
32 clerk of the county commission. Any discrepancies are to be
33 noted and reported immediately to the clerk of the county
34 commission. The election commissioners shall then number in
35 sequential order the ballot stub of each ballot in their possession
36 and report in writing to the clerk of the county commission the
37 number of ballots received. They shall issue the ballots in
38 sequential order to each voter.

39 (e) Where applicable, each voter shall be instructed how to
40 operate the vote recording device before he or she enters the
41 voting booth.

42 (f) Where applicable, any voter who spoils, defaces or
43 mutilates the ballot delivered to him or her, on returning the
44 ballot to the poll clerks, shall receive another in its place. Every
45 person who does not vote any ballot delivered to him or her
46 shall, before leaving the election room, return the ballot to the
47 poll clerks. When a spoiled or defaced ballot is returned, the
48 poll clerks shall make a minute of the fact on the pollbooks, at
49 the time, write the word "spoiled" across the face of the ballot,
50 and place it in an envelope for spoiled ballots.

51 Immediately on closing the polls, the election commission-
52 ers shall ascertain the number of spoiled ballots during the
53 election and the number of ballots remaining not voted. The
54 election commissioners shall also ascertain from the pollbooks
55 the number of persons who voted and shall report, in writing
56 signed by them to the clerk of the county commission, any
57 irregularities in the ballot boxes, the number of ballots cast, the
58 number of ballots spoiled during the election and the number of
59 ballots unused. All unused ballots are to be returned at the same
60 time to the clerk of the county commission who shall count
61 them and record the number. If there is no discrepancy, the
62 clerk of the county commission or a duly designated deputy
63 clerk shall destroy the unused ballots forthwith by fire or
64 otherwise, before a representative of each party on the ballot. If
65 there is a discrepancy, the unused ballots are to be impounded
66 and secured under double locks until the discrepancy is re-
67 solved. The county clerk and the president or president pro
68 tempore of the county commission are each to have a key. Upon
69 resolution of the discrepancy, the clerk of the county commis-
70 sion or a duly designated deputy clerk, shall destroy the unused
71 ballots forthwith, by fire or otherwise, before a representative
72 of each party on the ballot.

73 (g) Each commissioner who is a member of an election
74 board which fails to account for every ballot delivered to it is
75 guilty of a misdemeanor and, upon conviction thereof, shall be
76 fined not more than one thousand dollars or confined in the
77 county or regional jail for not more than one year, or both.

78 (h) The board of ballot commissioners of each county, or
79 the chair of the board, shall preserve the ballots that are left
80 over in their hands, after supplying the precincts as provided,
81 until the close of the polls on the day of election, and shall then
82 destroy the ballots, by fire or otherwise.

83 (i) Where ballots are used, the voter, after he or she has
84 marked his or her ballot shall, before leaving the voting booth,
85 place the ballot inside the envelope provided for this purpose,
86 with the stub extending outside the envelope, and return it to an
87 election commissioner who shall remove the stub and deposit
88 the envelope with the ballot inside in the ballot box. No ballot
89 from which the stub has been detached may be accepted by the
90 officer in charge of the ballot box, but the ballot shall be
91 marked "spoiled" and placed with the spoiled ballots. If an
92 electronic voting system is used that utilizes a screen on which
93 votes may be recorded by means of a stylus or by means of
94 touch, and the signal warning that a voter has attempted to cast
95 his or her ballot has failed to do so properly has been activated,
96 and the voter has departed the polling place, and cannot be
97 recalled by a poll clerk to complete his or her ballot while the
98 voter remains physically present in the polling place, then two
99 election commissioners of different registered party affiliations,
100 two poll clerks of different registered party affiliations, or an
101 election commissioner and a poll clerk of different registered
102 party affiliations, shall spoil the ballot.

103 (j) The precinct election commissioners shall prepare a
104 report in quadruplicate of the number of voters who have voted
105 and, where electronic voting systems are used that utilize a
106 screen on which votes may be recorded by means of a stylus or
107 by means of touch, the number of ballots that were spoiled, as
108 indicated by the pollbooks, and shall place two copies of this
109 report in the ballot box, or where electronic voting systems are
110 used that utilize a screen upon which votes may be recorded by
111 means of a stylus or by means of touch, shall place two copies
112 of this report and the electronic ballot devices in a container
113 provided by the clerk of the county commission, which there-
114 upon is to be sealed with a paper seal signed by the election
115 commissioners to ensure that no additional ballots may be
116 deposited or removed from the ballot box. Two election
117 commissioners of different registered party affiliations shall

118 forthwith deliver the ballot box or container to the clerk of the
119 county commission at the central counting center and receive a
120 signed numbered receipt therefor, which receipt carefully sets
121 forth in detail any and all irregularities pertaining to the ballot
122 boxes or containers and noted by the precinct election officers.

123 The receipt is to be prepared in duplicate, a copy of which
124 remains with the clerk of the county commission who shall
125 have any and all irregularities noted. The time of their departure
126 from the polling place is to be noted on the two remaining
127 copies of the report, which are to be immediately mailed to the
128 clerk of the county commission.

129 (k) The pollbooks, register of voters, unused ballots, spoiled
130 ballots and other records and supplies are to be delivered to the
131 clerk of the county commission, all in conformity with the
132 provisions of this section.

**§3-4A-19a. Form of ballots; requiring the signatures of poll
clerks; prohibiting the counting of votes cast on
ballots without signatures.**

1 (a) Where applicable, every ballot utilized during the course
2 of any electronic voting system election conducted under the
3 provisions of this article is to have two lines for the signatures
4 of the poll clerks. Both of the signature lines are to be printed
5 on a portion of the ballot where votes are not recorded by
6 perforation or marking, but which portion is an actual part of
7 the ballot deposited in the ballot box after the voter has perfo-
8 rated or marked his or her ballot and after the ballot stub has
9 been removed. Each of the two poll clerks shall sign his or her
10 name on one of the designated lines provided on each ballot
11 before any ballot is distributed to a voter. The requirement that
12 two poll clerks sign a ballot according to this subsection is a
13 mandatory duty and is not to be construed as merely directory.

14 (b) After a voter has signed the pollbook, as required in
15 section nineteen of this article, the two poll clerks shall deliver
16 a ballot to the voter, which ballot has been signed by each of the
17 two poll clerks as provided in this section: *Provided*, That
18 where an electronic voting system that utilizes screens upon
19 which votes may be recorded by means of a stylus or by means
20 of touch, an election commissioner shall accompany the voter
21 to the voting device and shall activate the device for voting.

22 (c) In the course of an election contest, if it is established
23 that a ballot does not contain the two signatures required by this
24 section, the ballot is null, void and of no effect, and may not be
25 counted. The requirement that a ballot not be counted if it does
26 not meet the requirements of this section is mandatory and not
27 to be construed as merely directory.

§3-4A-20. “Independent” voting in primary elections.

1 If at any primary elections, nonpartisan candidates for
2 office and public questions are submitted to the voters on which
3 persons registered as “independent” are entitled to vote, as
4 provided in section eighteen, article two of this chapter, the
5 election officers shall provide a vote recording device, where
6 applicable, or the appropriate ballot to be marked by an
7 electronically sensible pen or ink, or by means of a stylus or by
8 means of touch, so that “independent” voters may vote only
9 those portions of the ballot relating to the nonpartisan candi-
10 dates and the public questions submitted, or shall provide a
11 ballot containing only provisions for voting for those candidates
12 and upon those issues submitted common to the ballots pro-
13 vided to all voters regardless of political party affiliation, or
14 both.

15 In counties utilizing electronic voting systems in which
16 votes are recorded by perforating, if vote recording devices are
17 not available for the “independent” voters, provisions are to be

18 made for sealing the partisan section or sections of the ballot or
19 ballot labels on a vote recording device using temporary seals,
20 thus permitting the independent voter to vote for the nonparti-
21 san section or sections of the ballot or ballot labels. After the
22 “independent” voter has voted, the temporary seals may be
23 removed and the device may then be used by partisan voters.

§3-4A-21. Absent voter ballots; issuance, processing and tabulation.

1 (a) Absentee voters shall cast their votes on absent voter
2 ballots.

3 (b) If absentee voters are deemed eligible to vote in person
4 at the office of the official designated to supervise and conduct
5 absentee voting, in accordance with the provisions of article
6 three of this chapter, the official for each county shall provide
7 a vote recording device or other means, as may be appropriate
8 for votes recorded by electronically sensible ink or pencil, or by
9 means of a stylus or by means of touch, for the use of the
10 absentee voters. Notwithstanding any provision of article three
11 of this chapter to the contrary, any voter who desires to vote by
12 absentee ballot in a county using an electronic voting system
13 with a screen upon which votes are recorded by means of a
14 stylus or by means of touch shall complete an application
15 prescribed by the secretary of state which is to be processed in
16 the manner otherwise prescribed by law, except that the official
17 designated to supervise and conduct absentee voting shall
18 deliver a copy of the application to each polling place. No voter
19 who votes in person by absentee ballot may vote in person on
20 the date of the election.

21 (c) For all absentee voters considered eligible to vote an
22 absent voter’s ballot by mail, in accordance with the provisions
23 of article three of this chapter, the official designated to
24 supervise and conduct absentee voting for each county shall

25 prepare and issue an absent voter ballot packet consisting of the
26 following:

27 (1) One official absent voter ballot;

28 (2) One punching tool for perforating or a device for
29 marking by electronically sensible pen or ink, as may be
30 appropriate;

31 (3) If a punching tool is to be utilized, one disposable
32 styrofoam block to be placed behind the ballot card for voting
33 purposes and to be discarded after use by the voter;

34 (4) One absent voter instruction ballot;

35 (5) One absent voter's ballot envelope No. 1, unsealed,
36 which may have no writing on it and which is to be identical to
37 the secrecy envelope used for placement of ballots at the polls;
38 and

39 (6) One absent voter's ballot envelope No. 2, marked with
40 the proper precinct number and providing a place on its seal for
41 the absent voter to affix his or her signature. The envelope is
42 also to contain the forms and instructions as provided in section
43 five, article three of this chapter, relating to the absentee voting
44 of proper ballots.

45 (d) Upon receipt of an absent voter's ballot by mail, the
46 voter shall mark the ballot with the punch tool or marking
47 device, whichever is appropriate, and the voter may receive
48 assistance in voting his or her absent voter's ballot in accor-
49 dance with the provisions of section six, article three of this
50 chapter.

51 (e) After the voter has voted his or her absent voter's ballot,
52 he or she shall: (1) Enclose the ballot in absent voter's ballot
53 envelope No. 1, and seal that envelope; (2) enclose sealed

54 absent voter's ballot envelope No. 1 in absent voter's ballot
55 envelope No. 2; (3) complete and sign the forms, if any, on
56 absent voter's ballot envelope No. 2 according to the instruc-
57 tions on the envelope; and (4) mail, postage prepaid, sealed
58 absent voter's ballot envelope No. 2 to the official designated
59 to supervise and conduct absentee voting for the county in
60 which he or she is registered to vote, unless the voter has
61 appeared in person, in which event he or she shall hand deliver
62 the sealed absent voter's ballot envelope No. 2 to the official.

63 (f) Upon receipt of the sealed envelope, the official
64 designated to supervise and conduct absentee voting shall (1)
65 enter onto the envelope any information as may be required of
66 him or her according to the instructions on the envelope; (2)
67 enter his or her challenge, if any, to the absent voter's ballot;
68 (3) enter the required information into a record of persons
69 making application for and voting an absent voter's ballot by
70 personal appearance or by mail on a form prescribed by the
71 secretary of state; and (4) place the sealed envelope in a secure
72 location in his or her office, there to remain until delivered to
73 the polling place in accordance with the provisions of this
74 article or, in case of a challenged ballot, to the county commis-
75 sion sitting as a board of canvassers.

76 (g) Notwithstanding any provision of article three of this
77 chapter to the contrary, no voter who has voted by absentee
78 ballot in accordance with the provisions of article three of this
79 chapter, or otherwise as provided by law, in a county using an
80 electronic voting system with screens upon which votes are
81 recorded by means of a stylus or by means of touch, may vote
82 in person on the date of the election.

83 (h) When absent voters' ballots have been delivered to the
84 election board of any precinct, the election commissioners
85 shall, at the close of the polls, proceed to determine the legality
86 of the ballots as prescribed in article three of this chapter. The

87 commissioners shall then open all of the absent voter's ballot
88 envelopes No. 2 which contain ballots not challenged and
89 remove from the envelopes the absent voter's ballot envelopes
90 No. 1. These ballot envelopes No. 1 are then to be shuffled and
91 intermingled. The election commissioners and poll clerks, in
92 the presence of each other, shall next open all of the absent
93 voter's ballot envelopes No. 1 and remove the ballots from the
94 envelopes. The poll clerks shall then affix their signatures to the
95 ballots as provided in section nineteen-a of this article. The
96 commissioners shall then insert each ballot into a secrecy
97 envelope identical to the secrecy envelopes used for the
98 placement of ballots of voters who are voting in person at the
99 polls and shall deposit the ballot in the ballot box. The require-
100 ment that two poll clerks sign a ballot according to this subsec-
101 tion is a mandatory duty and is not to be construed as merely
102 directory.

103 (i) In the course of an election contest, if it is established
104 that a ballot does not contain the two signatures required by this
105 section, the ballot is null, void and of no effect, and may not be
106 counted. The requirement that a ballot not be counted if it does
107 not meet the requirements of this section is mandatory and not
108 to be construed as merely directory.

§3-4A-24. Voting by challenged voter.

1 Except for electronic voting systems using screens on
2 which votes may be recorded by means of a stylus or by means
3 of touch, if the right of any person to vote be challenged in
4 accordance with the provisions of article one of this chapter,
5 relating to the challenging of voters, and a vote recording
6 device or ballot is used that tabulates the vote as an individual
7 vote, the person is to be permitted to cast his or her vote by use
8 of the vote recording device or ballot, as may be appropriate.
9 He or she is to be provided with a challenged ballot and ballot
10 envelopes for the insertion of the ballot after voting. There is to

11 be an inner envelope marked with the precinct number for the
12 challenged ballot. There is also to be another envelope for the
13 inner envelope and the challenged voter stub, which envelope
14 provides a place for the challenged voter to affix his or her
15 signature on the seal of the outer envelope.

16 After the county commission, as prescribed in article one of
17 this chapter, has determined that the challenges are unfounded,
18 the commissioners shall remove the outer envelopes. Without
19 opening the inner envelope, the commissioners shall shuffle and
20 intermingle the inner envelopes. The commissioners shall then
21 open the inner envelopes, remove the ballots and add the votes
22 to the previously counted totals.

§3-4A-24a. Voting by challenged voter where touch-screen electronic voting systems are used.

1 If the right of any person to vote is challenged in accordance with the provisions of article one of this chapter, relating to the challenging of voters, and a vote recording device or ballot is used that tabulates the vote as an individual vote, the person is to be permitted to cast his or her vote by use of the vote recording device or ballot, as may be appropriate. An election commissioner shall enter into the voting device a voter-specific electronic code for any person voting a challenged ballot. The devices are to retain challenged ballots in electronic memory, and are not to be tabulated in accordance with the provisions of this code, but are to be reviewed in accordance with the provisions of this code.

13 After the county commission, as prescribed in article one of
14 this chapter, has determined that the challenges are unfounded,
15 the commissioners shall ensure that the ballots are included in
16 the tabulation.

§3-4A-26. Test of automatic tabulating equipment.

1 One week prior to the start of the count of the votes
2 recorded on ballots or ballot cards or screens, the clerk of the
3 county commission shall have the automatic tabulating equip-
4 ment tested to ascertain that it will accurately count the votes
5 cast for all offices and on all measures. Public notice of the time
6 and place of the test is to be given not less than forty-eight
7 hours nor more than two weeks prior to the test by publication
8 of a notice as a Class I-0 legal advertisement in the county
9 involved, in compliance with the provisions of article three,
10 chapter fifty-nine of this code.

11 The test is to be open to representatives of the political
12 parties, candidates, the press and the public. It is to be con-
13 ducted five times by processing two separate sets of a
14 preaudited group of ballots or ballot cards as appropriate,
15 punched or marked as to record a predetermined number of
16 valid votes for each candidate on each measure. It includes for
17 each multicandidate office one or more ballot cards which have
18 cross-over votes in order to test the ability of the automatic
19 tabulating equipment to record those votes in accordance with
20 the provisions of this article and applicable law, and it includes
21 for each office one or more ballot cards which have votes in
22 excess of the number allowed by law in order to test the ability
23 of the automatic tabulating equipment to reject votes. If, in the
24 process of any of the test counts, any error is detected, the cause
25 of the error is to be ascertained and corrective action promptly
26 taken. After the completion of the corrective action, the test
27 counts are to continue, including a retesting of those precincts
28 previously test counted. Prior to the continuation of the testing,
29 the county commission shall certify in writing, signed by them,
30 the nature of the error, the cause thereof and the type of
31 corrective action taken. The certification is to be recorded in the
32 office of the clerk of the county commission in the miscella-
33 neous record book. Immediately after conclusion of this
34 completed test, a certified duplicate copy of the program deck
35 is to be sent by certified mail to the offices of the state election

36 commission, where it is to be preserved and secured for one
37 year, and made available for comparison or analysis by order of
38 a circuit court or the supreme court of appeals.

39 The program deck to be used in the election is to immedi-
40 ately be certified by the county commission to be free from
41 error as determined by the test, is to be placed with the certifi-
42 cation in a sealed container and kept under individual multiple
43 locks with individual keys for each lock. The number of locks
44 and keys are the same as the number of county commissioners
45 together with the county clerk, with each commissioner and the
46 county clerk having a single key in his or her possession. The
47 sealed container is to be opened to conduct the test required to
48 be conducted immediately before the start of the official count.

49 The test is to be repeated immediately before the start of the
50 official count. The test is to also be conducted at the conclusion
51 of the official count before the count is approved as errorless
52 and before the election returns are approved as official.

53 All results of all of the tests are to be immediately certified
54 by the county commission and filed in the office of the clerk of
55 the county commission and immediately recorded in the
56 miscellaneous record book. On completion of the count, the
57 program deck, test materials and ballot cards are to be sealed,
58 except for purposes of the canvass as provided in section
59 twenty-eight of this article, and retained and kept under
60 individual multiple locks and individual keys for each lock.

61 The numbers of locks and keys are the same as the number
62 of county commissioners together with the county clerk, with
63 each commissioner and the county clerk having a single key in
64 his or her possession.

§3-4A-27. Proceedings at the central counting center.

1 (a) All proceedings at the central counting center are to be
2 under the supervision of the clerk of the county commission,
3 and are to be conducted under circumstances which allow
4 observation from a designated area by all persons entitled to be
5 present. The proceedings shall take place in a room of sufficient
6 size and satisfactory arrangement to permit observation. Those
7 persons entitled to be present include all candidates whose
8 names appear on the ballots being counted, or if a candidate is
9 absent, a representative of the candidate who presents a written
10 authorization signed by the candidate for the purpose, and two
11 representatives of each political party on the ballot, who are
12 chosen by the county executive committee chairperson. A
13 reasonable number of the general public is also freely admitted
14 to the room. In the event all members of the general public
15 desiring admission to the room cannot be admitted at one time,
16 the county commission shall provide for a periodic and conve-
17 nient rotation of admission to the room for observation, to the
18 end that each member of the general public desiring admission,
19 during the proceedings at the central counting center, is to be
20 granted admission for reasonable periods of time for observa-
21 tion: *Provided*, That no person except those authorized for the
22 purpose may touch any ballot or ballot card or other official
23 records and papers utilized in the election during observation.

24 (b) All persons who are engaged in processing and counting
25 the ballots are to work in teams consisting of two persons of
26 opposite political parties, and are to be deputized in writing and
27 take an oath that they will faithfully perform their assigned
28 duties. These deputies are to be issued an official badge or
29 identification card which is assigned an identity control
30 number, and the deputies are to prominently wear on his or her
31 outer garments the issued badge or identification card. Upon
32 completion of the deputies' duties, the badges or identification
33 cards are to be returned to the county clerk.

34 (c) Ballots are to be handled and tabulated and the write-in
35 votes tallied according to procedures established by the
36 secretary of state, subject to the following requirements:

37 (1) In systems using punch card ballots, the ballot cards and
38 secrecy envelopes for a precinct are to be removed from the box
39 and examined for write-in votes before being separated and
40 stacked for delivery to the tabulator. Immediately after valid
41 write-in votes are tallied, the ballot cards are to be delivered to
42 the tabulator. No write-in vote may be counted for an office
43 unless the voter has punched the write-in voting position for
44 that office and entered the name of that office and the name of
45 an official write-in candidate for that office on the inside of the
46 secrecy envelope, either by writing, affixing a sticker or label
47 or placing an ink-stamped impression thereon;

48 (2) In systems using ballots marked with electronically
49 sensible ink, ballots are to be removed from the boxes and
50 stacked for the tabulator, which separates ballots containing
51 marks for a write-in position. Immediately after tabulation, the
52 valid write-in votes are to be tallied. No write-in vote may be
53 counted for an office unless the voter has marked the write-in
54 voting position for that office and entered the name of an
55 official write-in candidate for that office on the line provided,
56 either by writing, affixing a sticker or placing an ink-stamped
57 impression thereon;

58 (3) In systems using ballots in which votes are recorded
59 upon screens with a stylus or by means of touch, the personal-
60 ized electronic ballots are to be removed from the containers
61 and stacked for the tabulator. Systems using ballots in which
62 votes are recorded upon screens with a stylus or by means of
63 touch are to tally write-in ballots simultaneously with the other
64 ballots;

65 (4) When more than one person is to be elected to an office
66 and the voter desires to cast write-in votes for more than one
67 official write-in candidate for that office, a single punch or
68 mark, as appropriate for the voting system, in the write-in
69 location for that office is sufficient for all write-in choices.
70 When there are multiple write-in votes for the same office and
71 the combination of choices for candidates on the ballot and
72 write-in choices for the same office exceed the number of
73 candidates to be elected, the ballot is to be duplicated or hand
74 counted, with all votes for that office rejected;

75 (5) Write-in votes for nomination for any office and write-
76 in votes for any person other than an official write-in candidate
77 are to be disregarded;

78 (6) When a voter casts a straight ticket vote and also
79 punches or marks the location for a write-in vote for an office,
80 the straight ticket vote for that office is to be rejected, whether
81 or not a vote can be counted for a write-in candidate; and

82 (7) Official write-in candidates are those who have filed a
83 write-in candidate's certificate of announcement and have been
84 certified according to the provisions of section four-a, article
85 six of this chapter.

86 (d) If any ballot card is damaged or defective so that it
87 cannot properly be counted by the automatic tabulating equip-
88 ment, a true duplicate copy is to be made of the damaged ballot
89 card in the presence of representatives of each political party on
90 the ballot and substituted for the damaged ballot card. All
91 duplicate ballot cards are to be clearly labeled "duplicate" and
92 are to bear a serial number which is recorded on the damaged
93 or defective ballot card and on the replacement ballot card.

94 (e) The returns printed by the automatic tabulating equip-
95 ment at the central counting center, to which have been added
96 write-in and other valid votes, are, when certified by the clerk

97 of the county commission, to constitute the official preliminary
98 returns of each precinct or election district. Further, all the
99 returns are to be printed on a precinct basis. Periodically
100 throughout and upon completion of the count, the returns are to
101 be open to the public by posting the returns as have been
102 tabulated precinct by precinct at the central counting center.
103 Upon completion of the canvass, the returns are to be posted in
104 the same manner.

105 (f) If for any reason it becomes impracticable to count all
106 or a part of the ballots with tabulating equipment, the county
107 commission may direct that they be counted manually, follow-
108 ing as far as practicable the provisions governing the counting
109 of paper ballots.

110 (g) As soon as possible after the completion of the count,
111 the clerk of the county commission shall have the vote record-
112 ing devices properly boxed or securely covered and removed to
113 a proper and secure place of storage.

**§3-4A-28. Post-election custody and inspection of vote recording
devices; canvass and recounts.**

1 (a) The vote recording devices, the ballot labels, ballot
2 cards, program decks and standard validation test decks are to
3 remain sealed during the canvass of the returns of the election
4 and for a period of seven days thereafter, except that the
5 equipment may be opened for the canvass and it is to be
6 resealed immediately thereafter. During that period any
7 candidate or the local chair of a political party may be permitted
8 to examine any of the materials sealed: *Provided*, That a notice
9 of the time and place of the examination is to be posted at the
10 central counting center before and on the hour of nine o'clock
11 in the morning on the day the examination is to occur, and all
12 persons entitled to be present at the central counting center
13 may, at their option, be present. Upon completion of the

14 canvass and after a seven-day period has expired, the vote
15 recording devices, the ballot labels, ballot cards, program decks
16 and standard validation test decks are to be sealed for one year:
17 *Provided, however,* That the vote recording devices and all
18 tabulating equipment may be released for use in any other
19 lawful election to be held more than ten days after the canvass
20 is completed, and any of the electronic voting equipment herein
21 discussed may be released for inspection or review by a request
22 of a circuit court or the supreme court of appeals.

23 (b) In canvassing the returns of the election, the board of
24 canvassers shall examine all of the vote recording devices, the
25 ballot labels, ballot cards and the automatic tabulating equip-
26 ment used in the election and shall determine the number of
27 votes cast for each candidate and for and against each question
28 and by this examination shall procure the correct returns and
29 ascertain the true results of the election. Any candidate or his or
30 her party representative may be present at the examination.

31 (c) If any candidate demands a recount of the votes cast at
32 an election, the ballots and ballot cards are to be reexamined
33 during the recount for the purpose of reascertaining the total
34 number of votes cast for any candidate in the same manner and
35 according to the same rules as are utilized in the original vote
36 count pursuant to section twenty-seven of this article.

37 (d) During the canvass and any requested recount, at least
38 five percent of the precincts are to be chosen at random and the
39 ballot cards cast therein counted manually. Where electronic
40 voting systems are used that utilize screens upon which votes
41 are recorded by means of a stylus or by means of touch, at least
42 five percent of the precincts are to be chosen at random, upon
43 any requested recount, and the ballot images are to be printed
44 from the internal electronic memory of the voting device and
45 are to be counted manually. The same random selection is also
46 to be counted by the automatic tabulating equipment. If the

47 variance between the random manual count and the automatic
48 tabulating equipment count of the same random ballots, is equal
49 to or greater than one percent, then a manual recount of all
50 ballot cards is required. In the course of any recount, if a
51 candidate for an office demands, or if the board of canvassers
52 elects to recount the votes cast for an office, the votes cast for
53 that office in any precinct are to be recounted by manual count.

§3-4A-30. Adjustments in voting precincts where electronic voting system used.

1 The provisions of section five, article one of this chapter,
2 relating to the number of registered voters in each precinct,
3 shall apply to and control in precincts in counties in which
4 electronic voting systems have been adopted, except that the
5 maximum number of registered voters shall be one thousand
6 five hundred per precinct. The county commissions of such
7 counties, subject to other provisions of this chapter with respect
8 to the altering or changing of the boundaries of voting pre-
9 cincts, may change the boundaries of precincts or consolidate
10 precincts as practicable, to achieve the maximum advantage
11 from the use of electronic voting systems.

12 The county commission may, in the urban centers of any
13 county adopting an electronic voting system, designate a voting
14 place without the limits of a precinct, provided such voting
15 place is in a public building, and in an adjoining precinct. In
16 such event more than one precinct may vote in any such public
17 building.

ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING PROCEDURES.

§3-5-23. Certificate nominations; requirements and control; penalties.

1 (a) Groups of citizens having no party organization may
2 nominate candidates for public office otherwise than by

3 conventions or primary elections. In such case, the candidate or
 4 candidates, jointly or severally, shall file a declaration with the
 5 secretary of state if the office is to be filled by the voters of
 6 more than one county, or with the clerk of the circuit court of
 7 the county if the office is to be filled by the voters of one
 8 county or political subdivision thereof; such declaration to be
 9 filed at least thirty days prior to the time of filing the certificate
 10 provided by section twenty-four of this article: *Provided*, That
 11 the deadline for filing the certificate for persons seeking ballot
 12 access as a candidate for the office of president or vice presi-
 13 dent shall be filed not later than the first day of August preced-
 14 ing the general election. At the time of filing of such declara-
 15 tion each candidate shall pay the filing fee required by law, and
 16 if such declaration is not so filed or the filing fee so paid, the
 17 certificate shall not be received by the secretary of state, or
 18 clerk of the circuit court, as the case may be.

19 (b) The person or persons soliciting or canvassing signa-
 20 tures of duly qualified voters on such certificate or certificates,
 21 may solicit or canvass duly registered voters residing within the
 22 county, district or other political division represented by the
 23 office sought, but must first obtain from the clerk of the county
 24 commission credentials which must be exhibited to each voter
 25 canvassed or solicited, which credentials may be in the follow-
 26 ing form or effect:

27 State of West Virginia, County of, ss:

28 This certifies that, whose post-office
 29 address is, is hereby authorized to solicit and
 30 canvass duly registered voters residing in (here
 31 place the county, district or other political division represented
 32 by the office sought) to sign a certificate purporting to nominate
 33 (here place name of candidate heading list
 34 on certificate) for the office of and others,
 35 at the general election to be held on, 20.....

36 Given under my hand and the seal of my office this
37 day of, 20.....

38
39 Clerk, County Commission of County.

40 The clerk of each county commission, upon proper applica-
41 tion made as herein provided, shall issue such credentials and
42 shall keep a record thereof.

43 (c) The certificate shall be personally signed by duly
44 registered voters, in their own proper handwriting or by their
45 marks duly witnessed, who must be residents within the county,
46 district or other political division represented by the office
47 sought wherein such canvass or solicitation is made by the
48 person or persons duly authorized. Such signatures need not all
49 be on one certificate. The number of such signatures shall be
50 equal to not less than two percent of the entire vote cast at the
51 last preceding general election for the office in the state,
52 district, county or other political division for which the nomina-
53 tion is to be made, but in no event shall the number be less than
54 twenty-five. The number of such signatures shall be equal to
55 not less than two percent of the entire vote cast at the last
56 preceding general election for any statewide, congressional or
57 presidential candidate, but in no event shall the number be less
58 than twenty-five. Where two or more nominations may be made
59 for the same office, the total of the votes cast at the last
60 preceding general election for the candidates receiving the
61 highest number of votes on each ticket for such office shall
62 constitute the entire vote. No signature on such certificate shall
63 be counted unless it be that of a duly registered voter of the
64 county, district or other political division represented by the
65 office sought wherein such certificate was presented. It shall be
66 the duty of those soliciting signatures to read to each voter
67 whose signature is solicited the statement written on the
68 certificate which gives notice that no person signing such

69 certificate shall vote at any primary election to be held to
70 nominate candidates for office to be voted for at the election to
71 be held next after the date of signing such certificate.

72 (d) Such certificates shall state the name and residence of
73 each of such candidates; that he is legally qualified to hold such
74 office; that the subscribers are legally qualified and duly
75 registered as voters and desire to vote for such candidates; and
76 may designate, by not more than five words, a brief name of the
77 party which such candidates represent and may adopt a device
78 or emblem to be printed on the official ballot. All candidates
79 nominated by the signing of such certificates shall have their
80 names placed on the official ballot as candidates, as if otherwise
81 nominated under the provisions of this chapter.

82 The secretary of state shall prescribe the form and content
83 of the nomination certificates to be used for soliciting signa-
84 tures. The content shall include the language to be used in
85 giving written and oral notice to each voter that signing of the
86 nominating certificate forfeits that voter's right to vote in the
87 corresponding primary election.

88 Offices to be filled by the voters of more than one county
89 shall use separate petition forms for the signatures of qualified
90 voters for each county.

91 (e) The secretary of state, or the clerk of the circuit court,
92 as the case may be, may investigate the validity of such
93 certificates and the signatures thereon, and if upon such
94 investigation there may be doubt as to the legitimacy and the
95 validity of such certificate, he may request the attorney general
96 of the state, or the prosecuting attorney of the county, to
97 institute a quo warranto proceeding against the nominee or
98 nominees by certificate to determine his or their right to such
99 nomination to public office, and upon request being made, the

100 attorney general or prosecuting attorney shall institute such quo
101 warranto proceeding.

102 (f) Any person violating the provisions of this section, in
103 addition to penalties prescribed elsewhere for violation of this
104 chapter, is guilty of a misdemeanor and, upon conviction, shall
105 be fined not more than one thousand dollars, or confined in the
106 county or regional jail for not more than one year, or both, in
107 the discretion of the court: *Provided*, That no criminal penalty
108 may be imposed upon anyone who signs a nomination certifi-
109 cate and votes in the primary election held after the date the
110 certificate was signed.

CHAPTER 118

(Com. Sub. for H. B. 2876 — By Delegates Mahan,
Smirl, C. White, Coleman and Craig)

[Passed April 14, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections twenty-eight, twenty-nine, thirty and forty-four, article one, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to election officials; allowing a person registered within the county where a municipality lies to serve as an election official in a municipal election; eliminating the eligibility restriction against persons who have served as deputy sheriffs within six months prior to an election; eliminating the requirement that a person be registered as affiliated with the political party which nominates that person as an election official; reducing the number of election officials in a standard receiving

board for municipal elections; and increasing the authorized maximum amount of compensation for election officials.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§3-1-28. Election officials; eligibility, suspension of eligibility.

§3-1-29. Boards of election officials; definitions, composition of boards, determination of number and type.

§3-1-30. Nomination and appointment of election officials and alternates; notice of appointment; appointment to fill vacancies in election boards.

§3-1-44. Compensation of election officials; expenses.

§3-1-28. Election officials; eligibility, suspension of eligibility.

1 (a) To be eligible to be appointed or serve as an election
2 official in any state, county or municipal election held in West
3 Virginia, a person:

4 (1) Must be a registered voter of the county for elections
5 held throughout the county, and a registered voter of the
6 municipality for elections held within the municipality:
7 *Provided*, That if the required number of persons eligible to
8 serve as election officials for a municipal election are not
9 available or are not willing to serve as election officials for a
10 municipal election, a registered voter of the county in which the
11 municipality is located may serve as an election official for
12 elections held within the municipality.

13 (2) Must be able to read and write the English language;

14 (3) May not be a candidate on the ballot in the election;

15 (4) May not be the parent, child, sibling or spouse of a
16 candidate on the ballot in the precinct where the official serves;

17 (5) May not be a person prohibited from serving as an
18 election official pursuant to any other federal or state statute;
19 and

20 (6) May not have been previously convicted of a violation
21 of any election law.

22 (b) The county commission may, upon majority vote,
23 suspend the eligibility to serve as election official in any
24 election for four years, for the following reasons:

25 (1) Failure to appear at the polling place at the designated
26 time without proper notice and just cause;

27 (2) Failure to perform the duties of an election official as
28 required by law;

29 (3) Improper interference with a voter casting a ballot, or
30 violating the secrecy of the voter's ballot;

31 (4) Being under the influence of alcohol or drugs while
32 serving as an election official; or

33 (5) Having anything wagered or bet on an election.

34 (c) The county commission may, upon majority vote,
35 suspend the eligibility to serve as an election official in any
36 election for two years, upon petition of twenty-five registered
37 voters of the precinct where the official last served and upon
38 presentation of evidence of any of the grounds set forth in
39 subsection (b) of this section: *Provided*, That the petition
40 requesting the suspension of the election official is filed with
41 the county commission at least ninety days prior to an election

42 date. The names of those persons signing the petition must be
43 kept confidential.

**§3-1-29. Boards of election officials; definitions, composition of
boards, determination of number and type.**

1 (a) For the purpose of this article:

2 (1) The term “standard receiving board” means those
3 election officials charged with conducting the process of voting
4 within a precinct and consists of five persons, including one
5 team of poll clerks, one team of election commissioners for the
6 ballot box and one additional election commissioner: *Provided*,
7 That if a municipal election is held at a time when there is no
8 county or state election, then the standard receiving board is to
9 consist of four persons, including one team of poll clerks and
10 one team of election commissioners for the ballot box.

11 (2) The term “expanded receiving board” means a standard
12 receiving board as defined in subdivision (1) of this subsection
13 and one additional team of poll clerks;

14 (3) The term “counting board” means those election
15 officials charged with counting the ballots at the precinct in
16 counties using paper ballots and includes one team of poll
17 clerks, one team of election commissioners and one additional
18 commissioner; and

19 (4) The term “team of poll clerks” or “team of election
20 commissioners” means two persons appointed by opposite
21 political parties to perform the specific functions of the office:
22 *Provided*, That no team of poll clerks or team of election
23 commissioners may consist of two persons with the same
24 registered political party affiliation or two persons registered
25 with no political party affiliation.

26 (b) The composition of boards of election officials shall be
27 as follows:

28 (1) In any primary, general or special election other than a
29 presidential primary or presidential general election, each
30 election precinct is to have one standard receiving board;

31 (2) In presidential primary and presidential general elec-
32 tions, each election precinct is to have one receiving board, as
33 follows:

34 (A) For precincts of less than five hundred registered
35 voters, one standard receiving board;

36 (B) For precincts of five hundred to seven hundred regis-
37 tered voters, one standard receiving board or, at the discretion
38 of the county commission, one expanded receiving board; and

39 (C) For precincts of more than seven hundred registered
40 voters, one expanded receiving board;

41 (3) In any election conducted using paper ballots, counting
42 boards may be allowed, disallowed or required as follows:

43 (A) For any state, county or municipal special election, no
44 counting board may be allowed;

45 (B) In a statewide primary or general election, one counting
46 board is required for any precinct of more than four hundred
47 registered voters, and one counting board may be allowed, at
48 the discretion of the county commission for any precinct of at
49 least two hundred but no more than four hundred registered
50 voters; and

51 (C) In a municipal primary or general election, one count-
52 ing board may be allowed, at the discretion of the municipal
53 governing body for any precinct of more than two hundred
54 registered voters.

55 (c) For each primary and general election in the county, the
56 county commission shall designate the number and type of

57 election boards for the various precincts according to the
58 provisions of this section. At least eighty-four days before each
59 primary and general election, the county commission shall
60 notify the county executive committees of the two major
61 political parties in writing of the number of nominations which
62 may be made for poll clerks and election commissioners.

63 (d) For each municipal election, the governing body of the
64 municipality shall perform the duties of the county commission
65 as provided in this section.

**§3-1-30. Nomination and appointment of election officials and
alternates; notice of appointment; appointment to
fill vacancies in election boards.**

1 (a) For any primary, general or special election held
2 throughout a county, poll clerks and election commissioners
3 may be nominated as follows:

4 (1) The county executive committee for each of the two
5 major political parties may, by a majority vote of the committee
6 at a duly called meeting, nominate one qualified person for each
7 team of poll clerks and one qualified person for each team of
8 election commissioners to be appointed for the election;

9 (2) The appointing body shall select one qualified person as
10 the additional election commissioner for each board of election
11 officials;

12 (3) Each county executive committee may also nominate as
13 many qualified persons as alternates as there are precincts in the
14 county, to be called upon to serve in the event any of the
15 persons originally appointed fail to accept appointment or fail
16 to appear for the required training or for the preparation or
17 execution of their duties;

18 (4) When an executive committee nominates qualified
19 persons as poll clerks, election commissioners or alternates, the
20 committee, or its chairman or secretary on their behalf, shall
21 file in writing with the appointing body, no later than the fifty-
22 sixth day before the election, a list of those persons nominated
23 and the positions for which they are designated.

24 (b) For any municipal primary, general or special election,
25 the poll clerks and election commissioners may be nominated
26 as follows:

27 (1) In municipalities which have municipal executive
28 committees for the two major political parties in the municipal-
29 ity, each committee may nominate election officials in the
30 manner provided for the nomination of election officials by
31 county executive committees in subsection (a) of this section;

32 (2) In municipalities which do not have executive commit-
33 tees, the governing body shall provide by ordinance for a
34 method of nominating election officials; or shall nominate as
35 many eligible persons as are required, giving due consideration
36 to any recommendations made by voters of the municipality or
37 by candidates on the ballot.

38 (c) The governing body responsible for appointing election
39 officials is:

40 (1) The county commission for any primary, general or
41 special election ordered by the county commission and any
42 joint county and municipal election;

43 (2) The board of education for any special election ordered
44 by the board of education conducted apart from any other
45 election;

46 (3) The municipal governing body for any primary, general
47 or special municipal election ordered by the governing body.

48 (d) The appropriate governing body shall appoint the
49 election officials for each designated election board no later
50 than the forty-ninth day before the election as follows:

51 (1) Those eligible persons whose nominations for poll clerk
52 and election commissioner were timely filed by the executive
53 committees and those additional persons selected to serve as an
54 election commissioner are to be appointed;

55 (2) The governing body shall fill any positions for which no
56 nominations were filed.

57 (e) At the same time as the appointment of election
58 officials, or at a subsequent meeting, the governing body shall
59 appoint persons as alternates: *Provided*, That no alternate may
60 be eligible for compensation for election training unless the
61 alternate is subsequently appointed as an election official, or is
62 instructed to attend and actually attends training as an alternate
63 and, if called to do so, also serves at the polls on election day.
64 Alternates shall be appointed and serve as follows:

65 (1) Those alternates nominated by the executive commit-
66 tees, shall be appointed;

67 (2) The governing body may appoint additional alternates,
68 who may be called upon to fill vacancies after all alternates
69 designated by the executive committees have been assigned,
70 have declined to serve or have failed to attend training; and

71 (3) The governing body may determine the number of
72 persons who may be instructed to attend training as alternates.

73 (f) The clerk of the county commission shall appoint
74 qualified persons to fill all vacancies existing after all previ-
75 ously appointed alternates have been assigned, have declined to
76 serve or have failed to attend training.

77 (g) Within seven days following appointment, the clerk of
78 the county commission shall notify, by first-class mail, all
79 election commissioners, poll clerks and alternates of the fact of
80 their appointment, and include with the notice a response notice
81 form for the appointed person to return indicating whether or
82 not he or she agrees to serve in the specified capacity in the
83 election.

84 (h) The position of any person notified of appointment who
85 fails to return the response notice or otherwise confirm to the
86 clerk of the county commission his or her agreement to serve
87 within fourteen days following the date of appointment is
88 considered vacant and the clerk shall proceed to fill the vacan-
89 cies according to the provisions of this section.

90 (i) If an appointed election official fails to appear at the
91 polling place by forty-five minutes past five o'clock a.m. on
92 election day, the election officials present shall contact the
93 office of the clerk of the county commission for assistance in
94 filling the vacancy and the clerk shall proceed as follows:

95 (1) The clerk may attempt to contact the person originally
96 appointed, may assign an alternate nominated by the same
97 political party as the person absent if one is available or, if no
98 alternate is available, may appoint another eligible person of the
99 same political party as the party that nominated the person
100 originally appointed;

101 (2) If the election officials present are unable to contact the
102 clerk within a reasonable time, they shall diligently attempt to
103 fill the position with an eligible person of the same political
104 party as the party that nominated the person absent until a
105 qualified person has agreed to serve;

106 (3) If two teams of election officials, as defined in section
107 twenty-nine of this article, are present at the polling place, the

108 person appointed to fill a vacancy in the position of the addi-
109 tional commissioner may be of either political party.

110 (j) In a municipal election, the recorder or other official
111 designated by charter or ordinance to perform election responsi-
112 bilities shall perform the duties of the clerk of the county
113 commission as provided in this section.

§3-1-44. Compensation of election officials; expenses.

1 (a) Each ballot commissioner is to be paid a sum, to be
2 fixed by the county commission, not exceeding one hundred
3 twenty-five dollars for each day he or she serves as ballot
4 commissioner, but, in no case may a ballot commissioner
5 receive allowance for more than ten days' services for any one
6 primary, general or special election.

7 (b) Each commissioner of election and poll clerk is to be
8 paid a sum, to be fixed by the county commission, not exceed-
9 ing one hundred twenty-five dollars for one day's services for
10 attending the school of instruction for election officials if the
11 commissioner or poll clerk provides at least one day's service
12 during an election and a sum not exceeding one hundred
13 seventy-five dollars for his or her services at any one election:
14 *Provided*, That each commissioner of election and poll clerk is
15 to be paid a sum not exceeding one hundred seventy-five
16 dollars for his or her services at any of the three special
17 elections described in subsection (e) of this section.

18 (c) The commissioners of election obtaining and delivering
19 the election supplies, as provided in section twenty-four of this
20 article, and returning them as provided in articles five and six
21 of this chapter, is to be paid an additional sum, fixed by the
22 county commission, not exceeding one hundred twenty-five
23 dollars for his or her services pursuant to this subsection at any
24 one election and, in addition, is to be paid mileage up to the rate

25 of reimbursement authorized per mile as set by the travel
26 management office of the department of administration per mile
27 necessarily traveled in the performance of his or her services.
28 The rate paid for mileage pursuant to this section may change
29 from time to time in accordance with changes in the reimburse-
30 ment rates established by the travel management office, or its
31 successor agency.

32 (d) The compensation of election officers, cost of printing
33 ballots and all other expenses incurred in holding and making
34 the return of elections, other than the three special elections
35 described in subsection (e) of this section, is to be audited by
36 the county commission and paid out of the county treasury.

37 (e) The compensation of election officers, cost of printing
38 ballots and all other reasonable and necessary expenses in
39 holding and making the return of a special election for the
40 purpose of taking the sense of the voters on the question of
41 calling a constitutional convention, of a special election to elect
42 members of a constitutional convention, and of a special
43 election to ratify or reject the proposals, acts and ordinances of
44 a constitutional convention are obligations of the state incurred
45 by the ballot commissioners, clerks of the circuit courts, clerks
46 of the county commissions and county commissions of the
47 various counties as agents of the state, and all expenses of these
48 special elections are to be audited by the secretary of state. The
49 secretary of state shall prepare and transmit to the county
50 commissions forms on which the county commissions shall
51 certify all expenses of these special elections to the secretary of
52 state. If satisfied that the expenses as certified by the county
53 commissions are reasonable and were necessarily incurred, the
54 secretary of state shall requisition the necessary warrants from
55 the auditor of the state to be drawn on the state treasurer, and

56 shall mail the warrants directly to the vendors of the special
57 election services, supplies and facilities.

CHAPTER 119

(H. B. 3175 — By Mr. Speaker, Mr. Kiss, and Delegates Staton,
Amores, Mahan, Coleman, Craig and C. White)

[Passed April 12, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twelve, article eight, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to limitations on certain political activity; clarifying prohibition on anonymous publications; including contributions to state party legislative caucus committees within limitations on contributions; making certain technical revisions; and providing criminal penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 8. REGULATION AND CONTROL OF ELECTIONS.

§3-8-12. Additional acts forbidden; circulation of written matter; newspaper advertising; solicitation of contributions; intimidation and coercion of employees; promise of employment or other benefits; limitations on contributions; public contractors; penalty.

1 (a) No person may publish, issue or circulate, or cause to be
2 published, issued or circulated, any anonymous letter, circular,
3 placard, or other publication expressly advocating the election
4 or defeat of a clearly identified candidate.

5 (b) No owner, publisher, editor or employee of a newspaper
6 or other periodical may insert, either in its advertising or
7 reading columns, any matter, paid for or to be paid for, which
8 tends to influence the voting at any election, unless directly
9 designating it as a paid advertisement and stating the name of
10 the person authorizing its publication and the candidate in
11 whose behalf it is published.

12 (c) No person may, in any room or building occupied for
13 the discharge of official duties by any officer or employee of
14 the state or a political subdivision of the state, solicit orally or
15 by written communication delivered within the room or
16 building, or in any other manner, any contribution of money or
17 other thing of value for any party or political purpose, from any
18 postmaster or any other officer or employee of the federal
19 government, or officer or employee of the state, or a political
20 subdivision of the state. No officer, agent, clerk or employee of
21 the federal government, or of this state, or any political subdivi-
22 sion of the state, who may have charge or control of any
23 building, office or room, occupied for any official purpose, may
24 knowingly permit any person to enter any building, office or
25 room, occupied for any official purpose for the purpose of
26 soliciting or receiving any political assessments from, or
27 delivering or giving written solicitations for, or any notice of,
28 any political assessments to, any officer or employee of the
29 state, or a political subdivision of the state.

30 (d) Except as provided in section eight of this article, no
31 person entering into any contract with the state or its subdivi-
32 sions, or any department or agency of the state, either for
33 rendition of personal services or furnishing any material,

34 supplies or equipment or selling any land or building to the
35 state, or its subdivisions, or any department or agency of the
36 state, if payment for the performance of the contract or payment
37 for the material, supplies, equipment, land or building is to be
38 made, in whole or in part, from public funds may, during the
39 period of negotiation for or performance under the contract or
40 furnishing of materials, supplies, equipment, land or buildings,
41 directly or indirectly, make any contribution to any political
42 party, committee or candidate for public office or to any person
43 for political purposes or use; nor may any person or firm solicit
44 any contributions for any purpose during any period.

45 (e) No person may, directly or indirectly, promise any
46 employment, position, work, compensation or other benefit
47 provided for, or made possible, in whole or in part, by act of the
48 Legislature, to any person as consideration, favor or reward for
49 any political activity for the support of or opposition to any
50 candidate, or any political party in any election.

51 (f) No person may, directly or indirectly, make any contri-
52 bution in excess of the value of one thousand dollars in connec-
53 tion with any campaign for nomination or election to or on
54 behalf of any statewide or national elective office, or in excess
55 of the value of one thousand dollars, in connection with any
56 other campaign for nomination or election to or on behalf of
57 any other elective office in the state or any of its subdivisions,
58 or in connection with or on behalf of any committee or other
59 organization or person engaged in furthering, advancing or
60 advocating the nomination or election of any candidate for any
61 of the offices.

62 (g)(1) Notwithstanding the provisions of subsection (f) of
63 this section to the contrary, the aggregate contributions made to
64 a state party executive committee or state party legislative
65 caucus committee are to be permitted only pursuant to the
66 limitations imposed by the provisions of this subsection.

67 (2) No person may, directly or indirectly, make contribu-
68 tions to a state party executive committee or state party
69 legislative caucus committee which, in the aggregate, exceed
70 the value of one thousand dollars in any calendar year.

71 (h) The limitations on contributions contained in this
72 section do not apply to transfers between and among a state
73 party executive committee or a state party's legislative caucus
74 political committee from national committees of the same
75 political party: *Provided*, That transfers permitted by this
76 subsection may not exceed fifty thousand dollars in the aggre-
77 gate in any calendar year to any state party executive committee
78 or state party legislative caucus political committee: *Provided*,
79 *however*, That the moneys transferred may only be used for
80 voter registration and get-out-the-vote activities of the state
81 committees.

82 (i) No person may solicit any contribution from any
83 nonelective salaried employee of the state government or of any
84 of its subdivisions or coerce or intimidate any nonelective
85 salaried employee into making a contribution. No person may
86 coerce or intimidate any nonsalaried employee of the state
87 government or any of its subdivisions into engaging in any form
88 of political activity. The provisions of this subsection may not
89 be construed to prevent any employee from making a contribu-
90 tion or from engaging in political activity voluntarily, without
91 coercion, intimidation or solicitation.

92 (j) No person may solicit a contribution from any other
93 person without informing the other person at the time of the
94 solicitation of the amount of any commission, remuneration or
95 other compensation that the solicitor or any other person will
96 receive or expect to receive as a direct result of the contribution
97 being successfully collected. Nothing in this subsection may be
98 construed to apply to solicitations of contributions made by any
99 person serving as an unpaid volunteer.

100 (k) No person may place any letter, circular, flyer, adver-
101 tisement, election paraphernalia, solicitation material or other
102 printed or published item tending to influence voting at any
103 election in a roadside receptacle unless it is: (1) Approved for
104 placement into a roadside receptacle by the business or entity
105 owning the receptacle; and (2) contains a written acknowledg-
106 ment of the approval. This subdivision does not apply to any
107 printed material contained in a newspaper or periodical pub-
108 lished or distributed by the owner of the receptacle. The term
109 "roadside receptacle" means any container placed by a newspa-
110 per or periodical business or entity to facilitate home or
111 personal delivery of a designated newspaper or periodical to its
112 customers.

113 (l) Any person violating any provision of this section is
114 guilty of a misdemeanor and, upon conviction thereof, shall be
115 fined not more than one thousand dollars, or confined in a
116 regional or county jail for not more than one year, or, in the
117 discretion of the court, be subject to both fine and confinement.

CHAPTER 120

**(Com. Sub. for S. B. 204 — By Senators Snyder, Fanning,
McCabe, Oliverio, Ross, Deem and Minard)**

[Passed April 14, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal article five, chapter thirty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend said code by adding thereto a new chapter, designated chapter thirty-nine-a; to amend chapter forty-six-a of said code by adding thereto a new article, designated article six-i; and to

amend article eight, chapter fifty-five of said code by adding thereto a new section, designated section fifteen, all relating generally to electronic commerce and the uniform electronic transactions act; defining terms; adopting the uniform electronic transaction act; providing that the act applies to electronic records and electronic signatures relating to transactions covered by the act; creating exemptions; providing that the act does not create or alter substantive law; applying the act upon agreement of the parties to a transaction; providing that parties may vary the effect of the act by agreement; providing that the right not to conduct transactions by electronic means may not be waived; providing for the construction and application of the act; providing that records, signatures and contracts may not be denied legal effect or enforceability solely because they are in electronic form; providing that an electronic record satisfies the legal requirement that a record be in writing; providing that electronic signature satisfies the legal requirement for a signature; recognizing the legal effect of providing or sending information by electronic means; establishing the requirements for providing or sending information by electronic means; providing that when a law, other than this act, contains specific requirements for a record, an electronic record must meet those requirements; providing that an electronic record or signature is attributable to the person creating it; establishing requirements for showing an electronic record or signature was created by a specific person; providing protection for the conforming party against the nonconforming party in the event of a change or error; establishing a procedure for correcting errors; establishing when other law applies when an error or change has occurred; authorizing electronic notarization and acknowledgment; establishing requirements for retention of electronic records as originals; providing that a legal requirement to retain or present a record, including a check, in its original form may be satisfied by an electronic record; providing that an electronic record may satisfy the legal requirements for retaining records for evidentiary, audit or like purposes unless specifically

prohibited by law; providing that an electronic record or signature may not be excluded from evidence solely because it is in electronic form; authorizing formation of contracts through automated transactions; providing that the terms of a contract formed by an automated transaction will be determined by applicable substantive law; establishing the conditions under which an electronic record is considered to have been sent; establishing the conditions under which an electronic record is considered to have been received; providing that an electronic record will be deemed to have been sent from the sender's place of business; providing that an electronic record will be deemed to have been received at the receiver's place of business; providing that, where the sender or receiver has more than one place of business, the place of business of that person is the place having the closest relationship to the underlying transaction; providing that if the sender or receiver does not have a place of business, the place of business of that person is his or her residence; providing that an electronic record is received even if no individual is aware of its receipt; providing that receipt of an electronic acknowledgment from an information processing system establishes that the record was sent but does not, by itself, establish that the content received is the same as what was sent; establishing the circumstances under which the legal effect of sending or receipt of an electronic record is controlled by other applicable law; providing that parts of this article may not be waived or varied by an agreement between the parties; defining transferrable records for purposes of using electronic means to transfer or maintain such records; establishing the requirements for using electronic means to transfer or maintain transferable records; providing for the applicability of the uniform commercial code to electronic transferable records; stating relationship with federal law; requiring information be given to consumer prior to obtaining consent; requiring consumer consent to electronic transactions; providing for withdrawal of consent; requiring consumer be informed when certain changes occur; providing that nothing in

this article affects content or timing of disclosure or other requirements under applicable substantive law; providing for effect of failure to obtain electronic consent or confirmation; providing that this article does not apply to consumer consent given or records provided prior to the enactment of this act; providing that oral communication or recording of an oral communication is not an electronic record; providing for retention, accuracy and accessibility of electronic records; providing that requirements for retaining originals and checks may be met by electronic means; providing that the legal effect, validity or enforceability of an electronic record may be denied if the electronic record is not in a form that can be retained and accurately reproduced; providing for certain notices that may not be sent in electronic form; providing for severability; providing for the applicability of the consumer protection portions of the federal electronic signatures in global and national commerce act; providing definitions; establishing the requirements for the acceptance of electronic signatures by governmental entities; requiring governmental entities choosing to use electronic signatures to participate in the secretary of state's registry and follow the secretary of state's rules; authorizing governmental entities to adopt an ordinance, rule or official policy relating to use of digital signatures; requiring public notice of a governmental entity's acceptance of electronic signatures; authorizing the secretary of state to propose legislative rules relating to the standards and processes for the use of electronic signatures by governmental entities; designating the secretary of state as the certification authority and repository for certain governmental agencies using electronic signatures; requiring the secretary of state to regulate electronic transactions and digital signature verifications; setting forth the powers and duties of the secretary of state with regard to governmental use of electronic transactions; providing that no specific form of technology, process or standard is required by this article; authorizing the secretary of state to revoke a signature key believed to be stolen, fraudulently used or otherwise compro-

mised; providing that the secretary of state is not liable for any transaction compromised by an illegal act or inappropriate use of an electronic signature; providing for severability; defining terms; providing for electronic response to electronic notices; explaining when an electronic record is actually received; providing for electronic transferable records; explaining relationship to federal law; providing for waiver; providing for severability; and establishing a choice of law limitation providing that the laws of West Virginia are applicable for any computer information agreements.

Be it enacted by the Legislature of West Virginia:

That article five, chapter thirty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that said code be amended by adding thereto a new chapter, designated chapter thirty-nine-a; that chapter forty-six-a of said code be amended by adding thereto a new article, designated article six-i; and that article eight, chapter fifty-five of said code be amended by adding thereto a new section, designated section fifteen, all to read as follows:

Chapter

39A. Electronic Commerce.

46A. West Virginia Consumer Credit and Protection Act.

55. Actions, Suits and Arbitration; Judicial Sale.

CHAPTER 39A. ELECTRONIC COMMERCE.

Article

1. Uniform Electronic Transactions Act.

2. Consumer Protections and Responsibilities in Electronic Transactions.

3. Digital Signatures; State Electronic Records and Transactions.

ARTICLE 1. UNIFORM ELECTRONIC TRANSACTIONS ACT.

§39A-1-1. Short title.

§39A-1-2. Definitions.

- §39A-1-3. Scope.
- §39A-1-4. Prospective application.
- §39A-1-5. Use of electronic records and electronic signatures; variation by agreement.
- §39A-1-6. Construction and application.
- §39A-1-7. Legal recognition of electronic records, electronic signatures and electronic contracts.
- §39A-1-8. Provision of information in writing; presentation of records.
- §39A-1-9. Attribution and effect of electronic record and electronic signature.
- §39A-1-10. Effect of change or error.
- §39A-1-11. Notarization and acknowledgment.
- §39A-1-12. Retention of electronic records; originals.
- §39A-1-13. Admissibility in evidence.
- §39A-1-14. Automated transaction.
- §39A-1-15. Time and place of sending and receipt.
- §39A-1-16. Transferable records.
- §39A-1-17. Relationship with federal law.

§39A-1-1. Short title.

- 1 This article may be cited as the uniform electronic transac-
- 2 tions act.

§39A-1-2. Definitions.

- 1 In this chapter:

- 2 (1) “Agreement” means the bargain of the parties in fact, as
- 3 found in their language or inferred from other circumstances
- 4 and from rules, regulations and procedures given the effect of
- 5 agreements under laws otherwise applicable to a particular
- 6 transaction.

- 7 (2) “Automated transaction” means a transaction conducted
- 8 or performed, in whole or in part, by electronic means or
- 9 electronic records in which the acts or records of one or both
- 10 parties are not reviewed by an individual in the ordinary course
- 11 in forming a contract, performing under an existing contract or
- 12 fulfilling an obligation required by the transaction.

- 13 (3) “Computer program” means a set of statements or
- 14 instructions to be used directly or indirectly in an information
- 15 processing system in order to bring about a certain result.

16 (4) "Contract" means the total legal obligation resulting
17 from the parties' agreement as affected by this article and other
18 applicable law.

19 (5) "Electronic" means relating to technology having
20 electrical, digital, magnetic, wireless, optical, electromagnetic
21 or similar capabilities.

22 (6) "Electronic agent" means a computer program or an
23 electronic or other automated means used independently to
24 initiate an action or respond to electronic records or perfor-
25 mances, in whole or in part, without review or action by an
26 individual.

27 (7) "Electronic record" means a record created, generated,
28 sent, communicated, received or stored by electronic means.

29 (8) "Electronic signature" means an electronic sound,
30 symbol or process attached to or logically associated with a
31 record and executed or adopted by a person with the intent to
32 sign the record.

33 (9) "Governmental agency" means an executive, legislative
34 or judicial agency, department, board, commission, authority,
35 institution or instrumentality of the federal government or of a
36 state or of a county, municipality or other political subdivision
37 of a state.

38 (10) "Information" means data, text, images, sounds, codes,
39 computer programs, software, databases or the like.

40 (11) "Information processing system" means an electronic
41 system for creating, generating, sending, receiving, storing,
42 displaying or processing information.

43 (12) "Person" means an individual, corporation, business
44 trust, estate, trust, partnership, limited liability company,

45 association, joint venture, governmental agency, public
46 corporation or any other legal or commercial entity.

47 (13) "Record" means information that is inscribed on a
48 tangible medium or that is stored in an electronic or other
49 medium and is retrievable in perceivable form.

50 (14) "Security procedure" means a procedure employed for
51 the purpose of verifying that an electronic signature, record or
52 performance is that of a specific person or for detecting changes
53 or errors in the information in an electronic record. The term
54 includes a procedure that requires the use of algorithms or other
55 codes, identifying words or numbers, encryption or callback or
56 other acknowledgment procedures.

57 (15) "State" means a state of the United States, the District
58 of Columbia, Puerto Rico, the United States Virgin Islands or
59 any territory or insular possession subject to the jurisdiction of
60 the United States. The term includes an Indian tribe or band or
61 Alaskan native village which is recognized by federal law or
62 formally acknowledged by a state.

63 (16) "Transaction" means an action or set of actions
64 occurring between two or more persons relating to the conduct
65 of business, commercial or governmental affairs.

§39A-1-3. Scope.

1 (a) Except as otherwise provided in subsection (d) of this
2 section, this article applies to electronic records and electronic
3 signatures relating to a transaction.

4 (b) This chapter does not apply to a transaction to the extent
5 it is governed by:

6 (1) A law governing the creation and execution of wills,
7 codicils or testamentary trusts; and

8 (2) The Uniform Commercial Code other than sections one
9 hundred seven and two hundred six, article one, chapter forty-
10 six of this code and articles two and two-a of said chapter.

11 (c) This article applies to an electronic record or electronic
12 signature otherwise excluded from the application of this article
13 under subsection (b) of this article to the extent it is governed
14 by a law other than those specified in said subsection.

15 (d) A transaction subject to this article is also subject to
16 other applicable substantive law.

§39A-1-4. Prospective application.

1 This article applies to any electronic record or electronic
2 signature created, generated, sent, communicated, received or
3 stored on or after the effective date of this article.

**§39A-1-5. Use of electronic records and electronic signatures;
variation by agreement.**

1 (a) This article does not require a record or signature to be
2 created, generated, sent, communicated, received, stored or
3 otherwise processed or used by electronic means or in elec-
4 tronic form.

5 (b) This article applies only to transactions between parties,
6 each of which has agreed to conduct transactions by electronic
7 means. Whether the parties agree to conduct a transaction by
8 electronic means is determined from the context and surround-
9 ing circumstances, including the parties' conduct.

10 (c) A party that agrees to conduct a transaction by elec-
11 tronic means may refuse to conduct other transactions by
12 electronic means. The right granted by this subsection may not
13 be waived by agreement.

14 (d) Except as otherwise provided in this article, the effect
15 of any of its provisions may be varied by agreement. The
16 presence in certain provisions of this article of the words
17 “unless otherwise agreed”, or words of similar import, does not
18 imply that the effect of other provisions may not be varied by
19 agreement.

20 (e) Whether an electronic record or electronic signature has
21 legal consequences is determined by this article and other
22 applicable law.

§39A-1-6. Construction and application.

1 This article must be construed and applied:

2 (1) To facilitate electronic transactions consistent with
3 other applicable law;

4 (2) To be consistent with reasonable practices concerning
5 electronic transactions and with the continued expansion of
6 those practices; and

7 (3) To effectuate its general purpose to make uniform the
8 law with respect to the subject of this article among states
9 enacting it.

**§39A-1-7. Legal recognition of electronic records, electronic
signatures and electronic contracts.**

1 (a) A record or signature may not be denied legal effect or
2 enforceability solely because it is in electronic form.

3 (b) A contract may not be denied legal effect or
4 enforceability solely because an electronic record was used in
5 its formation.

6 (c) If a law requires a record to be in writing, an electronic
7 record satisfies the law.

8 (d) If a law requires a signature, an electronic signature
9 satisfies the law.

§39A-1-8. Provision of information in writing; presentation of records.

1 (a) If parties have agreed to conduct a transaction by
2 electronic means and a law requires a person to provide, send
3 or deliver information in writing to another person, the require-
4 ment is satisfied if the information is provided, sent or deliv-
5 ered, as the case may be, in an electronic record capable of
6 retention by the recipient at the time of receipt. An electronic
7 record is not capable of retention by the recipient if the sender
8 or its information processing system inhibits the ability of the
9 recipient to print or store the electronic record.

10 (b) If a law other than this article requires a record: (i) To
11 be posted or displayed in a certain manner; (ii) to be sent,
12 communicated or transmitted by a specified method; or (iii) to
13 contain information that is formatted in a certain manner, the
14 following rules apply:

15 (1) The record must be posted or displayed in the manner
16 specified in the other law.

17 (2) Except as otherwise provided in subdivision (2),
18 subsection (d) of this section, the record must be sent, commu-
19 nicated or transmitted by the method specified in the other law.

20 (3) The record must contain the information formatted in
21 the manner specified in the other law.

22 (c) If a sender inhibits the ability of a recipient to store or
23 print an electronic record, the electronic record is not enforce-
24 able against the recipient.

25 (d) The requirements of this section may not be varied by
26 agreement, but:

27 (1) To the extent a law other than this article requires
28 information to be provided, sent or delivered in writing but
29 permits that requirement to be varied by agreement, the
30 requirement under subsection (a) of this section that the
31 information be in the form of an electronic record capable of
32 retention may also be varied by agreement; and

33 (2) A requirement under a law other than this article to
34 send, communicate or transmit a record by first class mail,
35 postage prepaid, regular United States mail, certified mail or
36 registered mail, may be varied by agreement to the extent
37 permitted by the other law.

§39A-1-9. Attribution and effect of electronic record and electronic signature.

1 (a) An electronic record or electronic signature is attribut-
2 able to a person if it was the act of the person. The act of the
3 person may be shown in any manner, including a showing of
4 the efficacy of any security procedure applied to determine the
5 person to which the electronic record or electronic signature
6 was attributable.

7 (b) The effect of an electronic record or electronic signature
8 attributed to a person under subsection (a) of this section is
9 determined from the context and surrounding circumstances at
10 the time of its creation, execution or adoption, including the
11 parties' agreement, if any, and otherwise as provided by law.

§39A-1-10. Effect of change or error.

1 If a change or error in an electronic record occurs in a
2 transmission between parties to a transaction, the following
3 rules apply:

4 (1) If the parties have agreed to use a security procedure to
5 detect changes or errors and one party has conformed to the
6 procedure, but the other party has not and the nonconforming
7 party would have detected the change or error had that party
8 also conformed, the conforming party may avoid the effect of
9 the changed or erroneous electronic record.

10 (2) In an automated transaction involving an individual, the
11 individual may avoid the effect of an electronic record that
12 resulted from an error made by the individual in dealing with
13 the electronic agent of another person if the electronic agent did
14 not provide an opportunity for the prevention or correction of
15 the error and, at the time the individual learns of the error, the
16 individual:

17 (A) Promptly notifies the other person of the error and that
18 the individual did not intend to be bound by the electronic
19 record received by the other person;

20 (B) Takes reasonable steps, including steps that conform to
21 the other person's reasonable instructions, to return to the other
22 person or, if instructed by the other person, to destroy the
23 consideration received, if any, as a result of the erroneous
24 electronic record; and

25 (C) Has not used or received any benefit or value from the
26 consideration, if any, received from the other person.

27 (3) If neither subdivision (1) nor subdivision (2) of this
28 section applies, the change or error has the effect provided by
29 other law, including the law of mistake, and the parties'
30 contract, if any.

31 (4) Subdivisions (2) and (3) of this subsection may not be
32 varied by agreement.

§39A-1-11. Notarization and acknowledgment.

1 If a law requires a signature or record to be notarized,
2 acknowledged, verified or made under oath, the requirement is
3 satisfied if the electronic signature of the person authorized to
4 perform those acts, together with all other information required
5 to be included by other applicable law, is attached to or
6 logically associated with the signature or record.

§39A-1-12. Retention of electronic records; originals.

1 (a) If a law requires that a record be retained, the require-
2 ment is satisfied by retaining an electronic record of the
3 information in the record which:

4 (1) Accurately reflects the information set forth in the
5 record after it was first generated in its final form as an elec-
6 tronic record or otherwise; and

7 (2) Remains accessible for later reference.

8 (b) A requirement to retain a record in accordance with
9 subsection (a) of this section does not apply to any information
10 the sole purpose of which is to enable the record to be sent,
11 communicated or received.

12 (c) A person may satisfy subsection (a) of this section by
13 using the services of another person if the requirements of said
14 subsection are satisfied.

15 (d) If a law requires a record to be presented or retained in
16 its original form, or provides consequences if the record is not
17 presented or retained in its original form, that law is satisfied by
18 an electronic record retained in accordance with subsection (a)
19 of this section.

20 (e) If a law requires retention of a check, that requirement
21 is satisfied by retention of an electronic record of the informa-

22 tion on the front and back of the check in accordance with
23 subsection (a) of this section.

24 (f) A record retained as an electronic record in accordance
25 with subsection (a) of this section satisfies a law requiring a
26 person to retain a record for evidentiary, audit, or like purposes,
27 unless a law enacted after the effective date of this article
28 specifically prohibits the use of an electronic record for the
29 specified purpose.

30 (g) This section does not preclude a governmental agency
31 of this state from specifying additional requirements for the
32 retention of a record subject to the agency's jurisdiction.

§39A-1-13. Admissibility in evidence.

1 In a proceeding, evidence of a record or signature may not
2 be excluded solely because it is in electronic form.

§39A-1-14. Automated transaction.

1 In an automated transaction, the following rules apply:

2 (1) A contract may be formed by the interaction of elec-
3 tronic agents of the parties, even if no individual was aware of
4 or reviewed the electronic agents' actions or the resulting terms
5 and agreements.

6 (2) A contract may be formed by the interaction of an
7 electronic agent and an individual, acting on the individual's
8 own behalf or for another person, including by an interaction in
9 which the individual performs actions that the individual is free
10 to refuse to perform and which the individual knows or has
11 reason to know will cause the electronic agent to complete the
12 transaction or performance.

13 (3) The terms of the contract are determined by the substan-
14 tive law applicable to it.

§39A-1-15. Time and place of sending and receipt.

1 (a) Unless otherwise agreed between the sender and the
2 recipient, an electronic record is sent when it:

3 (1) Is addressed properly or otherwise directed properly to
4 an information processing system that the recipient has desig-
5 nated or uses for the purpose of receiving electronic records or
6 information of the type sent and from which the recipient is
7 able to retrieve the electronic record;

8 (2) Is in a form capable of being processed by that system;
9 and

10 (3) Enters an information processing system outside the
11 control of the sender or of a person that sent the electronic
12 record on behalf of the sender or enters a region of the informa-
13 tion processing system designated or used by the recipient
14 which is under the control of the recipient.

15 (b) Unless otherwise agreed between a sender and the
16 recipient, an electronic record is received when:

17 (1) It enters an information processing system that the
18 recipient has designated or uses for the purpose of receiving
19 electronic records or information of the type sent and from
20 which the recipient is able to retrieve the electronic record; and

21 (2) It is in a form capable of being processed by that
22 system.

23 (c) Subsection (b) of this section applies even if the place
24 the information processing system is located is different from

25 the place the electronic record is deemed to be received under
26 subsection (d) of this section.

27 (d) Unless otherwise expressly provided in the electronic
28 record or agreed between the sender and the recipient, an
29 electronic record is deemed to be sent from the sender's place
30 of business and to be received at the recipient's place of
31 business. For purposes of this subsection, the following rules
32 apply:

33 (1) If the sender or recipient has more than one place of
34 business, the place of business of that person is the place having
35 the closest relationship to the underlying transaction;

36 (2) If the sender or the recipient does not have a place of
37 business, the place of business is the sender's or recipient's
38 residence, as the case may be.

39 (e) An electronic record is received under subsection (b) of
40 this section even if no individual is aware of its receipt.

41 (f) Receipt of an electronic acknowledgment from an
42 information processing system described in subsection (b) of
43 this section establishes that a record was received but, by itself,
44 does not establish that the content sent corresponds to the
45 content received.

46 (g) If a person is aware that an electronic record purport-
47 edly sent under subsection (a) of this section, or purportedly
48 received under subsection (b) of this section, was not actually
49 sent or received, the legal effect of the sending or receipt is
50 determined by other applicable law. Except to the extent
51 permitted by the other law, the requirements of this subsection
52 may not be varied by agreement.

§39A-1-16. Transferable records.

1 (a) In this section, “transferable record” means an electronic
2 record that:

3 (1) Would be a note under article three, chapter forty-six of
4 this code or a document under article seven of said chapter if
5 the electronic record were in writing; and

6 (2) The issuer of the electronic record expressly has agreed
7 is a transferable record.

8 (b) A person has control of a transferable record if a system
9 employed for evidencing the transfer of interests in the transfer-
10 able record reliably establishes that person as the person to
11 which the transferable record was issued or transferred.

12 (c) A system satisfies subsection (b) of this section and a
13 person is deemed to have control of a transferable record if the
14 transferable record is created, stored and assigned in such a
15 manner that:

16 (1) A single authoritative copy of the transferable record
17 exists which is unique, identifiable and, except as otherwise
18 provided in subdivisions (4), (5) and (6) of this subsection,
19 unalterable;

20 (2) The authoritative copy identifies the person asserting
21 control as:

22 (A) The person to which the transferable record was issued;
23 or

24 (B) If the authoritative copy indicates that the transferable
25 record has been transferred, the person to which the transferable
26 record was most recently transferred;

27 (3) The authoritative copy is communicated to and main-
28 tained by the person asserting control or its designated custodian;

29 (4) Copies or revisions that add or change an identified
30 assignee of the authoritative copy can be made only with the
31 consent of the person asserting control;

32 (5) Each copy of the authoritative copy and any copy of a
33 copy is readily identifiable as a copy that is not the authoritative
34 copy; and

35 (6) Any revision of the authoritative copy is readily
36 identifiable as authorized or unauthorized.

37 (d) Except as otherwise agreed, a person having control of
38 a transferable record is the holder, as defined in section two
39 hundred one, article one, chapter forty-six of this code, of the
40 transferable record and has the same rights and defenses as a
41 holder of an equivalent record or writing under said chapter,
42 including, if the applicable statutory requirements under section
43 three hundred two, article three of said chapter, section five
44 hundred one, article seven of said chapter or section three
45 hundred eight, article nine of said chapter are satisfied, the
46 rights and defenses of a holder in due course, a holder to which
47 a negotiable document of title has been duly negotiated or a
48 purchaser, respectively. Delivery, possession and indorsement
49 are not required to obtain or exercise any of the rights under this
50 subsection.

51 (e) Except as otherwise agreed, an obligor under a transfer-
52 able record has the same rights and defenses as an equivalent
53 obligor under equivalent records or writings under chapter
54 forty-six of this code.

55 (f) If requested by a person against which enforcement is
56 sought, the person seeking to enforce the transferable record
57 shall provide reasonable proof that the person is in control of

58 the transferable record. Proof may include access to the
59 authoritative copy of the transferable record and related
60 business records sufficient to review the terms of the transfer-
61 able record and to establish the identity of the person having
62 control of the transferable record.

§39A-1-17. Relationship with federal law.

1 The enactment of this article is an enactment of the
2 Uniform Electronic Transactions Act (UETA) as approved for
3 enactment in all of the states by the national conference of
4 commissioners on uniform state laws in one thousand nine
5 hundred ninety-nine and is an exception to preemption of state
6 law as permitted by section one hundred two of the federal
7 “Electronic Signatures in Global and National Commerce Act”,
8 Public Law No. 106-229, 15 U.S.C. 7001.

ARTICLE 2. CONSUMER PROTECTIONS AND RESPONSIBILITIES IN ELECTRONIC TRANSACTIONS.

- §39A-2-1. Consent to electronic records.
- §39A-2-2. Preservation of consumer protection; verification or acknowledgment.
- §39A-2-3. Effect of failure to obtain electronic consent or confirmation.
- §39A-2-4. Prospective effect.
- §39A-2-5. Prior consent.
- §39A-2-6. Oral communications.
- §39A-2-7. Retention; accuracy and accessibility.
- §39A-2-8. Retention; originals.
- §39A-2-9. Retention; checks.
- §39A-2-10. Accuracy and ability to retain contracts and other records.
- §39A-2-11. Exceptions.
- §39A-2-12. Severability.

§39A-2-1. Consent to electronic records.

1 Notwithstanding the provisions of article one of this
2 chapter, if a statute, regulation or other rule of law requires that
3 information relating to a transaction or transactions in or
4 affecting interstate or foreign commerce be provided or made

5 available to a consumer in writing, the use of an electronic
6 record to provide or make available such information satisfies
7 the requirement that such information be in writing if:

8 (1) The consumer has affirmatively consented to such use
9 and has not withdrawn such consent;

10 (2) The consumer, prior to consenting, is provided with a
11 clear and conspicuous statement;

12 (A) Informing the consumer of: (i) Any right or option of
13 the consumer to have the record provided or made available on
14 paper or in nonelectronic form; and (ii) the right of the con-
15 sumer to withdraw the consent to have the record provided or
16 made available in an electronic form and of any conditions,
17 consequences, which may include termination of the parties'
18 relationship, or fees in the event of such withdrawal;

19 (B) Informing the consumer of whether the consent applies:
20 (i) Only to the particular transaction which gave rise to the
21 obligation to provide the record; or (ii) to identified categories
22 of records that may be provided or made available during the
23 course of the parties' relationship;

24 (C) Describing the procedures the consumer must use to
25 withdraw consent as provided in paragraph (A) of this section
26 and to update information needed to contact the consumer
27 electronically; and

28 (D) Informing the consumer: (i) How, after consent, the
29 consumer may, upon request, obtain a paper copy of an
30 electronic record; and (ii) whether any fee will be charged for
31 such copy;

32 (3) The consumer:

33 (A) Prior to consenting, is provided with a statement of the
34 hardware and software requirements for access to and retention
35 of the electronic records; and

36 (B) Consents electronically, or confirms his or her consent
37 electronically, in a manner that reasonably demonstrates that
38 the consumer can access information in the electronic form that
39 will be used to provide the information that is the subject of the
40 consent; and

41 (4) After the consent of a consumer in accordance with
42 subdivision (1) of this section, if a change in the hardware or
43 software requirements needed to access or retain electronic
44 records creates a material risk that the consumer will not be
45 able to access or retain a subsequent electronic record that was
46 the subject of the consent, the person providing the electronic
47 record:

48 (A) Provides the consumer with a statement of: (i) The
49 revised hardware and software requirements for access to and
50 retention of the electronic records; and (ii) the right to withdraw
51 consent without the imposition of any fees for such withdrawal
52 and without the imposition of any condition or consequence
53 that was not disclosed under subparagraph (ii), paragraph (A),
54 subdivision (2) of this subsection; and

55 (B) Again complies with subdivision (3).

§39A-2-2. Preservation of consumer protection; verification or acknowledgment.

1 (a) Nothing in this article affects the content or timing of
2 any disclosure or other record required to be provided or made
3 available to any consumer under any statute, rule, regulation or
4 other rule of law.

5 (b) If a law that was enacted prior to this article expressly
6 requires a record to be provided or made available by a speci-
7 fied method that requires verification or acknowledgment of
8 receipt, the record may be provided or made available electroni-
9 cally only if the method used provides verification or acknowl-
10 edgment of receipt.

**§39A-2-3. Effect of failure to obtain electronic consent or confir-
mation.**

1 (a) The legal effectiveness, validity or enforceability of any
2 contract executed by a consumer shall not be denied solely
3 because of the failure to obtain electronic consent or confirma-
4 tion of consent by that consumer in accordance with paragraph
5 (B), subdivision (3), section one of this article.

§39A-2-4. Prospective effect.

1 Withdrawal of consent by a consumer shall not affect the
2 legal effectiveness, validity or enforceability of electronic
3 records provided or made available to that consumer in accor-
4 dance with section one of this article prior to implementation of
5 the consumer's withdrawal of consent. A consumer's with-
6 drawal of consent shall be effective within a reasonable period
7 of time after receipt of the withdrawal by the provider of the
8 record. Failure to comply with subdivision (4), section one of
9 this article may, at the election of the consumer, be treated as a
10 withdrawal of consent for purposes of this subsection.

§39A-2-5. Prior consent.

1 This section does not apply to any records that are provided
2 or made available to a consumer who has consented prior to the
3 effective date of this title to receive such records in electronic
4 form as permitted by any statute, regulation or other rule of law.

§39A-2-6. Oral communications.

1 An oral communication or a recording of an oral communi-
2 cation shall not qualify as an electronic record for purposes of
3 this article except as otherwise provided under applicable law.

§39A-2-7. Retention; accuracy and accessibility.

1 (a) If a statute, rule, regulation or other rule of law requires
2 that a contract or other record relating to a transaction in or
3 affecting interstate or foreign commerce be retained, that
4 requirement is met by retaining an electronic record of the
5 information in the contract or other record that:

6 (1) Accurately reflects the information set forth in the
7 contract or other record; and

8 (2) Remains accessible to all persons who are entitled to
9 access by statute, regulations or rule of law, for the period
10 required by such statute, regulation or rule of law, in a form that
11 is capable of being accurately reproduced for later reference,
12 whether by transmission, printing or otherwise.

13 (b) A requirement to retain a contract or other record in
14 accordance with subsection (a) of this section does not apply to
15 any information whose sole purpose is to enable the contract or
16 other record to be sent, communicated or received.

§39A-2-8. Retention; originals.

1 If a statute, regulation or other rule of law requires a
2 contract or other record relating to a transaction in or affecting
3 interstate or foreign commerce to be provided, available or
4 retained in its original form, or provides consequences if the
5 contract or other record is not provided, available or retained in
6 its original form, that statute, rule, regulation or rule of law is
7 satisfied by an electronic record that complies with section
8 seven of this article.

§39A-2-9. Retention; checks.

1 If a statute, rule, regulation or other rule of law requires the
2 retention of a check, that requirement is satisfied by retention
3 of an electronic record of the information on the front and back
4 of the check in accordance with section seven of this article.

§39A-2-10. Accuracy and ability to retain contracts and other records.

1 If a statute, rule, regulation or other rule of law requires that
2 a contract or other record relating to a transaction in or affecting
3 interstate or foreign commerce be in writing, the legal effect,
4 validity or enforceability of an electronic record of such
5 contract or other record may be denied if such electronic record
6 is not in a form that is capable of being retained and accurately
7 reproduced for later reference by all parties or persons who are
8 entitled to retain the contract or other record.

§39A-2-11. Exceptions.

1 The provisions of article one of this chapter do not apply to:

2 (1) Court orders or notices, or official court documents
3 (including briefs, pleadings, and other writings) required to be
4 executed in connection with court proceedings;

5 (2) Any notice of:

6 (A) The cancellation or termination of utility services
7 (including water, heat and power);

8 (B) Default, acceleration, repossession, foreclosure,
9 eviction or the right to cure, under a credit agreement secured
10 by, or a rental agreement for, a primary residence of an individ-
11 ual;

12 (C) The cancellation or termination of health insurance or
13 benefits or life insurance benefits (excluding annuities); or

14 (D) Recall of a product, or material failure of a product, that
15 risks endangering health or safety; or

16 (3) Any document required to accompany any transporta-
17 tion or handling of hazardous materials, pesticides or other
18 toxic or dangerous materials.

§39A-2-12. Severability.

1 If any provision of this article be found by a court of
2 competent jurisdiction to be unenforceable under the constitu-
3 tion of this state or the laws and constitutions of the United
4 States, the remaining provisions of this article shall be sever-
5 able and shall continue in full force and effect.

ARTICLE 3. DIGITAL SIGNATURES; STATE ELECTRONIC RECORDS AND TRANSACTIONS.

§39A-3-1. Definitions.

§39A-3-2. Acceptance of electronic signature by governmental entities in satisfac-
tion of signature requirement.

§39A-3-3. Duties of the secretary of state; state agencies use of electronic signatures.

§39A-3-4. Secretary of state; liability.

§39A-3-5. Severability.

§39A-3-1. Definitions.

1 (1) "Certificate" means a computer-based record that:

2 (A) Identifies the certification authority issuing it;

3 (B) Names or identifies its subscriber;

4 (C) Contains the subscriber's public key; and

5 (D) Is digitally signed by the certification authority issuing
6 it.

7 (2) "Certification authority" means a person who issues a
8 certificate.

9 (3) "Digital mark" consists of an electronic code indicating
10 approval or confirmation which is entered into a protected
11 digital record following access protocols which identify the user
12 and require a password, personal identification number,
13 encrypted card or other security device which restricts access to
14 one or more authorized individuals; and

15 (4) "Digital signature" consists of a message transformed
16 using an asymmetric cryptosystem so that a person having the
17 initial message and the signer's public key can accurately
18 determine:

19 (A) Whether the transformed message was created using the
20 private key that corresponds to the signer's public key; and

21 (B) Whether the initial message has been altered since the
22 message was transformed.

**§39A-3-2. Acceptance of electronic signature by governmental
entities in satisfaction of signature requirement.**

1 (a) Any governmental entity may, by appropriate official
2 action, authorize the acceptance of electronic signatures in lieu
3 of original signatures on messages or filings requiring one or
4 more original signatures, subject to the requirements and
5 limitations of section three of this article.

6 (b) Any governmental entity may elect to participate and
7 utilize the secretary of state's digital signature authority and
8 registry. Upon acceptance of and registration with the secretary
9 of state's digital signature authority and registry, the govern-

10 mental entity's electronic transactions are bound to the regula-
11 tion of the authority and registry and those rules promulgated
12 thereunder. Any governmental entity not required to participate,
13 but which elects to participate, may withdraw at any time from
14 the program upon notification of the secretary of state and all
15 others who utilize that entity's digital signature program.

16 (c) Any governmental entity may adopt, in the manner
17 provided by law, an ordinance, rule or official policy designat-
18 ing the documents on which electronic signatures are authorized
19 and the type or types of electronic signatures which may be
20 accepted for each type of document. Those governmental
21 entities not subject to the provisions of chapter twenty-nine-a of
22 this code which proposes to authorize the acceptance of
23 electronic signatures on documents filed with that entity shall
24 give public notice of the proposed adoption in a manner
25 prescribed by law, an ordinance, rule or official policy, but in
26 no case for less than thirty days before adoption.

27 (d) Any governmental entity which intends to extend,
28 modify or revoke the authority to accept electronic signatures
29 shall do so by the same means and with the same notice as
30 required in this section for adoption.

**§39A-3-3. Duties of the secretary of state; state agencies use of
electronic signatures.**

1 (a) The secretary of state shall propose legislative rules for
2 promulgation in accordance with the provisions of article three,
3 chapter twenty-nine-a of this code to establish standards and
4 processes to facilitate the use of electronic signatures in all
5 governmental transactions by state agencies subject to chapter
6 twenty-nine-a of this code. The rules shall include minimum
7 standards for secure transactions to promote confidence and
8 efficiency in legally binding electronic document transactions.
9 The rules may be amended from time to time to keep the rules

10 current with new developments in technology and improve-
11 ments in secured transaction processes.

12 (b) The secretary of state is designated the certification
13 authority and repository for all governmental agencies which
14 are subject to chapter twenty-nine-a of this code and shall
15 regulate transactions and digital signature verifications. The
16 secretary may enter into reciprocal agreements with all state
17 and federal governmental entities to promote the efficient
18 governmental use of electronic transactions. The secretary of
19 state may propose legislative rules for issuing certificates that
20 bind public keys to individuals, and other electronic transaction
21 authentication devices as provided for in this article. The
22 secretary of state is further authorized to contract with a private
23 entity to serve as certification authority for the state of West
24 Virginia. This private certification authority may contract with
25 persons to provide certification service. Any contract entered
26 into must require the certification authority to meet the require-
27 ments of this article and any rules promulgated by the secretary
28 of state.

29 (c) Nothing contained in this article may be construed to
30 mandate any specific form of technology, process or standard
31 to be the only technology, process or standard which may be
32 utilized by state entities. Nor may anything contained in this
33 article be construed to limit the secretary of state in adopting by
34 legislative rule, alternative technologies to authorize electronic
35 signatures.

§39A-3-4. Secretary of state; liability.

1 The secretary of state, serving as authority and repository
2 of signature keys for governmental entities shall revoke any
3 signature key when the secretary has reason to believe that the
4 digital signature key has been stolen, fraudulently used or
5 otherwise compromised. This article creates no liability upon

- 6 the secretary of state for any transaction compromised by any
- 7 illegal act or inappropriate uses associated with electronic
- 8 signatures.

§39A-3-5. Severability.

- 1 If any provision of this article be found by a court of
- 2 competent jurisdiction to be unenforceable under the constitu-
- 3 tion of this state or the laws and constitutions of the United
- 4 States, the remaining provisions of this article shall be sever-
- 5 able and shall continue in full force and effect.

CHAPTER 46A. WEST VIRGINIA CONSUMER CREDIT AND PROTECTION ACT.

ARTICLE 6I. CONSUMER PROTECTIONS IN ELECTRONIC TRANSACTIONS.

§46A-6I-1. Definitions.

§46A-6I-2. Electronic response to electronic notices.

§46A-6I-3. Receipt of electronic record.

§46A-6I-4. Electronic transferable records.

§46A-6I-5. Relationship with federal and state law.

§46A-6I-6. Waiver.

§46A-6I-7. Severability.

§46A-6I-1. Definitions.

- 1 (a) For purposes of this article, the terms herein have the
- 2 meaning ascribed in section two, article one, chapter thirty-
- 3 nine-a of this code.

- 4 (b) "Consumer transaction" means a transaction involving
- 5 an individual with respect to or primarily affecting personal,
- 6 family, household or agricultural purposes.

§46A-6I-2. Electronic response to electronic notices.

1 In a consumer transaction, when a consumer is required to
2 provide notice to exercise or preserve the consumer's rights
3 under any law, the consumer may exercise or preserve that right
4 using the same method by which the consumer was provided
5 with notice of that right.

§46A-6I-3. Receipt of electronic record.

1 Notwithstanding the provisions of article one, chapter
2 thirty-nine-a of this code, in a consumer transaction, an
3 electronic record is not sent to or received by a party if the
4 sender has actual knowledge that such party did not actually
5 receive the electronic record. In that case, the sender's sole
6 obligation shall be to take reasonable steps to attempt redelivery
7 using information in the sender's files. This redelivery require-
8 ment is satisfied if the sender sends the electronic record to a
9 different electronic mail address or to a postal address the
10 sender has on file.

§46A-6I-4. Electronic transferable records.

1 (a) In addition to the provisions of article one, chapter
2 thirty-nine-a of this code, this section applies to transferable
3 records in a consumer transaction.

4 (b) If payment is made to a person indicated to be in control
5 of a transferable record, as described in section sixteen, article
6 one of this chapter, by a system employed for evidencing the
7 transfer of interest in the transferable records, then the obligor
8 is discharged to the extent of the payment as permitted by
9 article three, chapter forty-six of this code.

§46A-6I-5. Relationship with federal and state law.

1 The requirements of this article are intended to supplement,
2 not to modify, limit, or supersede, the requirements of the
3 federal Electronic Signatures in Global and National Commerce

4 Act, Public Law No. 106-229, 15 U.S.C. 7001 or article one of
5 this chapter.

§46A-6I-6. Waiver.

1 In consumer transactions, the rules and requirements set out
2 in this article may not be changed by agreement of the parties.

§46A-6I-7. Severability.

1 If any provision of this article be found by a court of
2 competent jurisdiction to be unenforceable under the constitu-
3 tion of this state or the laws and constitutions of the United
4 States, the remaining provisions of this article shall be sever-
5 able and shall continue in full force and effect.

**CHAPTER 55. ACTIONS, SUITS AND ARBITRATION;
JUDICIAL SALE.**

ARTICLE 8. ACTIONS ON CONTRACTS.

§55-8-15. Choice of law for computer information agreements.

1 A choice of law provision in a computer information
2 agreement which provides that the contract is to be interpreted
3 pursuant to the laws of a state that has enacted uniform com-
4 puter information transactions act, as proposed by the national
5 conference of commissioners on uniform state laws, or any
6 substantially similar law, is voidable and the agreement shall be
7 interpreted pursuant to the laws of this state if the party against
8 whom enforcement of the choice of law provision is sought is
9 a resident of this state or has its principal place of business
10 located in this state. For purposes of this section, a “computer
11 information agreement” means an agreement that would be
12 governed by the uniform computer transactions act or substan-
13 tially similar law as enacted in the state specified in the choice

14 of law provision if that state's laws were applied to the agree-
15 ment.

CHAPTER 121

(Com. Sub. for H. B. 2313 — By Delegates Caputo and Prunty)

[Passed April 13, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seventeen, article five, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to time lost as a volunteer fire department member or an emergency medical service attendant; adding additional persons who may provide verification of an employee's response to an emergency call; modifying the definition of "emergency"; clarifying benefits as including seniority; and permitting the emergency medical service attendant to choose whether lost time as an emergency medical service attendant is subtracted from regular pay or accumulated annual leave at the option of the employee.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. WAGE PAYMENT AND COLLECTION.

§21-5-17. Employers prohibited from discharging employees for time lost as volunteer firemen or emergency medical service attendant.

1 No employer may terminate, or use any disciplinary action
2 against, an employee who is a member of a volunteer fire
3 department or who is an emergency medical service attendant
4 and who, in the line of emergency duty as a volunteer fireman
5 or an emergency medical service attendant, responds to an
6 emergency call prior to the time he or she is due to report for
7 work and which emergency results in a loss of time from his or
8 her employment.

9 Any time lost from employment as provided in this section
10 may be charged against the employee's regular pay or against
11 the employee's accumulated leave, if any, at the option of the
12 employee.

13 At the request of an employer, any employee losing time as
14 provided herein shall supply his or her employer with a
15 statement from the chief of the volunteer fire department or the
16 supervisor or other appropriate person in charge of the emer-
17 gency medical service entity stating that the employee re-
18 sponded to an emergency call and the time thereof.

19 As used in this section, "emergency" means going to,
20 attending to or coming from: (1) A fire call; (2) a hazardous or
21 toxic materials spill and cleanup; (3) a motor vehicle accident;
22 or (4) any other situation to which his or her fire department or
23 emergency medical service entity has been or later could be
24 dispatched. The term "employer" includes any individual,
25 partnership, association, corporation, business trust or any
26 person or group of persons acting directly or indirectly in the
27 interest of an employer in relation to any employee.

28 Any employer who willfully and knowingly violates the
29 provisions of this section must reinstate the employee to his or
30 her former position and shall be required to pay the employee
31 all lost wages and benefits, including seniority, for the period
32 between termination and reinstatement. Any action to enforce

33 the provisions of this section must be commenced within a
34 period of one year after the date of violation and the action must
35 be commenced in the circuit court of the county wherein the
36 place of employment is located.

CHAPTER 122

(Com. Sub. for S. B. 461 — By Senator Chafin)

[Passed April 13, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article six, chapter twenty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twelve, relating to local emergency telephone systems; and providing for the establishment of a local policy for the dispatching of emergency towing services under certain situations.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. LOCAL EMERGENCY TELEPHONE SYSTEM.

§24-6-12. Dispatching of towing services for emergency towing of vehicles; exceptions.

- 1 (a) Every three years, the county commission of each
- 2 county or the municipality operating an emergency telephone
- 3 system or an enhanced emergency telephone system shall, in

4 consultation with all public safety units, public agencies and all
5 available towing services registered as common carriers
6 pursuant to the provisions of chapter twenty-four-a of this code,
7 establish a policy that provides for the most prompt, fair,
8 equitable and effective response to requests or dispatches for
9 emergency towing services.

10 (b) For each incident where towing services are required,
11 the public agency procuring towing services shall maintain a
12 public record of the name of the towing service utilized.

CHAPTER 123

(Com. Sub. for H. B. 2218 — By Mr. Speaker,
Mr. Kiss and Delegate Trump)
[By Request of the Executive]

[Passed April 14, 2001; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article one, chapter five-f of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section one, article two of said chapter; and to amend and reenact sections one, two and six, article one, chapter twenty-two of said code, all relating to redesignating the division of environmental protection; redesignation of division of environmental protection as department of environmental protection; transfer of all agencies and boards previously under bureau of environment to department of environmental protection; and increase of salary of secretary of department of environmental protection.

Be it enacted by the Legislature of West Virginia:

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

Chapter

5F. Reorganization of the Executive Branch of State Government.

22. Environmental Resources.

CHAPTER 5F. REORGANIZATION OF THE EXECUTIVE BRANCH OF STATE GOVERNMENT.

Article

1. General Provisions.

2. Transfer of Agencies and Boards.

ARTICLE 1. GENERAL PROVISIONS.

§5F-1-2. Executive departments created; offices of secretary created.

1 (a) There are created, within the executive branch of the
2 state government, the following departments:

3 (1) Department of administration;

4 (2) Department of education and the arts;

5 (3) Department of environmental protection;

6 (4) Department of health and human resources;

7 (5) Department of military affairs and public safety;

8 (6) Department of tax and revenue; and

9 (7) Department of transportation.

10 (b) Each department will be headed by a secretary ap-
11 pointed by the governor with the advice and consent of the
12 Senate. Each secretary serves at the will and pleasure of the
13 governor.

ARTICLE 2. TRANSFER OF AGENCIES AND BOARDS.

***§5F-2-1. Transfer and incorporation of agencies and boards; funds.**

1 (a) The following agencies and boards, including all of the
2 allied, advisory, affiliated or related entities and funds associ-
3 ated with any agency or board, are transferred to and incorpo-
4 rated in and administered as a part of the department of
5 administration:

6 (1) Building commission provided for in article six, chapter
7 five of this code;

8 (2) Public employees insurance agency and public employ-
9 ees insurance agency advisory board provided for in article
10 sixteen, chapter five of this code;

11 (3) Governor's mansion advisory committee provided for
12 in article five, chapter five-a of this code;

13 (4) Commission on uniform state laws provided for in
14 article one-a, chapter twenty-nine of this code;

15 (5) Education and state employees grievance board pro-
16 vided for in article twenty-nine, chapter eighteen of this code
17 and article six-a, chapter twenty-nine of this code;

18 (6) Board of risk and insurance management provided for
19 in article twelve, chapter twenty-nine of this code;

***Clerk's Note:** This section was also amended by H. B. 2199 (Chapter 91), which passed prior to this act.

20 (7) Boundary commission provided for in article twenty-
21 three, chapter twenty-nine of this code;

22 (8) Public defender services provided for in article
23 twenty-one, chapter twenty-nine of this code;

24 (9) Division of personnel provided for in article six, chapter
25 twenty-nine of this code;

26 (10) The West Virginia ethics commission provided for in
27 article two, chapter six-b of this code; and

28 (11) Consolidated public retirement board provided for in
29 article ten-d, chapter five of this code.

30 (b) The department of commerce, labor and environmental
31 resources and the office of secretary of the department of
32 commerce, labor and environmental resources are abolished.
33 For purposes of administrative support and liaison with the
34 office of the governor, the following agencies and boards,
35 including all allied, advisory and affiliated entities are grouped
36 under two bureaus as follows:

37 (1) Bureau of commerce:

38 (A) Division of labor provided for in article one, chapter
39 twenty-one of this code, which includes:

40 (i) Occupational safety and health review commission
41 provided for in article three-a, chapter twenty-one of this code;
42 and

43 (ii) Board of manufactured housing construction and safety
44 provided for in article nine, chapter twenty-one of this code;

45 (B) Office of miners' health, safety and training provided
46 for in article one, chapter twenty-two-a of this code. The
47 following boards are transferred to the office of miners' health,

48 safety and training for purposes of administrative support and
49 liaison with the office of the governor:

50 (i) Board of coal mine health and safety and coal mine
51 safety and technical review committee provided for in article
52 six, chapter twenty-two-a of this code;

53 (ii) Board of miner training, education and certification
54 provided for in article seven, chapter twenty-two-a of this code;
55 and

56 (iii) Mine inspectors' examining board provided for in
57 article nine, chapter twenty-two-a of this code;

58 (C) The West Virginia development office provided for in
59 article two, chapter five-b of this code, which includes:

60 (i) Economic development authority provided for in article
61 fifteen, chapter thirty-one of this code; and

62 (ii) Tourism commission provided for in article two,
63 chapter five-b of this code and the office of the tourism
64 commissioner;

65 (D) Division of natural resources and natural resources
66 commission provided for in article one, chapter twenty of this
67 code. The Blennerhassett historical state park provided for in
68 article eight, chapter twenty-nine of this code is under the
69 division of natural resources;

70 (E) Division of forestry provided for in article one-a,
71 chapter nineteen of this code;

72 (F) Geological and economic survey provided for in article
73 two, chapter twenty-nine of this code;

74 (G) Water development authority and board provided for in
75 article one, chapter twenty-two-c of this code;

76 (2) Bureau of employment programs provided for in article
77 one, chapter twenty-one-a of this code.

78 (c) Bureau of environment is abolished and the following
79 agencies and boards, including all allied, advisory and affiliated
80 entities, are transferred to the department of environmental
81 protection for purposes of administrative support and liaison
82 with the office of the governor:

83 (1) Air quality board provided for in article two, chapter
84 twenty-two-b of this code;

85 (2) Solid waste management board provided for in article
86 three, chapter twenty-two-c of this code;

87 (3) Environmental quality board, or its successor board,
88 provided for in article three, chapter twenty-two-b of this code;

89 (4) Surface mine board provided for in article four, chapter
90 twenty-two-b of this code;

91 (5) Oil and gas inspectors' examining board provided for in
92 article seven, chapter twenty-two-c of this code;

93 (6) Shallow gas well review board provided for in article
94 eight, chapter twenty-two-c of this code; and

95 (7) Oil and gas conservation commission provided for in
96 article nine, chapter twenty-two-c of this code.

97 (d) The following agencies and boards, including all of the
98 allied, advisory, affiliated or related entities and funds associ-
99 ated with any agency or board, are transferred to and incorpo-
100 rated in and administered as a part of the department of
101 education and the arts:

102 (1) Library commission provided for in article one, chapter
103 ten of this code;

104 (2) Educational broadcasting authority provided for in
105 article five, chapter ten of this code;

106 (3) Joint commission for vocational-technical-occupational
107 education provided for in article three-a, chapter eighteen-b of
108 this code;

109 (4) Division of culture and history provided for in article
110 one, chapter twenty-nine of this code; and

111 (5) Division of rehabilitation services provided for in
112 section two, article ten-a, chapter eighteen of this code.

113 (e) The following agencies and boards, including all of the
114 allied, advisory, affiliated or related entities and funds associ-
115 ated with any agency or board, are transferred to and incorpo-
116 rated in and administered as a part of the department of health
117 and human resources:

118 (1) Human rights commission provided for in article eleven,
119 chapter five of this code;

120 (2) Division of human services provided for in article two,
121 chapter nine of this code;

122 (3) Bureau for public health provided for in article one,
123 chapter sixteen of this code;

124 (4) Office of emergency medical services and advisory
125 council thereto provided for in article four-c, chapter sixteen of
126 this code;

127 (5) Health care cost review authority provided for in article
128 twenty-nine-b, chapter sixteen of this code;

129 (6) Commission on mental retardation provided for in
130 article fifteen, chapter twenty-nine of this code;

- 131 (7) Women's commission provided for in article twenty,
132 chapter twenty-nine of this code; and
- 133 (8) The child support enforcement division provided for in
134 chapter forty-eight of this code.
- 135 (f) The following agencies and boards, including all of the
136 allied, advisory, affiliated or related entities and funds associ-
137 ated with any agency or board, are transferred to and incorpor-
138 ated in and administered as a part of the department of military
139 affairs and public safety:
- 140 (1) Adjutant general's department provided for in article
141 one-a, chapter fifteen of this code;
- 142 (2) Armory board provided for in article six, chapter fifteen
143 of this code;
- 144 (3) Military awards board provided for in article one-g,
145 chapter fifteen of this code;
- 146 (4) West Virginia state police provided for in article two,
147 chapter fifteen of this code;
- 148 (5) Office of emergency services and disaster recovery
149 board provided for in article five, chapter fifteen of this code
150 and emergency response commission provided for in article
151 five-a of said chapter;
- 152 (6) Sheriffs' bureau provided for in article eight, chapter
153 fifteen of this code;
- 154 (7) Division of corrections provided for in chapter
155 twenty-five of this code;
- 156 (8) Fire commission provided for in article three, chapter
157 twenty-nine of this code;

158 (9) Regional jail and correctional facility authority provided
159 for in article twenty, chapter thirty-one of this code;

160 (10) Board of probation and parole provided for in article
161 twelve, chapter sixty-two of this code; and

162 (11) Division of veterans' affairs and veterans' council
163 provided for in article one, chapter nine-a of this code.

164 (g) The following agencies and boards, including all of the
165 allied, advisory, affiliated or related entities and funds associ-
166 ated with any agency or board, are transferred to and incorpo-
167 rated in and administered as a part of the department of tax and
168 revenue:

169 (1) Tax division provided for in article one, chapter eleven
170 of this code;

171 (2) Racing commission provided for in article twenty-three,
172 chapter nineteen of this code;

173 (3) Lottery commission and position of lottery director
174 provided for in article twenty-two, chapter twenty-nine of this
175 code;

176 (4) Agency of insurance commissioner provided for in
177 article two, chapter thirty-three of this code;

178 (5) Office of alcohol beverage control commissioner
179 provided for in article sixteen, chapter eleven of this code and
180 article two, chapter sixty of this code;

181 (6) Board of banking and financial institutions provided for
182 in article three, chapter thirty-one-a of this code;

183 (7) Lending and credit rate board provided for in chapter
184 forty-seven-a of this code; and

185 (8) Division of banking provided for in article two, chapter
186 thirty-one-a of this code.

187 (h) The following agencies and boards, including all of the
188 allied, advisory, affiliated or related entities and funds associ-
189 ated with any agency or board, are transferred to and incorpo-
190 rated in and administered as a part of the department of
191 transportation:

192 (1) Division of highways provided for in article two-a,
193 chapter seventeen of this code;

194 (2) Parkways, economic development and tourism authority
195 provided for in article sixteen-a, chapter seventeen of this code;

196 (3) Division of motor vehicles provided for in article two,
197 chapter seventeen-a of this code;

198 (4) Driver's licensing advisory board provided for in article
199 two, chapter seventeen-b of this code;

200 (5) Aeronautics commission provided for in article two-a,
201 chapter twenty-nine of this code;

202 (6) State rail authority provided for in article eighteen,
203 chapter twenty-nine of this code; and

204 (7) Port authority provided for in article sixteen-b, chapter
205 seventeen of this code.

206 (i) Except for powers, authority and duties that have been
207 delegated to the secretaries of the departments by the provisions
208 of section two of this article, the existence of the position of
209 administrator and of the agency and the powers, authority and
210 duties of each administrator and agency are not affected by the
211 enactment of this chapter.

212 (j) Except for powers, authority and duties that have been
213 delegated to the secretaries of the departments by the provisions
214 of section two of this article, the existence, powers, authority
215 and duties of boards and the membership, terms and qualifica-
216 tions of members of such boards are not affected by the
217 enactment of this chapter and all boards which are appellate
218 bodies or were otherwise established to be independent decision
219 makers will not have their appellate or independent deci-
220 sion-making status affected by the enactment of this chapter.

221 (k) Any department previously transferred to and incorpo-
222 rated in a department created in section two, article one of this
223 chapter by prior enactment of this section in chapter three, acts
224 of the Legislature, first extraordinary session, one thousand nine
225 hundred eighty-nine, and subsequent amendments, means a
226 division of the appropriate department. Wherever reference is
227 made to any department transferred to and incorporated in a
228 department created in section two, article one of this chapter,
229 the reference means a division of the appropriate department,
230 and any reference to a division of a department so transferred
231 and incorporated means a section of the appropriate division of
232 the department.

233 (l) When an agency, board or commission is transferred
234 under a bureau or agency other than a department headed by a
235 secretary pursuant to this section, that transfer is solely for
236 purposes of administrative support and liaison with the office
237 of the governor, a department secretary or a bureau. The
238 bureaus created by the Legislature upon the abolishment of the
239 department of commerce, labor and environmental resources in
240 the year one thousand nine hundred ninety-four will be headed
241 by a commissioner or other statutory officer of an agency
242 within that bureau. Nothing in this section extends the powers
243 of department secretaries under section two of this article to any
244 person other than a department secretary and nothing limits or

245 abridges the statutory powers and duties of statutory commis-
246 sioners or officers pursuant to this code.

CHAPTER 22. ENVIRONMENTAL RESOURCES.

ARTICLE 1. DEPARTMENT OF ENVIRONMENTAL PROTECTION.

§22-1-1. Legislative findings; legislative statement of policy and purpose.

§22-1-2. Definitions.

§22-1-6. Secretary of the department of environmental protection.

§22-1-1. Legislative findings; legislative statement of policy and purpose.

1 (a) The Legislature finds that:

2 (1) Restoring and protecting the environment is fundamen-
3 tal to the health and welfare of individual citizens, and our
4 government has a duty to provide and maintain a healthful
5 environment for our citizens.

6 (2) The state has the primary responsibility for protecting
7 the environment; other governmental entities, public and
8 private organizations and our citizens have the primary respon-
9 sibility of supporting the state in its role as protector of the
10 environment.

11 (3) Governmental decisions on matters which relate to the
12 use, enhancement, preservation, protection and conservation of
13 the environment should be made after public participation and
14 public hearings.

15 (4) Efficiency in the wise use, enhancement, preservation,
16 protection and conservation of the environment can best be
17 accomplished by an integrated and interdisciplinary approach
18 in decision making and would benefit from the coordination,
19 consolidation and integration of state programs and agencies

20 which are significantly concerned with the use, enhancement,
21 preservation, protection and conservation of the environment.

22 (5) Those functions of government which regulate the
23 environment should be consolidated in order to accomplish the
24 purposes set forth in this article, to carry out the environmental
25 functions of government in the most efficient and cost effective
26 manner, to protect human health and safety and, to the greatest
27 degree practicable, to prevent injury to plant, animal and
28 aquatic life, improve and maintain the quality of life of our
29 citizens, and promote economic development consistent with
30 environmental goals and standards.

31 (b) The Legislature declares that the establishment of a
32 department of environmental protection is in the public interest
33 and will promote the general welfare of the state of West
34 Virginia without sacrificing social and economic development.
35 It is the policy of the state of West Virginia, in cooperation with
36 other governmental agencies, public and private organizations,
37 and the citizens of this state, to use all practicable means and
38 measures to prevent or eliminate harm to the environment and
39 biosphere, to create and maintain conditions under which man
40 and nature can exist in productive harmony, and fulfill the
41 social, economic and other requirements of present and future
42 generations. The purposes of this chapter are:

43 (1) To strengthen the commitment of this state to restore,
44 maintain and protect the environment;

45 (2) To consolidate environmental regulatory programs in a
46 single state agency;

47 (3) To provide a comprehensive program for the conserva-
48 tion, protection, exploration, development, enjoyment and use
49 of the natural resources of the state of West Virginia;

50 (4) To supplement and complement the efforts of the state
51 by coordinating state programs with the efforts of other
52 governmental entities, public and private organizations and the
53 general public; to improve the quality of the environment, the
54 public health and public enjoyment of the environment, and the
55 propagation and protection of animal, aquatic and plant life, in
56 a manner consistent with the benefits to be derived from strong
57 agricultural, manufacturing, tourism and energy-producing
58 industries;

59 (5) Insofar as federal environmental programs require state
60 participation, to endeavor to obtain and continue state primacy
61 in the administration of such federally-mandated environmental
62 programs, and to endeavor to maximize federal funds which
63 may be available to accomplish the purposes of the state and
64 federal environmental programs and to cooperate with appropri-
65 ate federal agencies to meet environmental goals;

66 (6) To encourage the increased involvement of all citizens
67 in the development and execution of state environmental
68 programs;

69 (7) To promote improvements in the quality of the environ-
70 ment through research, evaluation and sharing of information;

71 (8) To improve the management and effectiveness of state
72 environmental protection programs;

73 (9) To increase the accountability of state environmental
74 protection programs to the governor, the Legislature and the
75 public generally; and

76 (10) To promote pollution prevention by encouraging
77 reduction or elimination of pollutants at the source through
78 process modification, material substitutions, in-process recy-
79 cling, reduction of raw material use or other source reduction
80 opportunities.

§22-1-2. Definitions.

1 As used in this article, unless otherwise provided or
2 indicated by the context:

3 (1) "Department" means the department of environmental
4 protection.

5 (2) "Director" means the secretary of the department of
6 environmental protection.

7 (3) "Division" means the department of environmental
8 protection.

9 (4) "Function" includes any duty, obligation, power,
10 authority, responsibility, right, privilege, activity or program.

11 (5) "Office" includes any office, board, agency, unit,
12 organizational entity, or component thereof.

13 (6) "Secretary" means the secretary of the department of
14 environmental protection.

***§22-1-6. Secretary of the department of environmental protection.**

1 (a) The secretary is the chief executive officer of the
2 division. Subject to section seven of this article and other
3 provisions of law, the secretary shall organize the department
4 into such offices, sections, agencies and other units of activity
5 as may be found by the secretary to be desirable for the orderly,
6 efficient and economical administration of the department and
7 for the accomplishment of its objects and purposes. The
8 secretary may appoint a deputy secretary, chief of staff,
9 assistants, hearing officers, clerks, stenographers and other
10 officers, technical personnel and employees needed for the

***Clerk's Note:** This section was also amended by H. B. 2912 (Chapter 262), which passed prior to this act.

11 operation of the department and may prescribe their powers and
12 duties and fix their compensation within amounts appropriated.

13 (b) The secretary has the power to and may designate
14 supervisory officers or other officers or employees of the
15 department to substitute for him or her on any board or com-
16 mission established under this code or to sit in his or her place
17 in any hearings, appeals, meetings or other activities with such
18 substitute having the same powers, duties, authority and
19 responsibility as the secretary. The secretary has the power to
20 delegate, as he or she considers appropriate, to supervisory
21 officers or other officers or employees of the department his or
22 her powers, duties, authority and responsibility relating to
23 issuing permits, hiring and training inspectors and other
24 employees of the department, conducting hearings and appeals
25 and such other duties and functions set forth in this chapter or
26 elsewhere in this code.

27 (c) The secretary has responsibility for the conduct of the
28 intergovernmental relations of the department, including
29 assuring:

30 (1) That the department carries out its functions in a manner
31 which supplements and complements the environmental
32 policies, programs and procedures of the federal government,
33 other state governments and other instrumentalities of this state;
34 and

35 (2) That appropriate officers and employees of the division
36 consult with individuals responsible for making policy relating
37 to environmental issues in the federal government, other state
38 governments and other instrumentalities of this state concerning
39 differences over environmental policies, programs and proce-
40 dures and concerning the impact of statutory law and rules upon
41 the environment of this state.

42 (d) In addition to other powers, duties and responsibilities
43 granted and assigned to the secretary by this chapter, the
44 secretary is hereby authorized and empowered to:

45 (1) Sign and execute in the name of the state by the
46 "department of environmental protection" any contract or
47 agreement with the federal government or its departments or
48 agencies, subdivisions of the state, corporations, associations,
49 partnerships or individuals: *Provided*, That the powers granted
50 to the secretary to enter into agreements or contracts and to
51 make expenditures and obligations of public funds under this
52 subdivision may not exceed or be interpreted as authority to
53 exceed the powers granted by the Legislature to the various
54 commissioners, directors or board members of the various
55 departments, agencies or boards that comprise and are incorpo-
56 rated into each secretary's department pursuant to the provi-
57 sions of chapter five-f of this code;

58 (2) Conduct research in improved environmental protection
59 methods and disseminate information to the citizens of this
60 state;

61 (3) Enter private lands to make surveys and inspections for
62 environmental protection purposes; to investigate for violations
63 of statutes or rules which the division is charged with enforcing;
64 to serve and execute warrants and processes; to make arrests;
65 issue orders, which for the purposes of this chapter include
66 consent agreements; and to otherwise enforce the statutes or
67 rules which the division is charged with enforcing;

68 (4) Acquire for the state in the name of the " department of
69 environmental protection" by purchase, condemnation, lease or
70 agreement, or accept or reject for the state, in the name of the
71 department of environmental protection, gifts, donations,
72 contributions, bequests or devises of money, security or
73 property, both real and personal, and any interest in property;

74 (5) Provide for workshops, training programs and other
75 educational programs, apart from or in cooperation with other
76 governmental agencies, necessary to insure adequate standards
77 of public service in the department. The secretary may provide
78 for technical training and specialized instruction of any em-
79 ployee. Approved educational programs, training and instruc-
80 tion time may be compensated for as a part of regular employ-
81 ment. The secretary is authorized to pay out of federal or state
82 funds, or both, as such funds are available, fees and expenses
83 incidental to such educational programs, training, and instruc-
84 tion. Eligibility for participation by employees will be in
85 accordance with guidelines established by the secretary;

86 (6) Issue certifications required under 33 U.S.C. §1341 of
87 the federal Clean Water Act and enter into agreements in
88 accordance with the provisions of section seven-a, article
89 eleven of this chapter. Prior to issuing any certification the
90 secretary shall solicit from the division of natural resources
91 reports and comments concerning the possible certification. The
92 division of natural resources shall direct the reports and
93 comments to the secretary for consideration; and

94 (7) Notwithstanding any provisions of this code to the
95 contrary, employ in-house counsel to perform all legal services
96 for the secretary and the department, including, but not limited
97 to, representing the secretary, any chief, the department or any
98 office thereof in any administrative proceeding or in any
99 proceeding in any state or federal court. Additionally, the
100 secretary may call upon the attorney general for legal assistance
101 and representation as provided by law.

102 (e) The secretary shall be appointed by the governor, by and
103 with the advice and consent of the Senate, and serves at the will
104 and pleasure of the governor.

105 (f) At the time of his or her initial appointment, the secre-
106 tary must be at least thirty years old and must be selected with
107 special reference and consideration given to his or her adminis-
108 trative experience and ability, to his or her demonstrated
109 interest in the effective and responsible regulation of the energy

110 industry and the conservation and wise use of natural resources.
111 The secretary must have at least a bachelor's degree in a related
112 field and at least three years of experience in a position of
113 responsible charge in at least one discipline relating to the
114 duties and responsibilities for which the secretary will be
115 responsible upon assumption of the office. The secretary may
116 not be a candidate for or hold any other public office, may not
117 be a member of any political party committee and shall imme-
118 diately forfeit and vacate his or her office as secretary in the
119 event he or she becomes a candidate for or accepts appointment
120 to any other public office or political party committee.

121 (g) The secretary will receive an annual salary of eighty-
122 five thousand dollars and will be allowed and paid necessary
123 expenses incident to the performance of his or her official
124 duties. Prior to the assumption of the duties of his or her office,
125 the secretary shall take and subscribe to the oath required of
126 public officers prescribed by section five, article IV of the
127 constitution of West Virginia and shall execute a bond, with
128 surety approved by the governor, in the penal sum of ten
129 thousand dollars, which executed oath and bond will be filed in
130 the office of the secretary of state. Premiums on the bond will
131 be paid from the department funds.

CHAPTER 124

**(H. B. 3240 — By Delegates Mahan, Manuel, Amores,
Wills, Smirl, Givens and Hrutkay)**

[Passed April 14, 2001; in effect from passage. Approved by the Governor.]

AN ACT to amend article eleven, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section seven-b; and

to amend and reenact section four, article three, chapter twenty-two-b of said code, all relating to moving rule-making authority for the antidegradation implementation procedures from the environmental quality board to the director of the bureau of environment; and granting emergency and legislative rule-making authority.

Be it enacted by the Legislature of West Virginia:

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

Chapter

22. Environmental Resources.

22B. Environmental Boards.

CHAPTER 22. ENVIRONMENTAL RESOURCES.

ARTICLE 11. WATER POLLUTION CONTROL ACT.

§22-11-7b. Implementation of antidegradation procedures.

1 (a) The director of the bureau of the environment shall
2 establish the antidegradation implementation procedures as
3 required by 40 C.F.R. 131.12(a) which apply to regulated
4 activities that have the potential to affect water quality. The
5 director shall propose for legislative approval pursuant to article
6 three, chapter twenty-nine-a of the code, emergency and
7 legislative rules to establish implementation procedures which
8 include specifics of the review depending upon the existing
9 uses of the water body segment that would be affected, the level
10 of protection “tier” assigned to the applicable water body
11 segment, the nature of the activity, and the extent to which
12 existing water quality would be degraded.

13 (b) The legislative rule filed by the environmental quality
14 board as 46 CSR 1 in the state register on the first day of
15 September, two thousand, authorized under the authority of
16 section four, article three, chapter twenty-two-b, of this code, as
17 amended by the Legislature during the two thousand one
18 legislative session, establishes standards of water quality for
19 waters of the state. Appendices F, F-1, F-2 and F-3 of the rule
20 contain the antidegradation implementation procedures for the
21 state. The authority and responsibility to develop and imple-
22 ment antidegradation procedures for West Virginia is effective
23 the first day of July, two thousand one, transferred from the
24 environmental quality board to the director. The provisions of
25 Appendices F, F-1, F-2 and F-3 shall remain in full force and
26 effect as if promulgated by the director until such time as the
27 director files the rules authorized herein. The initial rule filed
28 by the director shall contain the same provisions as Appendices
29 F, F-1, F-2 and F-3, 46 CSR 1 approved by the Legislature
30 during the two thousand one regular session. Notwithstanding
31 any provision of the code to the contrary, the initial rule filed by
32 the director shall be effective from filing.

CHAPTER 22B. ENVIRONMENTAL BOARDS.

ARTICLE 3. ENVIRONMENTAL QUALITY BOARD.

§22B-3-4. Environmental quality board rule-making authority.

1 (a) In order to carry out the purposes of this chapter and
2 chapter twenty-two of this code, the board shall promulgate
3 legislative rules setting standards of water quality applicable to
4 both the surface waters and groundwaters of this state. Stan-
5 dards of quality with respect to surface waters shall be such as
6 to protect the public health and welfare, wildlife, fish and
7 aquatic life, and the present and prospective future uses of such
8 water for domestic, agricultural, industrial, recreational, scenic
9 and other legitimate beneficial uses thereof: *Provided*, That the
10 director of the bureau of environment shall establish the

11 antidegradation implementation procedures which apply to
12 regulated activities that have the potential to affect water
13 quality, pursuant to section seven-b, article eleven of chapter
14 twenty two of this code.

15 (b) Except for the alternate procedures provided for in
16 subsection (c) of this section, the board shall promulgate
17 legislative rules setting water quality standards in accordance
18 with the provisions of article three, chapter twenty-nine-a of
19 this code and the declaration of policy set forth in section two,
20 article eleven, chapter twenty-two of this code.

21 (c) The board may grant site specific variance only for
22 remined areas of coal remining operation from the standards of
23 water quality set forth in legislative rule 46-CSR-1, et seq.,
24 setting standards for iron manganese and pH prior to the
25 issuance of a national pollutant discharge elimination system
26 (NPDES) permit by the division of environmental protection in
27 accordance with 33 USC Section 1311(p) of the federal Water
28 Pollution Control Act. The standards established in the variance
29 will exist for the term of the NPDES permit. The board will
30 promulgate procedural rules on granting site specific coal
31 remining variances in accordance with the provisions of article
32 three, chapter twenty-nine-a of this code on or before the first
33 day of July, one thousand nine hundred ninety-five. At a
34 minimum, the procedures for granting or denying a remining
35 variance will include the following: A description of the data
36 and information to be submitted to the board by the applicant
37 for such variance; the criteria to be employed by the board in its
38 decision; and provisions for a public comment period and
39 public hearing prior to the board's decision. The board may not
40 grant a variance without requiring the applicant to improve the
41 instream water quality as much as is reasonably possible by
42 applying best available technology economically achievable
43 using best professional judgment which requirement will be
44 included as a permit condition. The board may not grant a

45 variance without a demonstration by the applicant that the coal
46 remining operation will result in the potential for improved
47 instream water quality as a result of the remining operation. The
48 board may not grant a variance where the board determines that
49 degradation of the instream water quality will result from the
50 remining operation.

51 (d) No rule of the board may specify the design of equip-
52 ment, type of construction or particular method which a person
53 shall use to reduce the discharge of a pollutant.

CHAPTER 125

**(Com. Sub. for H. B. 2768 — By Mr. Speaker,
Mr. Kiss, and Delegates Staton and Keener)**

[Passed April 14, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections seven and thirty-five, article eleven, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section eighteen, article one, chapter thirty-six of said code; to amend and reenact section three, article six, chapter forty-two of said code; to amend article one, chapter forty-four of said code, by adding thereto a new section, designated section thirteen-a; to amend and reenact section fourteen, article one of said chapter; to amend and reenact sections one and twenty-nine, article two of said chapter; and to amend and reenact section four-a, article three-a of said chapter, all relating to the administration of estates and trusts; providing for certain nonprobate inventories of estates and penalties for noncompliance; providing for the privacy of certain information from the public; providing for the administra-

tion of certain debts of beneficiaries and spendthrift trusts; providing for the timing of disclaimers and delivery; providing for the certain appraisal of real estate and personal property; providing for certain proceedings and references of decedents' estates; setting forth certain requirements for waiver of a final settlement; and providing for certain optional procedures for short form settlements against estates of decedents.

Be it enacted by the Legislature of West Virginia:

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

Chapter

11. Taxation.

36. Estates and Property.

42. Descent and Distribution.

44. Administration of Estates and Trusts.

CHAPTER 11. TAXATION.

ARTICLE 11. ESTATE TAXES.

§11-11-7. Nonprobate inventory of estates; penalties.

§11-11-35. Privacy of information.

§11-11-7. Nonprobate inventory of estates; penalties.

1 (a) The personal representative of every resident decedent
2 who owned or had an interest in any nonprobate personal
3 property, and the personal representative of every nonresident
4 decedent who owned or had an interest in any nonprobate
5 personal property which is a part of the taxable estate located in
6 West Virginia, shall, under oath, list and appraise on a
7 nonprobate inventory form prescribed by the tax commissioner,
8 all tangible and intangible nonprobate personal property owned
9 by the decedent or in which the decedent had an interest, at its
10 fair market value on the date of the decedent's death. The
11 nonprobate personal property to be included on the nonprobate
12 inventory form includes, but is not limited to, the following:

13 (1) Personalty held as joint tenants with right of
14 survivorship with one or more third parties;

15 (2) Personalty payable on the death of the decedent to one
16 or more third parties;

17 (3) Personalty held by the decedent as a life tenant;

18 (4) Insurance on the decedent's life payable to beneficiaries
19 other than the executor or administrator of the decedent's
20 estate;

21 (5) Powers of appointment;

22 (6) Annuities;

23 (7) Transfers during the decedent's life in which any
24 beneficial interest passes by trust or otherwise to another person
25 by reason of the death of the decedent;

26 (8) Revocable transfers in trust or otherwise;

27 (9) Taxable gifts under section 2503 of the United States
28 Internal Revenue Code of 1986; and

29 (10) All other nonprobate personalty included in the federal
30 gross estate of the decedent.

31 (b) For purposes of this section, “nonprobate personal
32 property” means all property which does not pass by operation
33 of the decedent’s will or by the laws of intestate descent and
34 distribution or is otherwise not subject to administration in a
35 decedent’s estate at common law.

36 (c) The personal representative shall prepare the nonprobate
37 inventory form and file it with the tax commissioner within
38 ninety days of the date of qualification of the personal represen-
39 tative in this state.

40 (d) Any personal representative who fails to comply with
41 the provisions of this section, without reasonable cause, is
42 guilty of a misdemeanor and, upon conviction thereof, shall be
43 fined not less than twenty-five dollars nor more than five
44 hundred dollars.

§11-11-35. Privacy of information.

1 (a) Notwithstanding the provisions of article ten of this
2 chapter, the tax return of an estate shall be open to inspection
3 by or disclosure to:

4 (1) The personal representative of the estate;

5 (2) Any heir at law, or beneficiary under the will of the
6 decedent; or

7 (3) The attorney for the estate or its personal representative
8 or the attorney-in-fact duly authorized by any of the persons
9 described in subdivision (1) or (2) of this section.

10 (b) Notwithstanding the provisions of article ten of this
11 chapter, the personal representative of the decedent shall make

12 the nonprobate inventory form of an estate available for
13 inspection by or disclosure to:

14 (1) The personal representative of the estate;

15 (2) Any heir at law, beneficiary under the will of the
16 decedent, a creditor who has timely filed a claim against the
17 estate of the decedent with the fiduciary commissioner or
18 fiduciary supervisor, or any party who has filed a civil action in
19 any court of competent jurisdiction in which any asset of the
20 decedent is in issue; or

21 (3) The attorney for the estate or its personal representative
22 or the attorney-in-fact duly authorized by any of the persons
23 described in subdivision (1) or (2) of this subsection.

CHAPTER 36. ESTATES AND PROPERTY.

ARTICLE 1. CREATION OF ESTATES GENERALLY.

§36-1-18. Trust estates; debts of beneficiaries; spendthrift trusts; nonmerger of trusts.

1 (a) Estates held in trust are subject to the debts of the
2 beneficiary of the trust, except where the creator has expressly
3 provided in the trust instrument that:

4 (1) The income or principal, or both, may only be applied
5 to the health, education, support or maintenance of a benefi-
6 ciary, other than the creator of the trust, for the life of the
7 beneficiary; and

8 (2) The trust is not subject to the liability of or alienation by
9 the beneficiary or beneficiaries.

10 (b) A trust, whenever created, may not be set aside or
11 terminated solely on the assertion of a creditor that the trustee

12 or trustees are the same person or persons as the beneficiary or
13 beneficiaries of the trust.

14 (c) This section applies to any trust established by an
15 instrument executed on or after the first day of July, two
16 thousand one, except as otherwise expressly provided in the
17 terms of the trust.

18 (d) This section applies to any trust established under an
19 instrument executed prior to the first day of July, two thousand
20 one, when the trustee elects, in his or her sole discretion, to
21 administer the trust pursuant to the provisions of this section.

22 (e) Except as provided in subsection (c) of this section, this
23 section may not be construed to create or imply a duty on a
24 trustee to administer the trust pursuant to the provisions of this
25 section, and a trustee may not be held liable for refusing to
26 administer a trust pursuant to the provisions of this section.

CHAPTER 42. DESCENT AND DISTRIBUTION.

ARTICLE 6. UNIFORM DISCLAIMER OF PROPERTY INTERESTS ACT.

§42-6-3. Time of disclaimer; delivery.

1 (a) Except as provided in subsection (c) of this section, if
2 the property or interest has devolved to the disclaimant under
3 a testamentary instrument or by the laws of intestacy, the
4 disclaimer shall be delivered, as to a present interest, not later
5 than nine months after the death of the deceased owner or
6 deceased donee of a power of appointment and, as to a future
7 interest, not later than nine months after the event determining
8 that the taker of the property or interest has become finally
9 ascertained and his or her interest is indefeasibly vested. The
10 disclaimer shall be delivered in person or mailed by registered
11 or certified mail to any personal representative, or other
12 fiduciary, of the decedent or the donee of the power, to the

13 holder of the legal title to which the interest relates or to the
14 person entitled to the property or interest in the event of
15 disclaimer. A fully executed and acknowledged copy of the
16 disclaimer shall be filed and recorded with the probate docu-
17 ments in the office of the clerk of the county commission of the
18 county in which proceedings for the administration of the estate
19 of the deceased owner or deceased donee of the power have
20 been commenced.

21 (b) Except as provided in subsection (c), if the property or
22 interest has devolved to the disclaimant under a
23 nontestamentary instrument or contract, the disclaimer shall be
24 delivered as to a present interest, not later than nine months
25 after the effective date of the nontestamentary instrument or
26 contract and, as to a future interest, not later than nine months
27 after the event determining that the taker of the property or
28 interest has become finally ascertained and his or her interest
29 indefeasibly vested. If the person entitled to disclaim does not
30 have actual knowledge of the existence of the interest, the
31 disclaimer shall be delivered not later than nine months after he
32 or she has actual knowledge of the existence of the interest. The
33 effective date of a revocable instrument or contract is the date
34 on which the maker no longer has power to revoke it or to
35 transfer to himself or herself or another the entire legal and
36 equitable ownership of the interest. The disclaimer shall be
37 delivered in person or mailed by registered or certified mail to
38 the person who has legal title to or possession of the interest
39 disclaimed.

40 (c) In any case, as to a transfer creating an interest in the
41 disclaimant made after the thirty-first day of December, one
42 thousand nine hundred seventy-six, and subject to tax under
43 chapters eleven, twelve or thirteen of the Internal Revenue
44 Code of 1954, as amended, a disclaimer intended as a qualified
45 disclaimer thereunder must specifically so state and must be
46 delivered not later than nine months after the later of the date

47 the transfer is made or the day on which the person disclaiming
48 attains age twenty- one.

49 (d) A surviving joint tenant may disclaim as a separate
50 interest any property or interest therein devolving to him or her
51 by right of survivorship. A surviving joint tenant may disclaim
52 the entire interest in any property or interest therein that is the
53 subject of a joint tenancy devolving to him or her, if the joint
54 tenancy was created by act of a deceased joint tenant and the
55 survivor did not join in creating the joint tenancy.

56 (e) If real property or an interest therein is disclaimed, in
57 addition to recording the disclaimer in the county wherein
58 administration is had or commenced, a fully executed and
59 acknowledged copy of the disclaimer shall be recorded in the
60 deed books in the office of the clerk of the county commission
61 of the county in which the property or interest disclaimed is
62 located.

CHAPTER 44. ADMINISTRATION OF ESTATES AND TRUSTS.

Article

1. **Personal Representatives.**
2. **Proof and Allowance of Claims Against the Estate of Decedents.**
- 3A. **Optional Procedure for Proof and Allowance of Claims Against Estates of Decedents; County Option.**

ARTICLE 1. PERSONAL REPRESENTATIVES.

§44-1-13a. Filing of objections and claims; notice of administration; liability of personal representative.

§44-1-14. Appraisal of real estate and probate personal property of decedents; disposition; and hiring of experts.

§44-1-13a. Filing of objections and claims; notice of administration; liability of personal representative.

1 (a) Any person interested in the estate of a deceased person
2 may file a claim against the estate of the decedent as provided
3 in article two of this chapter.

4 (b) Any person interested in the estate who objects to the
5 validity of the will, the qualifications of the personal represen-
6 tative or the venue or jurisdiction of the court, shall file notice
7 of an objection with the county commission within ninety days
8 after the date of the first publication as required in subsection
9 (c) of this section or within thirty days after service of the
10 notice as required by subsection (d) of this section, whichever
11 is later. If an objection is not timely filed, the objection is
12 forever barred.

13 (c) Within thirty days of the filing of the administration of
14 any estate, the clerk of the county commission shall publish,
15 once a week for two successive weeks, in a newspaper of
16 general circulation within the county of the administration of
17 the estate, a notice, which shall include:

18 (1) The name of the decedent;

19 (2) The file number of the estate, if any;

20 (3) The name and address of the county commission before
21 whom the proceedings are pending;

22 (4) The name and address of the personal representative;

23 (5) The name and address of any attorney representing the
24 personal representative;

25 (6) The name and address of the fiduciary commissioner, if
26 any;

27 (7) The date of first publication;

28 (8) A statement that claims against the estate must be filed
29 in accordance with the provisions of article two of this chapter;
30 and

31 (9) A statement that an interested person objecting to the
32 validity of the will, the qualifications of the personal represen-
33 tative or the venue or jurisdiction of the court, shall be filed
34 with the county commission within ninety days after the date of
35 the first publication or within thirty days of service of the
36 notice, whichever is later.

37 (d) The personal representative shall promptly make a
38 diligent search to determine the names and addresses of
39 creditors of the decedent who are reasonably ascertainable.

40 (e) The personal representative shall, within ninety days
41 after the date of first publication, serve a copy of the notice by
42 first class mail, postage prepaid, as required in subsection (c) of
43 this section, on the following persons:

44 (1) The decedent's surviving spouse, if any;

45 (2) Any beneficiaries;

46 (3) The trustee of any trust in which the decedent was a
47 grantor, if any; and

48 (4) All creditors identified under subsection (d) above,
49 other than a creditor who filed a claim as provided in article two
50 of this chapter or a creditor whose claim has been paid in full.

51 (f) The service of the notice required by subdivision (4),
52 subsection (e) of this section may not be construed to admit the
53 validity or enforceability of a claim.

54 (g) A personal representative acting in good faith is not
55 personally liable for serving notice under this section, notwith-
56 standing a determination that notice was not required by this
57 section. A personal representative acting in good faith who fails
58 to serve the notice required by this section is not personally
59 liable.

60 (h) The clerk of the county commission shall collect a fee
61 of ten dollars for the publication of the notice required in this
62 section.

**§44-1-14. Appraisal of real estate and probate personal
property of decedents; disposition; and hiring of
experts.**

1 (a) The personal representative of an estate of a deceased
2 person shall appraise the deceased's real estate and personal
3 probate property, or any real estate or personal probate property
4 in which the deceased person had an interest at the time of his
5 or her death, as provided in this section.

6 (b)(1) After having taken the appropriate oath, the personal
7 representative shall, on a form prescribed by the tax commis-
8 sioner list the following items owned by the decedent or in
9 which the decedent had an interest and the fair market value of
10 the items at the date of the decedent's death:

11 (A) All real estate including, but not limited to, real estate
12 owned by the decedent, as a joint tenant with right of
13 survivorship with one or more parties, as a life estate, subject to
14 a power of appointment of the decedent, or in which any
15 beneficial interest passes by trust or otherwise to another person
16 by reason of the death of the decedent; and

17 (B) All probate personal property, whether tangible or
18 intangible, including, but not limited to, stocks and bonds, bank
19 accounts, mortgages, notes, cash, life insurance payable to the
20 executor or administrator of the decedent's estate and all other
21 items of probate personal property.

22 (2) Any real estate or interest therein so appraised shall be
23 identified with particularity and description, shall identify the
24 source of title in the decedent and the location of such realty for
25 purposes of real property ad valorem taxation.

26 (3) For purposes of this section, the term “probate personal
27 property” means all property which passes by or under the
28 decedent’s will or by the laws of intestate descent and distribu-
29 tion or is otherwise subject to administration in a decedent’s
30 estate under common law.

31 (4) In addition, the personal representative shall complete,
32 under oath, a questionnaire included in the appraisal form
33 designed by the tax commissioner for the purpose of reporting
34 to the tax commissioner whether the estate of the decedent is
35 subject to estate tax as provided in article eleven, chapter eleven
36 of this code and whether the decedent owned or had an interest
37 in any nonprobate personal property.

38 (5) The appraisal and questionnaire shall be executed
39 and signed by the personal representative. The original ap-
40 praisal and questionnaire and two copies thereof shall be
41 returned to the clerk of the county commission by whom the
42 personal representative was appointed or to the fiduciary
43 supervisor within ninety days of the date of qualification of the
44 personal representative. The clerk or supervisor shall inspect
45 the appraisal and questionnaire to determine whether the
46 documents are in proper form. If the appraisal and ques-
47 tionnaire are returned to a fiduciary supervisor within ten days
48 after being received and approved by him or her, the supervisor
49 shall deliver the documents to the clerk of the county commis-
50 sion. Upon receipt of the appraisal and questionnaire, the
51 clerk of the county commission shall record the documents,
52 with the certificate of approval of the supervisor, mail a
53 certified copy of the documents to the tax commissioner, and
54 mail a copy of the documents to every known heir or benefi-
55 ciary of the estate of the decedent. The clerk of the county
56 commission may charge an appropriate mailing fee for mailing
57 the documents. The date of return of an appraisal shall be
58 entered by the clerk of the county commission in his or her
59 record of fiduciaries.

60 (c) An appraisal is prima facie evidence of:

61 (1) The value of the property listed;

62 (2) The property is subject to administration; and

63 (3) The property was received by the personal representa-
64 tive.

65 (d) Any personal representative who refuses or declines,
66 without reasonable cause, to comply with the provisions of this
67 section is guilty of a misdemeanor and, upon conviction
68 thereof, shall be fined not less than twenty-five dollars nor more
69 than five hundred dollars.

70 (e) Every personal representative has authority to retain the
71 services of an expert as may be appropriate to assist and advise
72 him or her concerning his or her duties in appraising any asset
73 or property pursuant to the provisions of this section. An expert
74 so retained shall be compensated a reasonable sum by the
75 personal representative from the assets of the estate. The
76 compensation and the reasonableness thereof is subject to
77 review and approval by the county commission, upon recom-
78 mendation of the fiduciary supervisor.

79 (f) Except as specifically provided in paragraph (A),
80 subdivision (1), subsection (b) of this section and in section
81 seven, article eleven, chapter eleven of this code, the personal
82 representative is not required to list and appraise nonprobate
83 real estate or nonprobate personal property of the decedent on
84 the forms required in this section or section seven-a, article
85 eleven, chapter eleven of this code.

**ARTICLE 2. PROOF AND ALLOWANCE OF CLAIMS AGAINST THE
ESTATE OF DECEDENTS.**

§44-2-1. Reference of decedents' estates; proceedings thereon.

§44-2-29. Waiver of final settlement.

§44-2-1. Reference of decedents' estates; proceedings thereon.

1 (a) Upon the return of the appraisal by the personal
2 representative to the county clerk, the estate of his or her
3 decedent shall, by order of the county commission, be referred
4 to a fiduciary commissioner for proof and determination of
5 debts and claims, establishment of their priority, determination
6 of the amount of the respective shares of the legatees and
7 distributees, and any other matter necessary for the settlement
8 of the estate: *Provided*, That in counties where there are two or
9 more commissioners, the estates of decedents shall be referred
10 to the commissioners in rotation, so there may be an equal
11 division of the work. Notwithstanding any other provision of
12 this code to the contrary, a fiduciary commissioner may not
13 charge to the estate a fee greater than three hundred dollars and
14 expenses for the settlement of an estate, except upon: (i)
15 Approval of the personal representative; or (ii) a determination
16 by the county commission after a hearing that complicating
17 issues or problems attendant to such settlement substantiate the
18 allowance of a greater fee.

19 (b) If the personal representative delivers to the clerk an
20 appraisal of the assets of the estate showing their value to
21 be one hundred thousand dollars or less, exclusive of real estate
22 specifically devised and nonprobate assets, or, if it appears to
23 the clerk that there is only one beneficiary of the probate estate
24 and that the beneficiary is competent at law, the clerk shall
25 record the appraisal and publish a notice once a week for
26 two successive weeks in a newspaper of general circulation
27 within the county of administration of the estate, substantially
28 as follows:

29 NOTICE TO CREDITORS AND BENEFICIARIES

30 "Notice is hereby given that settlement of the estate of the
31 following named decedents will proceed without reference to a
32 fiduciary commissioner unless within ninety days from the first

33 publication of this notice such reference is requested by a party
34 in interest or an unpaid creditor files a claim and good cause is
35 shown to support reference to a fiduciary commissioner.

36 Dated this _____ day of _____,
37 _____.

38 _____
39 Clerk of the County Commission of
40 _____ County, West Virginia.”

41 The clerk may charge the personal representative a reason-
42 able cost for publication of the notice. If an unpaid creditor files
43 a claim against the estate, the personal representative has
44 twenty days after the date of the filing of a claim against the
45 estate of the decedent to approve or reject the claim before the
46 estate is referred to a fiduciary commissioner. If the personal
47 representative approves all claims as filed, then no reference
48 may be made.

49 The personal representative shall, within a reasonable time
50 after the date of recordation of the appraisalment: (i) File a
51 waiver of final settlement in accordance with the provisions of
52 section twenty-nine of this article; or (ii) make a report to the
53 clerk of his or her receipts, disbursements and distribution and
54 submit an affidavit stating that all claims against the estate for
55 expenses of administration, taxes and debts of the decedent
56 have been paid in full. Upon receipt of the waiver of final
57 settlement or report, the clerk shall record the waiver or report
58 and mail copies to each beneficiary and creditor of by first class
59 mail, postage prepaid. The clerk shall retain the report for ten
60 days to allow any beneficiary or creditor to appear before the
61 county commission to request reference to a fiduciary commis-
62 sioner. The clerk shall collect a fee of ten dollars for recording
63 and mailing the waiver of final settlement or report.

64 If no request or objection is made to the clerk or to the
65 county commission, the county commission may confirm the
66 report of the personal representative the personal representative
67 and his or her surety shall be discharged; but if such objection
68 or request is made, the county commission may confirm and
69 record the accounting or may refer the estate to its fiduciary
70 commissioners: *Provided*, That the personal representative has
71 twenty days after the date of the filing of a claim against the
72 estate of the decedent to approve or reject the claim before the
73 estate is referred to a fiduciary commissioner and if all claims
74 are approved as filed, then no reference may be made.

§44-2-29. Waiver of final settlement.

1 In all estates of decedents subject to administration under
2 this article where a release of lien, if required by the provisions
3 of article eleven, chapter eleven of this code, has been filed
4 with the clerk and more than ninety days have elapsed since the
5 filing of any notice required by the provisions of this article,
6 even though such estate may have been referred to a fiduciary
7 commissioner, a final settlement may be waived by a waiver
8 containing an affidavit made by the personal representative, that
9 the time for filing of claims has expired, that no known and
10 unpaid claims exist against the estate, and that all beneficiaries
11 have each been advised of the share or shares to which each is
12 entitled from the estate. Each beneficiary shall sign the waiver
13 unless the beneficiary receives a bequest of tangible personal
14 property or a bequest of cash.

15 In the case of a deceased beneficiary or a beneficiary under
16 a disability, the duly qualified fiduciary or agent of such
17 beneficiary may sign in lieu of such beneficiary. A fiduciary or
18 agent signing such waiver shall be responsible to the benefi-
19 ciary for any loss resulting from such waiver.

20 The waiver shall be recorded as in the case of and in lieu of
21 a settlement as provided in section one, article two of this
22 chapter.

**ARTICLE 3A. OPTIONAL PROCEDURE FOR PROOF AND ALLOWANCE
OF CLAIMS AGAINST ESTATES OF DECEDENTS;
COUNTY OPTION.**

§44-3A-4a. Short form settlement.

1 (a) In all estates of decedents administered under the
2 provisions of this article where more than ninety days has
3 elapsed since the filing of any notice required by section four,
4 an estate may be closed by a short form settlement filed in
5 compliance with this section: *Provided*, That any lien for
6 payment of estate taxes under article eleven, chapter eleven of
7 this code is released and that the release is filed with the clerk.

8 (b) The fiduciary may file with the fiduciary supervisor a
9 proposed short form settlement which shall contain an affidavit
10 made by the fiduciary that the time for filing claims has
11 expired, that no known and unpaid claims exist against the
12 estate and showing the allocation to which each distributee and
13 beneficiary is entitled in the distribution of the estate and
14 contain a representation that the property to which each
15 distributee or beneficiary is entitled has been or upon approval
16 of the settlement will be delivered thereto, or that each
17 distributee and beneficiary has agreed to a different allocation.
18 The application shall contain a waiver signed by each
19 distributee and beneficiary: *Provided*, That a beneficiary
20 receiving a bequest of tangible personal property or a bequest
21 of cash may not be required to sign the waiver.

22 (c) Such waiver may be signed in the case of a distributee
23 or beneficiary under a disability by the duly qualified personal
24 representative of such distributee or beneficiary. A personal
25 representative signing such waiver shall be responsible to his or
26 her cestui que trust for any loss resulting from such waiver.

27 (d) The fiduciary supervisor shall examine the affidavit and
28 waiver and determine that the allocation to the distributees and
29 beneficiaries set forth in the affidavit is correct and all proper
30 parties signed the waiver, both shall be recorded as in the case
31 of and in lieu of settlement. If the fiduciary supervisor identifies
32 any error the fiduciary supervisor shall within five days of the
33 filing of such settlement give the fiduciary notice as in the case
34 of any other incorrect settlement.

35 (e) If the short form settlement is proper the fiduciary
36 supervisor shall proceed as in the case of any other settlement.

CHAPTER 126

(S. B. 546 — By Senator Wooton)

[Passed April 13, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article two, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to requiring claims against estates of decedents to be verified by affidavits.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. PROOF AND ALLOWANCE OF CLAIMS AGAINST ESTATES OF DECEDENTS.

§44-2-5. Claims to be proved by vouchers and affidavits in first instance.

1 Every claim against the estate of a decedent shall be
2 itemized, verified by affidavit, accompanied by proper vouchers
3 and shall state the character of the claim, whether open account,
4 note, bond, bill, writing obligatory, judgment, decree or other
5 evidence of debt and the amount thereof and from what date
6 and on what items interest runs and at what percent per annum
7 and stating further that the claim is just and true and that the
8 creditor, or any prior owner of the claim, if there was one, has
9 not received any part of the money stated to be due or any
10 security or satisfaction for the same, except what is credited.
11 The voucher for a judgment or decree shall be an abstract
12 thereof; for a specialty, bond, note, bill of exchange, writing
13 obligatory or other instrument, shall be the instrument itself, or
14 a true copy thereof, or proof of the same in case the instrument
15 be lost; and for an open account, an itemized copy of the
16 account. This section does not apply to taxes.

CHAPTER 127

(H. B. 2482 — By Mr. Speaker, Mr. Kiss (By Request))

[Passed March 28, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twelve, article five, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the distribution of assets in satisfaction of pecuniary bequests or transfers in trust of a pecuniary amount or formula; authorizing fiduciaries to enter into certain agreements; validating certain agreements; and providing for discretionary division of trusts for tax administrative or other purposes.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. GENERAL PROVISIONS AS TO FIDUCIARIES.

§44-5-12. Distribution of assets in satisfaction of pecuniary bequests; authority of fiduciaries to enter into certain agreements; validating certain agreements; providing for discretionary division of trusts for tax, administrative or other purposes.

1 (a) Where a will, trust or other governing instrument
2 authorizes or directs the fiduciary to satisfy wholly or partly in
3 kind a pecuniary bequest or a separate trust to be funded by a
4 pecuniary amount or formula unless the will, trust or other
5 governing instrument shall otherwise expressly provide, the
6 assets selected by the fiduciary for that purpose shall be valued
7 at their respective values on the date or dates of their distribu-
8 tion, and in the case of any pecuniary bequests or separate trusts
9 established under the will or trust by a pecuniary amount or
10 formula if the pecuniary bequest or separate trust is not entirely
11 funded or an amount necessary to fund the bequest or trust
12 completely is not irrevocably set aside within fifteen months
13 after the date of the testator's or grantor's death, the fiduciary
14 shall allocate to the bequest or trust a prorata share of the
15 income earned by the estate of the testator or grantor or such
16 other fund from which the bequest or trust is to be funded
17 between the date of death of the testator or grantor and the date
18 or dates of the funding.

19 (b) Whenever a fiduciary under the provisions of a will,
20 trust or other governing instrument is required to satisfy a
21 pecuniary bequest or transfer in trust and is authorized to satisfy
22 the bequest or transfer by selection and distribution of assets in
23 kind, and the will, trust or other governing instrument further
24 provides that the assets to be so distributed shall or may be
25 valued by some standard other than their fair market value on
26 the date of distribution, the fiduciary, unless the will, trust or

27 other governing instrument otherwise specifically directs, shall
28 distribute assets, including cash, fairly representative of
29 appreciation or depreciation in the value of all property
30 available for distribution in satisfaction of the pecuniary
31 bequest or transfer. This section shall not apply to prevent a
32 fiduciary from carrying into effect the provisions of the will,
33 trust or other governing instrument that the fiduciary, in order
34 to implement such a bequest or transfer, must distribute assets,
35 including cash, having an aggregate fair market value at the
36 date or dates of distribution amounting to no less than the
37 amount of the pecuniary bequest or transfer as finally deter-
38 mined for federal estate tax purposes.

39 (c) (1) Any fiduciary having discretionary powers under a
40 will or other governing instrument with respect to the selection
41 of assets to be distributed in satisfaction of a pecuniary bequest
42 or transfer in trust shall be authorized to enter into agreements
43 with the commissioner of internal revenue of the United States
44 of America and other taxing authorities requiring the fiduciary
45 to exercise the fiduciary's discretion so that cash and other
46 properties distributed in satisfaction of the bequest or transfer
47 in trust will be fairly representative of the appreciation or
48 depreciation in value of all property then available for distribu-
49 tion in satisfaction of the bequest or transfer in trust and any
50 such agreement heretofore entered into after April one, one
51 thousand nine hundred sixty-four, is hereby validated. The
52 fiduciary shall be authorized to enter into any other agreement
53 not in conflict with the express terms of the will, trust or other
54 governing instrument that may be necessary or advisable in
55 order to secure for federal estate tax purposes the appropriate
56 marital deduction or other deduction or exemption available
57 under the internal revenue laws of the United States of Amer-
58 ica, and to do and perform all acts incident to such purpose.

59 (2) Unless ordered by a court of competent jurisdiction, the
60 bank or trust company operating a common trust fund, as
61 provided for in section six of this article, shall not be required
62 to render an accounting with regard to the fund, before any
63 fiduciary commissioner but it may, by application to the circuit

64 court of the county in which is located the principal place of
65 business of said bank or trust company, secure the approval of
66 an accounting in such condition as the court may fix: *Provided*,
67 That nothing herein shall be interpreted as relieving any
68 fiduciary acquiring, holding or disposing of an interest in any
69 common trust fund from making an accounting as required by
70 law with respect of the interest.

71 (d) The fiduciary of any trust created by will, trust or other
72 governing instrument shall have discretionary power from time
73 to time without need of court approval to divide the trust or
74 trusts for purposes of the generation skipping transfer tax
75 (“GST”) of section 2601 of the Internal Revenue Code of 1986,
76 as amended, or any similar or successor law of like import, or
77 for any other tax, administrative or other purposes. In exercis-
78 ing this authority for inclusion ratio, marital deduction election,
79 reverse qualified terminal interest property election or other
80 GST or other tax purposes, the power shall be exercised in a
81 manner that complies with applicable internal revenue code
82 treasury regulations or other requirements for accomplishing
83 the intended purposes. In the event that division is made for
84 purposes of separating assets with respect to which the federal
85 estate tax marital deduction election is to be made from those
86 as to which such election is not to be made, the division shall be
87 done on a fractional or percentage basis and the assets of the
88 trust or other fund to be divided shall be valued for purposes of
89 the division on the date or dates of division.

CHAPTER 128

(S. B. 573 — By Senator Rowe)

[Passed April 14, 2001; in effect ninety days from passage.]

AN ACT to amend article ten, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section sixteen, relating to settlement of derivative parental claims for damages they personally have arising out of injury to their child or children; providing authority to settle derivative claims including the costs of medical care and other necessary expenses; providing that settlement of the derivative claim does not limit the right to seek damages on behalf of a minor child; requiring that a release of derivative claims be in writing; providing that a parent or guardian may revive a derivative claim previously settled with the repayment of consideration plus legal interest; and continuing current limitation period for bringing an action on behalf of a minor child.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10. GUARDIANS AND WARDS GENERALLY.

§44-10-16. Settlement of derivative claims.

- 1 (a) Nothing contained in this article may limit the deriva-
- 2 tive rights of a parent or guardian to compromise and settle any
- 3 claim they may personally have for damages arising out of
- 4 injury to their minor child or ward for whom they are responsi-
- 5 ble. This authority to compromise and settle derivative claims
- 6 includes, without limitation, the authority to compromise and
- 7 settle claims for the costs of medical or other care for the child
- 8 or ward attributable to the bodily injury.

9 (b) The separate settlement of a derivative claim by a parent
10 or guardian does not limit any person, including the parent or
11 guardian, from seeking damages for the minor child or ward.

12 (c) Any release or waiver of a right to bring a legal action
13 to assert a derivative claim, made and executed prior to the
14 commencement of a civil action, shall be in writing and shall be
15 binding against the person who accepts valuable consideration
16 in exchange for the release or waiver of right to bring the legal
17 action: *Provided*, That in the event a parent or guardian fully
18 repays the consideration received in exchange for a release or
19 waiver of a right to bring a derivative claim or action to the
20 appropriate entity within ninety days after the commencement
21 of a civil action brought on behalf of the child or ward who was
22 injured, the parent or guardian may fully assert the derivative
23 claim in conjunction with the child or ward's claim: *Provided*,
24 *however*, That if more than a year has elapsed since the
25 payment of the consideration, full repayment shall include, in
26 addition to the principal sum paid, legal interest on the principal
27 sum calculated in accordance with section thirty-one, article
28 six, chapter fifty-six of this code.

29 (d) Nothing contained in this section may be construed to
30 reduce the limitation period for filing any civil action for
31 damages arising out of the bodily injury of a minor child.

CHAPTER 129

(Com. Sub. for S. B. 263 — By Senators Anderson, Ross and Caldwell)

[Passed April 12, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal sections three, five, six and seven, article seven, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections one, two, four, eight, nine and ten of said article; and to further amend said article by adding thereto a new section, designated section eleven, all relating to rewriting and updating the law on state aid for fairs and festivals; and authorizing the commissioner of agriculture to make the determination of eligibility to receive these funds.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. STATE AID FOR FAIRS AND FESTIVALS.

- §19-7-1. Amount of state aid for fairs and festivals.
- §19-7-2. State aid where more than one fair, festival or event in county.
- §19-7-4. When fairs, festivals and events are entitled to state aid.
- §19-7-8. Gambling devices and immoral shows prohibited; forfeiture of right to state aid; horse racing exempted.
- §19-7-9. State fair of West Virginia; ex officio members of board of directors; appropriations; authority to propose rules.
- §19-7-10. Appropriations specifically made available for designated exhibitions.
- §19-7-11. Determination of eligibility; legislative rules.

§19-7-1. Amount of state aid for fairs and festivals.

- 1 For the purpose of encouraging agriculture, any agricultural
- 2 or industrial association, organization or individual conforming
- 3 to the requirements of this article and the rules promulgated
- 4 pursuant to this article may receive from the state of West
- 5 Virginia an amount not to exceed twenty thousand dollars.

§19-7-2. State aid where more than one fair, festival or event in county.

1 When more than one association, organization or individual
2 holding a fair, festival or event in a county is eligible to receive
3 the benefits pursuant to this article, the county associations,
4 organizations or individuals are eligible to receive from the
5 state a sum not exceeding in the aggregate fifty thousand dollars
6 to be apportioned among the associations, organizations or
7 individuals.

§19-7-4. When fairs, festivals and events are entitled to state aid.

1 (a) Associations, organizations or individuals purchasing or
2 leasing the grounds and buildings of an agricultural or industrial
3 association, organization or individual entitled to the benefits
4 of this article are also entitled to the benefits set forth in this
5 article.

6 (b) Other agricultural and industrial associations not
7 entitled to aid under the provisions of this article may receive
8 aid from the state of West Virginia, if funds are available,
9 when, in the judgment of the commissioner of agriculture, the
10 exhibitions are in the interest of the agricultural or the industrial
11 development of the state.

12 (c) The commissioner of agriculture may assist in the
13 promotion and operation of an annual state fair and 4-H
14 regional fairs and, when funds are available, to expend those
15 funds for their support and development.

**§19-7-8. Gambling devices and immoral shows prohibited;
forfeiture of right to state aid; horse racing ex-
empted.**

1 No association, organization or individual which is the
2 recipient of state aid under this article may operate or permit to

3 be operated in conjunction with the fair, festival or event any
4 gambling device or any indecent or immoral show. Any
5 association, organization or individual violating the provisions
6 of this section shall forfeit all eligibility for state aid for a
7 period of three years. This section, however, may not be
8 construed to prevent horse racing or horse shows at any fair
9 receiving state aid.

**§19-7-9. State fair of West Virginia; ex officio members of board
of directors; appropriations; authority to propose
rules.**

1 (a) The corporation formerly known as “Greenbrier Valley
2 fair” is designated “the state fair of West Virginia”; with the
3 exclusive right to the use of that designation.

4 (b) The governor and commissioner of agriculture are ex
5 officio members of the board of directors of the fair association
6 for the purpose of protecting the interests of the state in the
7 awarding of premiums and in the arrangement of the agriculture
8 and other exhibits.

9 (c) The provisions of this section may not alter, change or
10 alienate the rights of any other association, organization or
11 individual entitled to benefits under the provisions of this
12 article, except as to the use of the name designated in subsec-
13 tion (a) of this section.

14 (d) For the purpose of encouraging agriculture and industry,
15 the state fair of West Virginia is not limited to the appropria-
16 tions authorized by section one of this article. Nothing con-
17 tained in this article may be construed or interpreted to prevent
18 the state fair of West Virginia from receiving the benefit of any
19 sum specifically appropriated for its use by the Legislature to
20 pay awards and exhibition expenses.

§19-7-10. Appropriations specifically made available for designated exhibitions.

1 For the purpose of encouraging agriculture, forestry and
2 industries related thereto and the development and progress of
3 the state, and when appropriations are specifically set out in the
4 budget bill by the Legislature for any state, county or local
5 exhibition or community development, when the exhibition or
6 community development is held in the interest of the public and
7 substantially supported financially by an association or corpora-
8 tion not operated for profit, the commissioner of agriculture
9 may expend any moneys for those purposes and nothing
10 contained in this article may be construed or interpreted to
11 prevent the commissioner from paying awards to exhibitors and
12 expenses in connection with the operation of the exhibition.

13 The commissioner of agriculture may pay premiums,
14 awards and provide monetary assistance to the exhibitors at
15 county, community and state fairs, festivals or events of any
16 agricultural or horticultural products when appropriations are
17 specifically made available for specific events or organizations.

§19-7-11. Determination of eligibility; legislative rules.

1 (a) The commissioner shall administer the provisions of this
2 article and shall determine the eligibility of an association,
3 organization or individual to receive state aid described in this
4 article in accordance with the provisions of subsection (b) of
5 this section.

6 (b) The commissioner of agriculture shall propose legisla-
7 tive rules for promulgation pursuant to the provisions of article
8 three, chapter twenty-nine-a of this code. The rules shall
9 provide for the administration of the provisions of this article
10 and shall provide criteria under which the commissioner is to
11 determine the eligibility of an association, organization or

12 individual to receive state aid under the provisions of this
13 article. Notwithstanding any other provisions of this code to the
14 contrary, until the Legislature has authorized the rules, the
15 commissioner of agriculture may promulgate emergency rules
16 for those purposes pursuant to section fifteen, article three,
17 chapter twenty-nine-a of this code.

CHAPTER 130

(Com. Sub. for S. B. 630 — By Senator Snyder)

[Passed April 14, 2001; 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 state building code; providing counties and cities the option to apply building code prospectively only; authorizing fire commission to promulgate rules to establish standards and fees; and permitting commissioner to create advisory boards.

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

***Clerk's Note:** This section was also amended by S. B. 428 (Chapter 76), which passed prior to this act.

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 *Provided*, That each county or municipality may adopt the code
12 to the extent that it is only prospective and not retroactive in its
13 application.

14 (b) The state fire commission has authority to propose rules
15 for legislative approval in accordance with the provisions of
16 article three, chapter twenty-nine-a of this code, regarding
17 building construction, renovation and all other aspects as
18 related to the construction and mechanical operations of a
19 structure. The rules shall be known as the "State Building
20 Code".

21 (c) The state fire commission has authority to propose rules
22 for legislative approval, in accordance with the provisions of
23 article three, chapter twenty-nine-a, establishing state standards
24 and fee schedules for the licensing, registration, certification,
25 regulation and continuing education of persons which will
26 conduct inspections relating to the state building code, which
27 include, but are not limited to, building code officials, inspec-
28 tors, plans examiners and home inspectors.

29 (d) The state fire commission has authority to establish
30 advisory boards as it deems appropriate to encourage represen-
31 tative participation in subsequent rulemaking from groups or
32 individuals with an interest in any aspect of the state building
33 code or related construction or renovation practices.

34 (e) For the purpose of this section, the term “building code”
35 is intended to include all aspects of safe building construction
36 and mechanical operations and all safety aspects related thereto.
37 Whenever any other state law, county or municipal ordinance
38 or regulation of any agency thereof is more stringent or imposes
39 a higher standard than is required by the state building code, the
40 provisions of the state law, county or municipal ordinance or
41 regulation of any agency thereof governs if they are not
42 inconsistent with the laws of West Virginia and are not contrary
43 to recognized standards and good engineering practices. In any
44 question, the decision of the state fire commission determines
45 the relative priority of any such state law, county or municipal
46 ordinance or regulation of any agency thereof and determines
47 compliance with state building code by officials of the state,
48 counties, municipalities and political subdivisions of the state.

49 (f) Enforcement of the provisions of the state building code
50 is the responsibility of the respective local jurisdiction. Also,
51 any county or municipality may enter into an agreement with
52 any other county or municipality to provide inspection and
53 enforcement services: *Provided*, That any county or municipal-
54 ity may adopt the state building code with or without adopting
55 the BOCA national property maintenance code.

56 (g) After the state fire commission has promulgated rules
57 as provided in this section, each county or municipality
58 intending to adopt the state building code shall notify the state
59 fire commission of its intent.

60 (h) The state fire commission may conduct public meetings
61 in each county or municipality adopting the state building code
62 to explain the provisions of the rules.

63 (i) The provisions of the state building code relating to the
64 construction, repair, alteration, restoration and movement of

65 structures are not mandatory for existing buildings and struc-
66 tures identified and classified by the state register of historic
67 places under the provisions of section eight, article one of this
68 chapter or the national register of historic places, pursuant to
69 Title XVI, section 470a of the United States Code. Prior to
70 renovations regarding the application of the state building code,
71 in relation to historical preservation of structures identified as
72 such, the authority having jurisdiction shall consult with the
73 division of culture and history, state historic preservation office.
74 The final decision is vested in the state fire commission.
75 Additions constructed on a historic building are not excluded
76 from complying with the state building code.

CHAPTER 131

(H. B. 2515 — By Delegates Michael, Mezzatesta, Stemple and Williams)

[Passed April 14, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section twenty, article three, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to state fire marshal; repealing fees for reporting fires to the state fire marshal.

Be it enacted by the Legislature of West Virginia:

§1. Repeal of section relating to allowance fee for reporting fires.

1 That section twenty, article three, chapter twenty-nine of
2 the code of West Virginia, one thousand nine hundred thirty-
3 one, as amended, is hereby repealed.

CHAPTER 132

(Com. Sub. for S. B. 128 — By Senators Tomblin,
Mr. President, and Sprouse)
[By Request of the Executive]

[Passed April 14, 2001; to take effect July 1, 2001. Approved by the Governor.]

AN ACT to amend chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article one-d, relating to creating the office of fiscal risk analysis and management within the office of the governor; appointment and qualifications of the chief risk officer; powers and duties; requiring spending units to notify the chief risk officer of proposed purchases of certain goods and services; annual report; requiring a comprehensive strategic plan; authority of chief risk officer to obtain assistance from executive branch agencies; authorizing certain assessments against spending units; authorizing transfer of proceeds of assessments to the office of fiscal risk analysis and management; and termination date.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1D. GOVERNOR'S OFFICE OF FISCAL RISK ANALYSIS AND MANAGEMENT.

- §5-1D-1. Findings and purposes.
- §5-1D-2. Definitions.
- §5-1D-3. Creation of the office of fiscal risk analysis and management; appointment and qualifications of chief risk officer.

- §5-1D-4. Powers and duties of the office to all state spending units.
- §5-1D-5. Powers and duties of the office to executive agencies.
- §5-1D-6. Fees.
- §5-1D-7. Notice of request for proposals by state spending units required to make purchases through the state purchasing division.
- §5-1D-8. Notice of request for proposals by state spending units exempted from submitting purchases to the state purchasing division.
- §5-1D-9. Annual report.
- §5-1D-10. Exemptions.
- §5-1D-11. Termination of office.

§5-1D-1. Findings and purposes.

1 The Legislature finds and declares that fiscal risk analysis
2 and management is essential to finding practical solutions to the
3 everyday problems of government and that the management
4 goals and purposes of government would be furthered by the
5 development of a consistent set of fiscal risk analysis and
6 management principles. Therefore, it is the purpose of this
7 article to create, as an integral part of the office of the governor,
8 the office of fiscal risk analysis and management, with the
9 authority to advise and make recommendations to all state
10 spending units on fiscal risk analysis and management functions
11 and decisions with potential long term fiscal impact of an
12 amount of at least one million dollars: *Provided*, That the
13 authority shall advise and make recommendations to the public
14 employees insurance agency, the consolidated public retirement
15 board, workers' compensation and the board of risk and
16 insurance management on fiscal risk analysis and management
17 functions and decisions with potential long term fiscal impact
18 of any increases of program costs in excess of five percent.

§5-1D-2. Definitions.

1 As used in this article:

- 2 (a) "Chief risk officer" means the person appointed to the
3 position created in section three of this article and who is vested

4 with authority to assist state spending units in planning and
5 coordinating fiscal risk analysis and management activities that
6 serve the effectiveness and efficiency of the individual state
7 spending units, state executive agencies and further the overall
8 management goals and purposes of government.

9 (b) "Fiscal risk analysis and management" means issues
10 that arise out of the day-to-day operations of state government
11 that put at fiscal risk the people, property or other assets of the
12 state, the overall operation of state government and its ability
13 to carry and acceptance of fiscal risks on decisions with
14 potential fiscal impact of an amount of at least one million
15 dollars: *Provided*, That the authority shall advise and make
16 recommendations to the public employees insurance agency,
17 the consolidated public retirement board, workers' compensa-
18 tion and the board of risk and insurance management on fiscal
19 risk analysis and management functions and decisions with
20 potential long term fiscal impact of any increases of program
21 costs in excess of five percent.

22 (c) "Fiscal impact" means any anticipated budgetary or
23 other financial impact that may result from the proposed
24 expenditure, decision, or undertaking.

**§5-1D-3. Creation of the office of fiscal risk analysis and manage-
ment; appointment and qualifications of chief risk
officer.**

1 (a) There is hereby created the office of fiscal risk analysis
2 and management within the office of the governor. The office
3 shall be administered by the chief risk officer who shall be
4 appointed by the governor with the advice and consent of the
5 Senate and shall serve at the will and pleasure of the governor.
6 The chief risk officer shall have knowledge in the area of self-
7 insured risk pools, advanced training in the area of fiscal risk
8 management and an understanding of the special demands upon

9 government with respect to budgetary constraints, the protec-
10 tion of public funds, and federal and state standards of account-
11 ability.

12 (b) The chief risk officer may employ the personnel
13 necessary to carry out the work of the office and may approve
14 reimbursement of costs incurred by employees to obtain
15 education and training.

**§5-1D-4. Powers and duties of the office to all state spending
units.**

1 With respect to all state spending units, the office of fiscal
2 risk analysis and management:

3 (1) Shall develop an organized approach to fiscal risk
4 analysis and management;

5 (2) Shall provide, with the assistance of certain executive
6 branch agencies, technical assistance to the administrators of
7 the various state spending units in the design and implementa-
8 tion of fiscal risk analysis and management procedures and
9 systems;

10 (3) Shall evaluate, with the assistance of certain executive
11 branch agencies, the economic justification and suitability of
12 acceptable fiscal risk levels, the management thereof, and
13 related services and review and make recommendations on the
14 need for acquisition of fiscal risk analysis, management
15 consulting and actuarial services by the state spending units;

16 (4) Shall develop a mechanism for identifying those
17 instances in which the sound application of fiscal risk analysis
18 and management principles can assist agencies in reducing their
19 exposure to or frequency of loss;

20 (5) Shall create new tools to assist agencies of government
21 in fulfilling their duties, convene conferences and develop
22 incentive packages to encourage the use of sound fiscal risk
23 management principles;

24 (6) Shall engage in any other activities reasonably related
25 to the findings and purposes set forth in section one of this
26 article, as directed by the governor; and

27 (7) Shall charge a fee to be assessed by the chief risk officer
28 to the state spending units for evaluations performed and
29 technical assistance provided under the provisions of this
30 article.

§5-1D-5. Powers and duties of the office to executive agencies.

1 With respect to executive agencies, the office of fiscal risk
2 analysis and management:

3 (1) Shall develop a unified and integrated structure of fiscal
4 risk management for all state executive agencies that must be
5 completed by the first day of July, two thousand two;

6 (2) May establish, based on need and opportunity, priorities
7 and time lines for addressing the fiscal risk analysis require-
8 ments of the various executive agencies of state government;

9 (3) Shall exercise such authority inherent to the chief
10 executive of the state as the governor may, by executive order,
11 delegate, to overrule and supersede decisions made by the
12 administrators of the various executive agencies of government
13 with respect to fiscal risk analysis and management decisions
14 and the acquisition of fiscal risk management services, includ-
15 ing, but not limited to, management consulting contracts and
16 contracts for actuarial and related services: *Provided*, That the
17 provisions of this subdivision do not exempt the various

18 executive agencies from complying with the provision of this
19 code regarding audits and actuarial studies.

20 (4) Shall consult and work closely with staff of other
21 executive agencies for advice and assistance in the formulation
22 and implementation of administrative and operational plans and
23 policies.

§5-1D-6. Fees.

1 All fees collected by the office of fiscal risk analysis and
2 management shall be deposited in a special account in the state
3 treasury to be known as the “Office of Fiscal Risk Analysis and
4 Management Administration Fund”. Expenditures from the
5 fund shall be made by the chief risk officer for the purposes set
6 forth in this article and are not authorized from collections, but
7 are to be made only in accordance with appropriation by the
8 Legislature and in accordance with the provisions of article
9 three, chapter twelve of this code and upon the fulfillment of
10 the provisions set forth in article two, chapter five-a of this
11 code. Amounts collected which are found from time to time to
12 exceed the funds needed for purposes set forth in this article
13 may be transferred to other accounts or funds and used for other
14 purposes by appropriation of the Legislature.

§5-1D-7. Notice of request for proposals by state spending units required to make purchases through the state purchasing division.

1 Any state spending unit that is required to submit a request
2 for proposal to the state purchasing division prior to purchasing
3 goods or services shall notify the chief risk officer, in writing,
4 of any proposed purchases of goods or services related to fiscal
5 risk analysis and management, including, but not limited to,
6 management consulting, actuarial or other contracts that
7 involve the management or fiscal risk evaluation of the spend-
8 ing unit with potential fiscal impact of an amount of at least one

9 million dollars. The notice shall contain a brief description of
10 the goods and services to be purchased. The state spending unit
11 shall provide the notice to the chief risk officer ten days prior
12 to its submission of its request for proposal to the state purchas-
13 ing division.

**§5-1D-8. Notice of request for proposals by state spending units
exempted from submitting purchases to the state
purchasing division.**

1 (a) Any state spending unit that is not required to submit a
2 request for proposal to the state purchasing division prior to
3 purchasing goods or services shall notify the chief risk officer,
4 in writing, of any proposed purchase of goods or services
5 related to fiscal risk analysis and management, including, but
6 not limited to, management consulting, actuarial or other
7 contracts that involved the management or fiscal risk evaluation
8 of the spending unit with potential fiscal impact of an amount
9 of at least one million dollars. The notice shall contain a
10 detailed description of the goods and services to be purchased.
11 The state spending unit shall provide the notice to the chief risk
12 officer a minimum of ten days prior to the time it requests bids
13 on the provision of the goods or services.

14 (b) If the chief risk officer evaluates the suitability of the
15 related services under the provisions of subsection (3), section
16 four of this article and determines that the goods or services to
17 be purchased or the price requested for the same are not
18 suitable, he or she shall, within ten days of receiving the notice
19 from the state spending unit, notify the state spending unit, in
20 writing, of any recommendations he or she has regarding the
21 proposed purchase of the goods or services. If the state spend-
22 ing unit receives a written notice from the chief risk officer
23 within the time period required by this section, the state
24 spending unit shall not put the goods or services out for bid less

25 than fifteen days following receipt of the notice from the chief
26 fiscal management officer.

§5-1D-9. Annual report.

1 The chief risk officer shall report annually to the legislative
2 joint committee on government and finance on the activities of
3 his or her office.

§5-1D-10. Exemptions.

1 Except for the provisions of section four of this article, the
2 provisions of this article do not apply to the legislative or
3 judicial branches of state government, unless either the legisla-
4 tive or the judicial branch shall request services from the
5 governor's office of fiscal risk analysis and management.

§5-1D-11. Termination of office.

1 The office of fiscal risk analysis and management shall
2 continue to exist until the first day of July, two thousand three,
3 pursuant to the provisions of article ten, chapter four of this
4 code unless sooner terminated, continued or reestablished
5 pursuant to the provisions of such article.



CHAPTER 133

(Com. Sub. for H. B. 2891 — By Delegates C. White,
Campbell, Coleman, Boggs, Yeager and Stalnaker)

[Passed April 12, 2001; 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 unlawful taking of timber; providing for a first offense felony when the value of the timber is more than one thousand dollars; establishing notice requirements; and tolling of the statute of limitations.

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 first offense violation of the provisions of this section in
12 which the timber is valued at more than one thousand dollars is
13 guilty of a felony and, upon conviction thereof, shall be
14 confined in a correctional facility for not less than one nor more
15 than two years, or fined not more than three times the value of
16 the timber injured, removed or destroyed, or both fined and
17 confined: *Provided further*, That a person convicted of a second
18 or subsequent violation of the provisions of this section is guilty
19 of a felony and, upon conviction thereof, shall be confined in a
20 correctional facility for not less than one nor more than three

21 years, or fined not more than three times the value of the timber
22 injured, removed or destroyed, or both fined and confined.

23 (b) The necessary trimming and removal of timber to
24 permit the construction, repair, maintenance, cleanup and
25 operations of pipelines and utility lines and appurtenances of
26 public utilities, public service corporations and to aid registered
27 land surveyors and professional engineers in the performance
28 of their professional services, and municipalities, and pipeline
29 companies, or lawful operators and product purchasers of
30 natural resources other than timber shall not be considered a
31 willful and intentional cutting down, injuring, removing or
32 destroying of timber.

33 (c) The necessary trimming and removal of timber for
34 boundary line maintenance, for the construction, maintenance
35 and repair of streets, roads and highways or for the control and
36 regulation of traffic thereon by the state and its political
37 subdivisions or registered land surveyors and professional
38 engineers shall not be considered a willful and intentional
39 cutting down, injuring, removing or destroying of timber.

40 (d) No fine or imprisonment imposed pursuant to this
41 section shall be construed to limit any cause of action by a
42 landowner for recovery of damages otherwise allowed by law.
43 If a person charged or convicted under the provisions of this
44 section enters into an agreement with a landowner to make
45 financial restitution for the landowner's timber damages, any
46 applicable statute of limitations effecting the landowner's cause
47 of action shall be tolled from the date the agreement was
48 entered into until a breach of the agreement occurs.

49 (e) If a criminal action is brought under the provisions of
50 this section, the county prosecutor shall publish a Class II legal
51 advertisement in compliance with the provisions of article
52 three, chapter fifty-nine of this code in the county where the

53 property involved is located which provides a description of the
54 property and a general summary of the timber damages. If a
55 landowner suffering timber damages is not aware of those
56 damages prior to the publication of the Class II legal advertise-
57 ment, any applicable statute of limitations effecting the land-
58 owner's cause of action for the recovery of damages shall be
59 tolled from the time the damages were incurred, and may not
60 commence until the date the final Class II legal advertisement
61 is published.

CHAPTER 134

(Com. Sub. for H. B. 2513 — By Delegates
Manchin, Prunty and Caputo)

[Passed April 13, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article one, chapter twenty-nine-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to freedom of information; modifying penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. PUBLIC RECORDS.

§29B-1-6. Violation of article; penalties.

1 Any custodian of any public records who willfully violates
2 the provisions of this article is guilty of a misdemeanor and,
3 upon conviction thereof, shall be fined not less than two
4 hundred dollars nor more than one thousand dollars, or be
5 imprisoned in the county jail for not more than twenty days, or,
6 in the discretion of the court, by both fine and imprisonment.

CHAPTER 135

(S. B. 253 — By Senators Helmick, Ross, Sharpe, Minard, Rowe,
Oliverio, Love, Mitchell, Anderson and Unger)

[Passed April 14, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eighteen, article five, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing the indigent funeral expense allowance.

Be it enacted by the Legislature of West Virginia:

That section eighteen, article five, 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 5. MISCELLANEOUS PROVISIONS.

§9-5-18. Funeral expenses for indigent persons; filing of affidavit to certify indigency; penalties for false swearing; payment by division.

1 (a) The department of health and human resources shall pay
2 for reasonable funeral service expenses for indigent persons, in

3 an amount not to exceed one thousand two hundred fifty
4 dollars.

5 (b) For purposes of this section, the indigency of a deceased
6 person is determined by the filing of an affidavit with the
7 department, in a form provided by and determined in accor-
8 dance with the income guidelines as set forth by the depart-
9 ment: (1) Signed by the heir or heirs-at-law which states that
10 the estate of the deceased person is pecuniarily unable to pay
11 the costs associated with a funeral; or (2) signed by the county
12 coroner or the county health officer, the attending physician or
13 other person signing the death certificate or the state medical
14 examiner stating that the deceased person has no heirs or that
15 heirs have not been located after a reasonable search and that
16 the deceased person had no estate or the estate is pecuniarily
17 unable to pay the costs associated with a funeral.

18 (c) Payment shall be made by the department to the person
19 or persons who have furnished the services and supplies for the
20 indigent person's funeral expenses or to the persons who have
21 advanced payment for same, as the department may determine,
22 pursuant to appropriations for expenditures made by the
23 Legislature for such purpose.

24 (d) For purposes of this section, "reasonable funeral service
25 expenses" means expenses for services provided by a funeral
26 director for the disposition of human remains.

27 (e) Any person who knowingly swears falsely in an
28 affidavit required by this section shall be guilty of a misde-
29 meanor and, upon conviction thereof, shall be fined not more
30 than one thousand dollars or confined in the county or regional
31 jail for a period of not more than six months, or both.

CHAPTER 136

**(Com. Sub. for S. B. 640 — Senators Wooton,
Hunter, Sprouse, McCabe and Rowe)**

[Passed April 14, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article two, chapter forty-four-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section one-a, relating to filing under the West Virginia guardianship and conservatorship act a petition for appointment of a guardian and conservator for a minor approaching adulthood.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. PROCEDURE FOR APPOINTMENT.

§44A-2-1a. Filing of a petition where protected person is a minor.

1 A petition for the appointment of a guardian, conservator or
 2 both of a minor may be filed if the minor is at least seventeen
 3 years and ten months of age and the petition alleges that the
 4 minor would qualify as a “protected person”, as that term is
 5 defined in section four, article one of this chapter, if he or she
 6 were an adult. The hearing provided for in section nine of this
 7 article shall occur no sooner than fourteen days prior to the
 8 alleged protected person’s eighteenth birthday if the trier of fact
 9 is the mental hygiene commissioner and no more than seven
 10 days prior to said date if the circuit judge conducts the hearing.

CHAPTER 137

(S. B. 606 — By Senators Wooton, Hunter, Sprouse, McCabe and Rowe)

[Passed April 14, 2001; in effect from passage. Approved by the Governor.]

AN ACT to amend article two, chapter forty-four-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section thirteen-a, relating to the time of entry of orders of guardianship and conservatorship under the West Virginia guardianship and conservatorship act.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. PROCEDURE FOR APPOINTMENT.

§44A-2-13a. Time of entry of orders.

1 An order appointing a guardian, a conservator or both, or an
2 order ruling on a petition or motion filed subsequent to an
3 appointment, shall be entered by the court within fourteen days
4 of the hearing on any such petition filed pursuant to this article
5 if the trier of fact be the mental hygiene commissioner or within
6 seven days of the hearing if the circuit court judge conducts the
7 hearing.

CHAPTER 138

**(Com. Sub. for S. B. 490 — By Senators Tomblin, Mr. President,
Bailey, Chafin, Fanning, Jackson, Plymale,
Redd, Wooton, Caldwell and Anderson)**

[Passed April 13, 2001; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article twenty-five, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections one, two, five and six, article fourteen, chapter twenty of said code; to further amend said article by adding thereto two new sections, designated sections nine and ten; and to amend and reenact section six, article seven, chapter sixty-one of said code, all relating to the Hatfield-McCoy recreation area; defining terms; allowing rangers on duty on the Hatfield-McCoy recreation area or trail to carry firearms; permitting the use of the Hatfield-McCoy trail for equestrians; allowing the Hatfield-McCoy recreation area authority to promulgate emergency rules under certain circumstances; requiring certain insurance policies to be read as containing a waiver of defenses; allowing the authority to set user fees for the Hatfield-McCoy recreation area and trail at its discretion; and authorizing federal law enforcement officers to carry concealed weapons.

Be it enacted by the Legislature of West Virginia:

That section five, article twenty-five, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that sections one, two, five and six, article fourteen, chapter twenty of said code be amended and reenacted; that said article be further amended by adding thereto two new sections,

designated sections nine and ten; and that section six, article seven, chapter sixty-one of said code be amended and reenacted, all to read as follows:

Chapter

19. Agriculture.

20. Natural Resources.

61. Crimes and Their Punishment.

CHAPTER 19. AGRICULTURE.

ARTICLE 25. LIMITING LIABILITY OF LANDOWNERS.

§19-25-5. Definitions.

1 Unless the context used clearly requires a different mean-
2 ing, as used in this article:

3 (1) "Charge" means:

4 (A) For purposes of limiting liability for recreational or
5 wildlife propagation purposes set forth in section two of this
6 article, the amount of money asked in return for an invitation to
7 enter or go upon the land, including a one-time fee for a
8 particular event, amusement, occurrence, adventure, incident,
9 experience or occasion which may not exceed fifty dollars a
10 year per recreational participant: *Provided*, That the monetary
11 cap on charges imposed pursuant to this article does not apply
12 to the provisions of article fourteen, chapter twenty of this code
13 pertaining to the Hatfield-McCoy regional recreational author-
14 ity or activities sponsored on the Hatfield-McCoy recreation
15 area;

16 (B) For purposes of limiting liability for military training
17 set forth in section six of this article, the amount of money
18 asked in return for an invitation to enter or go upon the land;

19 (2) "Land" includes, but shall not be limited to, roads,
20 water, watercourses, private ways and buildings, structures and
21 machinery or equipment thereon when attached to the realty;

22 (3) "Noncommercial recreational activity" shall not include
23 any activity for which there is any charge which exceeds fifty
24 dollars per year per participant;

25 (4) "Owner" includes, but shall not be limited to, tenant,
26 lessee, occupant or person in control of the premises;

27 (5) "Recreational purposes" includes, but shall not be
28 limited to, any one or any combination of the following
29 noncommercial recreational activities: Hunting, fishing,
30 swimming, boating, camping, picnicking, hiking, pleasure
31 driving, motorcycle or all-terrain vehicle riding, bicycling,
32 horseback riding, nature study, water skiing, winter sports and
33 visiting, viewing or enjoying historical, archaeological, scenic
34 or scientific sites or otherwise using land for purposes of the
35 user;

36 (6) "Wildlife propagation purposes" applies to and includes
37 all ponds, sediment control structures, permanent water
38 impoundments or any other similar or like structure created or
39 constructed as a result of or in connection with surface mining
40 activities as governed by article three, chapter twenty-two of
41 this code or from the use of surface in the conduct of under-
42 ground coal mining as governed by said article and rules
43 promulgated thereunder, which ponds, structures or impound-
44 ments are hereafter designated and certified in writing by the
45 director of the division of environmental protection and the
46 owner to be necessary and vital to the growth and propagation
47 of wildlife, animals, birds and fish or other forms of aquatic life
48 and finds and determines that the premises have the potential of
49 being actually used by the wildlife for those purposes and that
50 the premises are no longer used or necessary for mining

51 reclamation purposes. The certification shall be in form
52 satisfactory to the director and shall provide that the designated
53 ponds, structures or impoundments shall not be removed
54 without the joint consent of the director and the owner; and

55 (7) "Military training" includes, but is not limited to,
56 training, encampments, instruction, overflight by military
57 aircraft, parachute drops of personnel or equipment or other use
58 of land by a member of the army national guard or air national
59 guard, a member of a reserve unit of the armed forces of the
60 United States or a person on active duty in the armed forces of
61 the United States, acting in that capacity.

CHAPTER 20. NATURAL RESOURCES.

ARTICLE 14. HATFIELD-MCCOY REGIONAL RECREATION AUTHORITY.

- §20-14-1. Legislative findings.
- §20-14-2. Definitions.
- §20-14-5. Powers of authority.
- §20-14-6. Hatfield-McCoy recreation area rangers.
- §20-14-9. Limiting liability.
- §20-14-10. Insurance policies.

§20-14-1. Legislative findings.

1 The West Virginia Legislature finds that there is a signifi-
2 cant need within the state and throughout the eastern United
3 States for well-managed facilities for trail-oriented recreation
4 for off-highway vehicle enthusiasts, mountain bicyclists,
5 equestrians and others. The Legislature further finds that under
6 an appropriate contractual and management scheme, well-
7 managed, trail-oriented, recreation facilities could exist on
8 private property without diminishing the landowner's interest,
9 control or profitability in the land and without increasing the
10 landowner's exposure to liability.

11 The Legislature further finds that, with the cooperation of
12 private landowners, there is an opportunity to provide trail-
13 oriented recreation facilities primarily on private property in the
14 mountainous terrain of southern West Virginia and that the
15 facilities will provide significant economic and recreational
16 benefits to the state and to the communities in southern West
17 Virginia through increased tourism in the same manner as
18 whitewater rafting and snow skiing benefit the state and
19 communities surrounding those activities.

20 The Legislature further finds that the creation and empow-
21 ering of a statutory corporation to work with the landowners,
22 county officials and community leaders, state and federal
23 government agencies, recreational user groups and other
24 interested parties to enable and facilitate the implementation of
25 the facilities will greatly assist in the realization of these
26 potential benefits.

27 The Legislature further finds that it is in the best interests
28 of the state to encourage private landowners to make available
29 for public use through the Hatfield-McCoy regional recreation
30 authority land for these recreational purposes by limiting their
31 liability for injury to persons entering thereon, by limiting their
32 liability for injury to the property of persons entering thereon
33 and by limiting their liability to persons who may be injured or
34 otherwise damaged by the acts or omissions of persons entering
35 thereon.

§20-14-2. Definitions.

1 Unless the context clearly requires a different meaning, the
2 terms used in this section have the following meanings:

3 (a) “Authority” means the Hatfield-McCoy regional
4 recreational authority;

5 (b) "Board" means the board of the Hatfield-McCoy
6 regional recreation authority;

7 (c) "Charge" means, for purposes of limiting liability for
8 recreational purposes set forth in this article, the amount of
9 money asked in return for an invitation to enter or go upon the
10 land, including a one-time fee for a particular event, amuse-
11 ment, occurrence, adventure, incident, experience or occasion
12 as set by the authority: *Provided*, That the authority may set
13 charges in differing amounts for different categories of partici-
14 pants, including, but not limited to, in-state and out-of-state
15 participants, as the authority sees fit;

16 (d) "Hatfield-McCoy recreation area" means a system of
17 recreational trails and appurtenant facilities, including trail head
18 centers, parking areas, camping facilities, picnic areas, recre-
19 ational areas, historic or cultural interpretive sites and other
20 facilities that are a part of the system;

21 (e) "Land" includes, but is not limited to, roads, water,
22 watercourses, private ways and buildings, structures and
23 machinery or equipment thereon when attached to the realty;

24 (f) "Owner" includes, but is not limited to, tenant, lessee,
25 occupant or person in control of the premises;

26 (g) "Recreational purposes" includes, but is not limited to,
27 any one or any combination of the following noncommercial
28 recreational activities: Hunting, fishing, swimming, boating,
29 camping, picnicking, hiking, pleasure driving, motorcycle or
30 all-terrain vehicle riding, bicycling, horseback riding, nature
31 study, water skiing, winter sports and visiting, viewing or
32 enjoying historical, archaeological, scenic or scientific sites or
33 otherwise using land for purposes of the user;

34 (h) "Participating county" means the counties of Boone,
35 Lincoln, Logan, McDowell, Mingo, Wayne and Wyoming and,

36 with the approval of the board, any other county or counties
37 where trails and other recreational facilities relating to the
38 Hatfield-McCoy recreation area are developed in the future
39 with the cooperation of the county commission.

§20-14-5. Powers of authority.

1 The authority, as a public corporation and governmental
2 instrumentality exercising public powers of the state, may
3 exercise all powers necessary or appropriate to carry out the
4 purposes of this article, including, but not limited to, the power:

5 (1) To acquire, own, hold and dispose of property, real and
6 personal, tangible and intangible;

7 (2) To lease property, whether as lessee or lessor, and to
8 acquire or grant through easement, license or other appropriate
9 legal form, the right to develop and use property and open it to
10 the use of the public;

11 (3) To mortgage or otherwise grant security interests in its
12 property;

13 (4) To procure insurance against any losses in connection
14 with its property, license or easements, contracts, including
15 hold-harmless agreements, operations or assets in such amounts
16 and from such insurers as the authority considers desirable;

17 (5) To maintain such sinking funds and reserves as the
18 board determines appropriate for the purposes of meeting future
19 monetary obligations and needs of the authority;

20 (6) To sue and be sued, implead and be impleaded and
21 complain and defend in any court;

22 (7) To contract for the provision of legal services by private
23 counsel and, notwithstanding the provisions of article three,

24 chapter five of this code, the counsel may, in addition to the
25 provisions of other legal services, represent the authority in
26 court, negotiate contracts and other agreements on behalf of the
27 authority, render advice to the authority on any matter relating
28 to the authority, prepare contracts and other agreements and
29 provide such other legal services as may be requested by the
30 authority;

31 (8) To adopt, use and alter at will a corporate seal;

32 (9) To make, amend, repeal and adopt bylaws for the
33 management and regulation of its affairs;

34 (10) To appoint officers, agents and employees and to
35 contract for and engage the services of consultants;

36 (11) To make contracts of every kind and nature and to
37 execute all instruments necessary or convenient for carrying on
38 its business, including contracts with any other governmental
39 agency of this state or of the federal government or with any
40 person, individual, partnership or corporation to effect any or
41 all of the purposes of this article;

42 (12) Without in any way limiting any other subdivision of
43 this section, to accept grants and loans from and enter into
44 contracts and other transactions with any federal agency;

45 (13) To maintain an office at such places within the state as
46 it may designate;

47 (14) To borrow money and to issue its bonds, security
48 interests or notes and to provide for and secure the payment of
49 the bonds, security interests or notes and to provide for the
50 rights of the holders of the bonds, security interests or notes and
51 to purchase, hold and dispose of any of its bonds, security
52 interests or notes;

53 (15) To sell, at public or private sale, any bond or other
54 negotiable instrument, security interest or obligation of the
55 authority in such manner and upon such terms as the authority
56 considers would best serve the purposes of this article;

57 (16) To issue its bonds, security interests and notes payable
58 solely from the revenues or other funds available to the author-
59 ity, and the authority may issue its bonds, security interests or
60 notes in such principal amounts as it considers necessary to
61 provide funds for any purpose under this article, including:

62 (A) The payment, funding or refunding of the principal of,
63 interest on or redemption premiums on, any bonds, security
64 interests or notes issued by it whether the bonds, security
65 interests, notes or interest to be funded or refunded have or have
66 not become due;

67 (B) The establishment or increase of reserves to secure or
68 to pay bonds, security interests, notes or the interest on the
69 bonds, security interest or notes and all other costs or expenses
70 of the authority incident to and necessary or convenient to carry
71 out its corporate purposes and powers. Any bonds, security
72 interests or notes may be additionally secured by a pledge of
73 any revenues, funds, assets or moneys of the authority from any
74 source whatsoever;

75 (17) To issue renewal notes or security interests, to issue
76 bonds to pay notes or security interests and, whenever it
77 considers refunding expedient, to refund any bonds by the
78 issuance of new bonds, whether the bonds to be refunded have
79 or have not matured except that no renewal notes may be issued
80 to mature more than ten years from the date of issuance of the
81 notes renewed and no refunding bonds may be issued to mature
82 more than twenty-five years from the date of issuance;

83 (18) To apply the proceeds from the sale of renewal notes,
84 security interests of refunding bonds to the purchase, redemp-

85 tion or payment of the notes, security interests or bonds to be
86 refunded;

87 (19) To accept gifts or grants of property, funds, security
88 interests, money, materials, labor, supplies or services from the
89 federal government or from any governmental unit or any
90 person, firm or corporation and to carry out the terms or
91 provisions of or make agreements with respect to or pledge any
92 gifts or grants and to do any and all things necessary, useful,
93 desirable or convenient in connection with the procuring,
94 acceptance or disposition of gifts or grants;

95 (20) To the extent permitted under its contracts with the
96 holders of bonds, security interests or notes of the authority, to
97 consent to any modification of the rate of interest, time of
98 payment of any installment of principal or interest, security or
99 any other term of any bond, security interest, note, contract or
100 agreement of any kind to which the authority is a party;

101 (21) To sell security interests in the loan portfolio of the
102 authority. The security interests shall be evidenced by instru-
103 ments issued by the authority. Proceeds from the sale of
104 security interests may be issued in the same manner and for the
105 same purposes as bond and note venues;

106 (22) To promulgate legislative rules in accordance with the
107 provisions of article three, chapter twenty-nine-a of this code as
108 necessary to implement and make effective the powers, duties
109 and responsibilities invested in the authority by the provisions
110 of this article and otherwise by law, including regulation of the
111 conduct of persons using the Hatfield-McCoy recreation area.
112 Notwithstanding any other provisions of this code to the
113 contrary, until the Legislature has authorized the rules, the
114 authority may promulgate emergency rules for those purposes
115 pursuant to section fifteen, article three, chapter twenty-nine-a
116 of this code;

117 (23) To construct, reconstruct, improve, maintain, repair,
118 operate and manage the Hatfield-McCoy recreation area at the
119 locations within the state as may be determined by the author-
120 ity;

121 (24) To exercise all power and authority provided in this
122 article necessary and convenient to plan, finance, construct,
123 renovate, maintain and operate or oversee the operation of the
124 Hatfield-McCoy recreation area at such locations within the
125 state as may be determined by the authority;

126 (25) To exercise such other and additional powers as may
127 be necessary or appropriate for the exercise of the powers
128 conferred in this section;

129 (26) To exercise all of the powers which a corporation may
130 lawfully exercise under the laws of this state;

131 (27) To provide for law enforcement within the Hatfield-
132 McCoy recreational area by appointing rangers as provided in
133 section six of this article;

134 (28) To develop, maintain and operate or to contract for the
135 development, maintenance and operation of the Hatfield-
136 McCoy recreation area;

137 (29) To enter into contract with landowners and other
138 persons holding an interest in the land being used for its
139 recreational facilities to hold those landowners and other
140 persons harmless with respect to any claim in tort growing out
141 of the use of the land for public recreation or growing out of the
142 recreational activities operated or managed by the authority
143 from any claim except a claim for damages proximately caused
144 by the willful or malicious conduct of the landowner or other
145 person or any of his or her agents or employees;

146 (30) To assess and collect a reasonable fee from those
147 persons who use the trails, parking facilities, visitor centers or
148 other facilities which are part of the Hatfield-McCoy recreation
149 area and to retain and utilize that revenue for any purposes
150 consistent with this article;

151 (31) To cooperate with the states of Kentucky and Virginia
152 and appropriate state and local officials and community leaders
153 in those states to connect the trails of the West Virginia portion
154 of the Hatfield-McCoy recreation area with similar recreation
155 facilities in those states;

156 (32) To enter into contracts or other appropriate legal
157 arrangements with landowners under which their land is made
158 available for use as part of the Hatfield-McCoy recreation area;
159 and

160 (33) To directly operate and manage recreation activities
161 and facilities within the Hatfield-McCoy recreation area.

§20-14-6. Hatfield-McCoy recreation area rangers.

1 The board is hereby authorized to appoint bona fide
2 residents of this state to act as Hatfield-McCoy recreation area
3 rangers upon any premises which are part of the Hatfield-
4 McCoy recreation area, subject to the conditions and restric-
5 tions imposed by this section. Before performing the duties of
6 ranger, each appointed person shall qualify for the position of
7 ranger in the same manner as is required of county officers by
8 the taking and filing of an oath of office as required by section
9 one, article one, chapter six of this code and by posting an
10 official bond as required by section one, article two, chapter six
11 of this code. To facilitate the performance of the duties of a
12 ranger, a ranger may carry a firearm or other dangerous weapon
13 while the ranger is on duty.

14 It is the duty of any person appointed and qualified to
15 preserve law and order on any premises which are part of the
16 Hatfield-McCoy recreation area, the immediately adjacent
17 property of landowners who are making land available for
18 public use under agreement with the authority and on streets,
19 highways or other public lands utilized by the trails, parking
20 areas or related recreational facilities and other immediately
21 adjacent public lands. For this purpose, the ranger shall be
22 considered to be a law-enforcement officer in accordance with
23 the provisions of section one, article twenty-nine, chapter thirty
24 of this code and, as to offenses committed within those areas,
25 have and may exercise all the powers and authority and are
26 subject to all the requirements and responsibilities of a law-
27 enforcement officer. The assignment of rangers to the duties
28 authorized by this section may not supersede in any way the
29 authority or duty of other peace officers to preserve law and
30 order on those premises.

31 The salary of all rangers shall be paid by the board. The
32 board shall furnish each ranger with an official uniform to be
33 worn while on duty and shall furnish and require each ranger
34 while on duty to wear a shield with an appropriate inscription
35 and to carry credentials certifying the person's identity and
36 authority as a ranger.

37 The board may at its pleasure revoke the authority of any
38 ranger. The executive director shall report the termination of
39 employment of a ranger by filing a notice to that effect in the
40 office of the clerk of each county in which the ranger's oath of
41 office was filed and in the case of a ranger licensed to carry a
42 gun or other dangerous weapon, by notifying the clerk of the
43 circuit court of the county in which the license for the gun or
44 other dangerous weapon was granted.

§20-14-9. Limiting liability.

1 (a) Notwithstanding the provisions of section three, article
2 twenty-five, chapter nineteen, an owner of land used by or for
3 the stated purposes of the Hatfield-McCoy regional recreation
4 authority, whether with or without charge, owes no duty of care
5 to keep the premises safe for entry or use by others for recre-
6 ational purposes or to give any warning of a dangerous or
7 hazardous condition, use, structure or activity on the premises
8 to persons entering for those purposes.

9 (b) Notwithstanding the provisions of section three, article
10 twenty-five, chapter nineteen of this code, the landowner or
11 lessor of the property for recreational purposes does not
12 thereby: (a) Extend any assurance that the premises are safe for
13 any purpose; or (b) confer upon such persons the legal status of
14 an invitee or licensee to whom a duty of care is owed; or (c)
15 assume responsibility for or incur liability for any injury to
16 person or property caused by an act or omission of these
17 persons.

18 (c) Unless otherwise agreed in writing, an owner who
19 grants a lease, easement or license of land to the authority for
20 recreational purposes owes no duty of care to keep that land
21 safe for entry or use by others or to give warning to persons
22 entering or going upon the land of any dangerous or hazardous
23 conditions, uses, structures or activities thereon. An owner who
24 grants a lease, easement or license of land to the authority for
25 recreational purposes does not by giving a lease, easement or
26 license: (1) Extend any assurance to any person using the land
27 that the premises are safe for any purpose; (2) confer upon
28 those persons the legal status of an invitee or licensee to whom
29 a duty of care is owed; or (3) assume responsibility for or incur
30 liability for any injury to person or property caused by an act or
31 omission of a person who enters upon the leased land. The
32 provisions of this section apply whether the person entering
33 upon the land is an invitee, licensee, trespasser or otherwise.

34 (d) Nothing herein limits in any way any liability which
35 otherwise exists for deliberate, willful or malicious infliction of
36 injury to persons or property: *Provided*, That nothing herein
37 limits in any way the obligation of a person entering upon or
38 using the land of another for recreational purposes to exercise
39 due care in his or her use of the land and in his or her activities
40 thereon, so as to prevent the creation of hazards or the commis-
41 sion of waste by himself or herself: *Provided, however*, That
42 equestrians who are using the land upon which the Hatfield-
43 McCoy recreation area is located but who are not engaged in a
44 commercial profit-making venture are exempt from the
45 provisions of subsection (d), section five, article four, chapter
46 twenty of this code.

§20-14-10. Insurance policies.

1 Any policy or contract of liability insurance providing
2 coverage for liability sold, issued or delivered in this state to
3 any owner of lands covered under the provisions of this article
4 shall be read so as to contain a provision or endorsement
5 whereby the company issuing such policy waives or agrees not
6 to assert as a defense on behalf of the policyholder or any
7 beneficiary thereof, to any claim covered by the terms of such
8 policy within the policy limits, the immunity from liability of
9 the insured by reason of the use of such insured's land for
10 recreational purposes, unless such provision or endorsement is
11 rejected in writing by the named insured.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 7. DANGEROUS WEAPONS.

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

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

*Clerk's Note: This section was also amended by H. B. 2587 (Chapter 179), which passed prior to this act.

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

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

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

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

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

32 (6) Any circuit judge, including any retired circuit judge
33 designated senior status by the supreme court of appeals of

34 West Virginia, prosecuting attorney, assistant prosecuting
35 attorney or a duly appointed investigator employed by a
36 prosecuting attorney;

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

39 (8) Any resident of another state who has been issued a
40 license to carry a concealed weapon by a state or a political
41 subdivision which has entered into a reciprocity agreement with
42 this state shall be exempt from the licensing requirements of
43 section four of this article. The governor may execute reciproc-
44 ity agreements on behalf of the state of West Virginia with
45 states or political subdivisions which have similar gun permit-
46 ting laws and which recognize and honor West Virginia licenses
47 issued pursuant to section four of this article;

48 (9) Any federal law-enforcement officer or federal police
49 officer authorized to carry a weapon in the performance of the
50 officer's duty; and

51 (10) Any Hatfield-McCoy regional recreation authority
52 ranger while the ranger is on duty.

CHAPTER 139

(Com. Sub. for S. B. 10 — Senators Chafin and Kessler)

[Passed April 12, 2001; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one and four, article four-b,
chapter nine of the code of West Virginia, one thousand nine

hundred thirty-one, as amended, all relating to defining registered nurse first assistant under medicaid; defining perioperative nursing; providing for medicaid reimbursement of certain services rendered by a registered nurse first assistant; establishing comparative fees for services provided by a registered nurse first assistant; and eliminating outdated provisions regarding the physician/medical practitioner provider medicaid enhancement board.

Be it enacted by the Legislature of West Virginia:

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

**ARTICLE 4B. PHYSICIAN/MEDICAL PRACTITIONER PROVIDER
MEDICAID ACT.**

§9-4B-1. Definitions.

§9-4B-4. Powers and duties.

§9-4B-1. Definitions.

1 The following words, when used in this article, have
2 meanings ascribed to them in this section, except in those
3 instances where the context clearly indicates a different
4 meaning:

5 (a) “Board” means the physician/medical practitioner
6 provider medicaid enhancement board created to develop,
7 review and recommend the physician/medical practitioner
8 provider fee schedule;

9 (b) “Physician provider” means an allopathic or osteopathic
10 physician, rendering services within this state and receiving
11 reimbursement, directly as an individual provider or indirectly
12 as an employee or agent of a medical clinic, partnership or other
13 business entity;

14 (c) "Nurse practitioner" means a registered nurse qualified
15 by virtue of his or her education and credentials and approved
16 by the West Virginia board of examiners for registered profes-
17 sional nurses to practice as an advanced practice nurse inde-
18 pendently or in a collaborative relationship with a physician;

19 (d) "Nurse-midwife" means a qualified professional nurse
20 registered with the West Virginia board of examiners for
21 registered professional nurses who by virtue of additional
22 training is specifically qualified to practice nurse-midwifery
23 according to the statement of standards for the practice of
24 nurse-midwifery as set forth by the American college of nurse-
25 midwives;

26 (e) "Physician assistant" means an assistant to a physician
27 who is a graduate of an approved program of instruction in
28 primary health care or surgery, has attained a baccalaureate or
29 master's degree, has passed the national certification examina-
30 tion and is qualified to perform direct patient care services
31 under the supervision of a physician;

32 (f) "Registered nurse first assistant" means one who:

33 (1) Holds a current active registered nurse licensure;

34 (2) Is certified in perioperative nursing; and

35 (3) Has successfully completed and holds a degree or
36 certificate from a recognized program which consists of:

37 (A) The association of operating room nurses, inc., care
38 curriculum for the registered nurse first assistant; and

39 (B) One year of post-basic nursing study, which shall
40 include at least forty-five hours of didactic instruction and one
41 hundred twenty hours of clinical internship or its equivalent of
42 two college semesters;

43 A registered nurse who was certified by the certification
44 board of perioperative nursing before one thousand nine
45 hundred ninety-seven is not required to fulfill the requirements
46 of subdivision (3) of this subsection;

47 (g) "Perioperative nursing" means a practice of nursing in
48 which the nurse provides preoperative, intraoperative and post-
49 operative nursing care to surgical patients;

50 (h) "Secretary" means the secretary of the department of
51 health and human resources; and

52 (i) "Single state agency" means the single state agency for
53 medicaid in this state.

§9-4B-4. Powers and duties.

1 (a) The board shall:

2 (1) Develop and recommend a reasonable physi-
3 cian/medical practitioner provider fee schedule that conforms
4 with federal medicaid laws and remains within the limits of
5 annual funding available to the single state agency for the
6 medicaid program. In developing the fee schedule, the board
7 may refer to a nationally published regional specific fee
8 schedule selected by the secretary of the department of health
9 and human resources. The board may consider identified health
10 care priorities in developing its fee schedule to the extent
11 permitted by applicable federal medicaid laws and may
12 recommend higher reimbursement rates for basic primary and
13 preventive health care services than for other services. If the
14 single state agency approves the fee schedule, it shall imple-
15 ment the physician/medical practitioner provider fee schedule;

16 (2) Review the fee schedule on a quarterly basis and
17 recommend to the single state agency any adjustments it
18 considers necessary. If the single state agency approves any of

19 the board's recommendations, it shall immediately implement
20 those adjustments and shall report the same to the joint commit-
21 tee on government and finance on a quarterly basis;

22 (3) Meet and confer with representatives from each medical
23 specialty area so that equity in reimbursement increases or
24 decreases be achieved to the greatest extent possible;

25 (4) Assist and enhance communications between participat-
26 ing physician and medical practitioner providers and the
27 department of health and human resources; and

28 (5) Review reimbursements in relation to those physician
29 and medical practitioner providers who provide early and
30 periodic screening diagnosis and treatment.

31 (b) The board may carry out any other powers and duties as
32 prescribed for it by the secretary.

33 (c) Nothing in this section gives the board the authority to
34 interfere with the discretion and judgment given to the single
35 state agency that administers the state's medicaid program. If
36 the single state agency disapproves the recommendations or
37 adjustments to the fee schedule, it is expressly authorized to
38 make any modifications to fee schedules as are necessary to
39 ensure that total financial requirements of the agency for the
40 current fiscal year with respect to the state's medicaid plan are
41 met and shall report the same to the joint committee on govern-
42 ment and finance on a quarterly basis: *Provided*, That the single
43 state agency shall provide reimbursement for the services of a
44 registered nurse first assistant which reimbursement shall be no
45 less than thirteen and six tenths of one percent of the rate for a
46 surgeon physician. The purpose of the board is to assist and
47 enhance the role of the single state agency in carrying out its
48 mandate by acting as a means of communication between the
49 medicaid provider community and the agency.

50 (d) On a quarterly basis, the single state agency and the
51 board shall report to the joint committee on government and
52 finance the status of the fund, any adjustments to the fee
53 schedule and the fee schedule for each health care provider
54 group identified in section one of this article.

CHAPTER 140

(S. B. 734 — By Senators Wooton, Snyder, Caldwell, Fanning, Hunter,
Kessler, Minard, Mitchell, Redd, Ross and Deem)

[Passed April 13, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine-a, article one, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to public and community water systems; and administrative penalties.

Be it enacted by the Legislature of West Virginia:

That section nine-a, article one, 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 1. STATE PUBLIC HEALTH SYSTEM.

§16-1-9a. Public water system and community water system defined; regulation of maximum contaminant levels in water systems; authorization of inspections; violations; criminal, civil and administrative penalties; safe drinking water penalty fund.

1 (a) A public water system is any water supply or system
2 that regularly supplies or offers to supply water for human

3 consumption through pipes or other constructed conveyances,
4 if serving at least an average of twenty-five individuals per day
5 for at least sixty days per year, or which has at least fifteen
6 service connections, and shall include: (1) Any collection,
7 treatment, storage and distribution facilities under the control
8 of the owner or operator of such system and used primarily in
9 connection with such system; and (2) any collection or pretreat-
10 ment storage facilities not under such control which are used
11 primarily in connection with such system. A public water
12 system does not include a system that meets all of the following
13 conditions: (1) Consists only of distribution and storage
14 facilities (and does not have any collection and treatment
15 facilities); (2) obtains all of its water from, but is not owned or
16 operated by, a public water system that otherwise meets the
17 definition; (3) does not sell water to any person; and (4) is not
18 a carrier conveying passengers in interstate commerce.

19 (b)(1) The secretary shall prescribe by legislative rule the
20 maximum contaminant levels to which all public water systems
21 shall conform in order to prevent adverse effects on the health
22 of individuals and, if the secretary considers appropriate,
23 treatment techniques that reduce the contaminant or contami-
24 nants to a level which will not adversely affect the health of the
25 consumer. The rule shall contain provisions to protect and
26 prevent contamination of wellheads and well fields used by
27 public water supplies so that contaminants do not reach a level
28 that would adversely affect the health of the consumer.

29 (2) The secretary shall further prescribe by legislative rule
30 minimum requirements for: Sampling and testing; system
31 operation; public notification by a public water system on being
32 granted a variance or exemption or upon failure to comply with
33 specific requirements of this section and regulations promul-
34 gated under this section; recordkeeping; laboratory certifica-
35 tion; as well as procedures and conditions for granting vari-
36 ances and exemptions to public water systems from state public
37 water systems regulations.

38 (3) In addition, the secretary shall establish by legislative
39 rule, in accordance with article three, chapter twenty-nine-a of
40 this code, requirements covering the production and distribution
41 of bottled drinking water and may by legislative rule, in
42 accordance with article three, chapter twenty-nine-a of this
43 code, establish requirements governing the taste, odor, appear-
44 ance and other consumer acceptability parameters of drinking
45 water.

46 (c) Authorized representatives of the bureau have right of
47 entry to any part of a public water system, whether or not the
48 system is in violation of a legal requirement, for the purpose of
49 inspecting, sampling or testing and shall be furnished records
50 or information reasonably required for a complete inspection.

51 (d)(1) Any individual, partnership, association, syndicate,
52 company, firm, trust, corporation, government corporation,
53 institution, department, division, bureau, agency, federal agency
54 or any entity recognized by law who violates any provision of
55 this section, or any of the rules or orders issued pursuant to this
56 section, is guilty of a misdemeanor and, upon conviction
57 thereof, shall be fined not less than fifty dollars nor more than
58 five hundred dollars and each day's violation shall constitute a
59 separate offense. The commissioner or his or her authorized
60 representative may also seek injunctive relief in the circuit court
61 of the county in which all or part of the public water system is
62 situated for threatened or continuing violations.

63 (2) For a willful violation of a provision of this section, or
64 of any of the rules or orders issued under this section for which
65 a penalty is not otherwise provided under subdivision (3) of this
66 subsection, an individual, partnership, association, syndicate,
67 company, firm, trust, corporation, government corporation,
68 institution, department, division, bureau, agency, federal agency
69 or entity recognized by law, upon a finding of a willful viola-
70 tion by the circuit court of the county in which the violation
71 occurs, shall be subject to a civil penalty of not more than five

72 thousand dollars and each day's violation shall be grounds for
73 a separate penalty.

74 (3) The commissioner or his or her authorized representa-
75 tive shall have authority to assess administrative penalties and
76 initiate any proceedings necessary for the enforcement of
77 drinking water rules. The administrative penalty for a violation
78 of any drinking water rule is a minimum of one thousand
79 dollars per day per violation and a maximum of two thousand
80 five hundred dollars per day per violation for systems serving
81 more than ten thousand persons, a minimum of two hundred
82 fifty dollars per day per violation and a maximum of five
83 hundred dollars per day per violation for systems serving over
84 three thousand three hundred persons up to and including ten
85 thousand persons, a minimum of one hundred dollars per day
86 per violation and a maximum of two hundred dollars per day
87 per violation for systems serving three thousand three hundred
88 or fewer persons and each day's violation shall be grounds for
89 a separate penalty. Penalties are payable to the commissioner.
90 All moneys collected under this section shall be deposited into
91 a restricted account known as the safe drinking water penalty
92 fund previously created in the office of the state treasurer. All
93 money deposited into the fund shall be used by the commis-
94 sioner to provide technical assistance to public water systems.



CHAPTER 141

**(H. B. 3242 — By Delegates Douglas, Kuhn, Perdue,
Marshall, Ennis, Flanigan and Ellem)**

[Passed April 14, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article one-a, relating to uniform credentialing for health care practitioners.

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 one-a, to read as follows:

ARTICLE 1A. UNIFORM CREDENTIALING FOR HEALTH CARE PRACTITIONERS.

§16-1A -1. Legislative findings; purpose.

§16-1A-2. Development of uniform credentialing application forms.

§16-1A-3. Advisory committee.

§16-1A-4. Report required.

§16-1A -1. Legislative findings; purpose.

1 (a) The legislature finds:

2 (1) Credentialing, required by hospitals, insurance compa-
3 nies, prepaid health plans, third party administrators and other
4 health care entities, is necessary to assess and verify the
5 education, training, experience and competence of health care
6 practitioners to ensure that qualified professionals treat the
7 citizens of this state.

8 (2) Currently, each of the entities requiring credentialing
9 has its own credentialing application forms resulting in health
10 care practitioners being required to complete multiple forms
11 listing the same or similar information. The duplication is
12 costly, time consuming and not in the best interests of the
13 citizens of this state.

14 (3) The secretary of the department of health and human
15 resources and the insurance commissioner share regulatory
16 authority over the entities requiring credentialing.

17 (b) The purpose of this article is to authorize the develop-
18 ment of uniform credentialing application forms by those public
19 officials regulating the entities that require credentialing and to
20 establish an advisory committee to assist in developing a
21 uniform credentialing process and implementing the use of
22 uniform credentialing in this state.

§16-1A-2. Development of uniform credentialing application forms.

1 Notwithstanding any provision of this code to the contrary,
2 the secretary of the department of health and human resources
3 and the insurance commissioner, on or before the first day of
4 January, two thousand two, shall jointly propose rules for
5 legislative approval in accordance with the provisions of article
6 three, chapter twenty-nine-a of this code which set forth
7 uniform application forms for credentialing, recredentialing or
8 updating information and to specify the health care practitioners
9 who may utilize the forms.

§16-1A-3. Advisory committee.

1 The secretary of the department of health and human
2 resources and the insurance commissioner shall jointly establish
3 an advisory committee to assist them in the development and
4 implementation of the uniform credentialing process in this
5 state. The advisory committee shall consist of eleven appointed
6 members. Six members shall be appointed by the secretary of
7 the department of health and human resources: one member
8 shall represent a hospital with one hundred beds or less; one
9 member shall represent a hospital with more than one hundred
10 beds; one member shall represent another type of health care
11 facility requiring credentialing; one member shall be a person

12 currently credentialing on behalf of health care practitioners;
13 and two of the members shall represent the health care practi-
14 tioners subject to credentialing. Five members shall be repre-
15 sentative of the entities regulated by the insurance commis-
16 sioner that require credentialing and shall be appointed by the
17 insurance commissioner: one member shall represent an
18 indemnity health care insurer; one member shall represent a
19 preferred provider organization; one member shall represent a
20 third party administrator; one member shall represent a health
21 maintenance organization accredited by American accreditation
22 health care commission; and one member shall represent a
23 health maintenance organization accredited by the national
24 committee on quality assurance. The secretary of the depart-
25 ment of health and human resources and the insurance commis-
26 sioner, or the designee of either or both, shall be nonvoting ex
27 officio members.

§16-1A-4. Report required.

1 On or before the first day of January, two thousand two, the
2 secretary of the department of health and human resources and
3 the insurance commissioner shall jointly report to the legislative
4 oversight commission on health and human resources account-
5 ability on the need, if any, for further legislation to implement
6 the use of the uniform credentialing application forms devel-
7 oped pursuant to the legislative rule authorized by section two
8 of this article.

CHAPTER 142

(Com. Sub. for H. B. 2871 — By Delegates Amores, Compton and Leach)

[Passed April 13, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two-a, article five-a, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to expanding the existing cancer registry to include the collection of medical information concerning intracranial and central nervous system tumors; requiring reports and maintaining confidentiality.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5A. CANCER CONTROL.

§16-5A-2a. Cancer and tumor registry.

1 (a) To the extent funds are available, the director of the
2 division of health shall establish a cancer and tumor registry for
3 the purpose of collecting information concerning the incidence
4 of cancer and nonmalignant intracranial and central nervous
5 system tumors. The information collected by the registry shall
6 be analyzed to prepare reports and perform studies as necessary
7 when such data identifies hazards to public health. Pending
8 appropriate funding, a statewide system shall be phased in and
9 be fully operational by the first day of July, two thousand two,
10 pursuant to the enactment of this section in two thousand one.

11 (b) All reporting sources, including hospitals, physicians,
12 laboratories, clinics or other similar units diagnosing or
13 providing treatment for cancer and nonmalignant intracranial
14 and central nervous system tumors, shall provide a report of
15 each cancer or tumor case to the cancer and tumor registry in a
16 format specified by the director. The reporting sources shall
17 grant the director or an authorized representative of the registry
18 access to all records which would identify cases of cancer or
19 nonmalignant intracranial and central nervous system tumors or
20 would establish characteristics of cancer or nonmalignant
21 intracranial or central nervous system tumors.

22 (c) All information reported pursuant to this section is
23 confidential and shall be used for the purpose of determining
24 the sources of malignant neoplasms and nonmalignant
25 intracranial and central nervous system tumors and evaluating
26 measures designed to eliminate, alleviate or ameliorate their
27 effect. A report provided to the cancer and tumor registry
28 disclosing the identity of an individual who was reported as
29 having cancer or tumors shall only be released to reporting
30 sources and persons demonstrating a need which is essential to
31 health related research, except that the release shall be condi-
32 tioned upon the reporting source and personal identities
33 remaining confidential. No liability of any kind or character for
34 damages or other relief shall arise or be enforced against any
35 reporting source by reason of having provided the information
36 or material to the cancer and tumor registry.

37 (d) The director of the division of health shall appoint an
38 advisory committee on cancer and tumors with membership
39 consisting of representatives of appropriate agencies, including
40 the West Virginia hospital association; the American cancer
41 society, West Virginia division; the American lung association
42 of West Virginia; the West Virginia medical association; the
43 association of osteopathic medicine; the West Virginia nurses
44 association; the Mary Babb Randolph cancer center; and, at the
45 discretion of the director, any other individuals directly
46 involved. The advisory committee shall provide technical
47 guidance regarding the operation of the cancer registry and
48 shall provide such advice and assistance as needed to carry out
49 effective cancer prevention and control activities. The members
50 of the advisory committee shall serve four-year terms. Vacan-
51 cies shall be filled in a like manner for the unexpired term.

52 (e) The director shall promulgate rules related to: (1) The
53 content and design of all forms and reports required by this
54 section; (2) the procedures for disclosure of information
55 gathered by the cancer and tumor registry by monitoring and
56 evaluating health data and from completed risk assessments;
57 and (3) any other matter necessary to the administration of this
58 section.

CHAPTER 143

**(H. B. 2271 — By Mr. Speaker, Mr. Kiss, and Delegates
Varner, Kominar, Douglas and Pethtel)**

[Passed April 11, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article thirteen, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing the maximum expenditure made by a sanitary board from five thousand dollars to ten thousand dollars before requiring advertising for competitive bids.

Be it enacted by the Legislature of West Virginia:

That section three, article thirteen, 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 13. SEWAGE WORKS OF MUNICIPAL CORPORATIONS AND
SANITARY DISTRICTS.**

***§16-13-3. Powers of sanitary board; contracts; employees; compensation thereof; extensions and improvements; replacement of damaged public works.**

1 The board shall have power to take all steps and proceed-
2 ings and to make and enter into all contracts or agreements
3 necessary or incidental to the performance of its duties and the
4 execution of its powers under this article: *Provided*, That any
5 contract relating to the financing of the acquisition or construc-

***Clerk's Note:** This section was also amended by H. B. 2877 (Chapter 212), which passed subsequent to this act.

6 tion of any such works, or any trust indenture as hereinafter
7 provided for, shall be approved by the governing body of such
8 municipality before the same shall be effective. The board may
9 employ engineers, architects, inspectors, superintendents,
10 managers, collectors, attorneys, and such other employees as in
11 its judgment may be necessary in the execution of its powers
12 and duties, and may fix their compensation, all of whom shall
13 do such work as the board shall direct. All such compensation
14 and all expenses incurred in carrying out the provisions of this
15 article shall be paid solely from funds provided under the
16 authority of this article, and the board shall not exercise or carry
17 out any authority or power herein given it so as to bind said
18 board of said municipality beyond the extent to which money
19 shall have been or may be provided under the authority of this
20 article. No contract or agreement with any contractor or
21 contractors for labor and/or material, exceeding in amount the
22 sum of ten thousand dollars, shall be made without advertising
23 for bids, which bids shall be publicly opened and award made
24 to the best bidder, with power in the board to reject any or all
25 bids. After the construction, installation, and completion of the
26 works, or the acquisition thereof, the board shall operate,
27 manage and control the same and may order and complete any
28 extensions, betterments and improvements of and to the works
29 that the board may deem expedient, if funds therefor be
30 available or are made available as provided in this article, and
31 shall establish rules and regulations for the use and operation of
32 the works, and of other sewers and drains connected therewith
33 so far as they may affect the operation of such works, and do all
34 things necessary or expedient for the successful operation
35 thereof. The sanitary board may declare an emergency situation
36 in the event of collector line breaks or vital treatment plant
37 equipment failure and shall be exempted from competitive
38 bidding requirements and enter into direct purchase agreements

39 or contracts for such expenses. All public ways or public works
 40 damaged or destroyed by the board in carrying out its authority
 41 under this article shall be restored or repaired by the board and
 42 placed in their original condition, as nearly as practicable, if
 43 requested so to do by proper authority, out of the funds pro-
 44 vided by this article.

CHAPTER 144

(Com. Sub. for H. B. 2506 — By Delegates Hatfield, Marshall,
 Caputo, Keener, Manuel, Fleischauer and Mahan)

[Passed April 14, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article thirty-nine, relating to patient health care safety; establishing legislative intent and defining terms; prohibiting discrimination and retaliation against health care workers for reporting instances of waste or wrongdoing; requiring confidentiality of health care workers who file reports or complaints; providing for enforcement through civil actions; specifying the relief available and a two-year statute of limitation; and requiring the posting of certain notices by health care entities.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 39. PATIENT SAFETY ACT.

§16-39-1. Short title.

§16-39-2. Legislative findings and purpose.

§16-39-3. Definitions.

§16-39-4. Prohibition against discrimination or retaliation.

§16-39-5. Confidentiality of complaints to government agencies.

§16-39-6. Enforcement.

§16-39-7. Notice.

§16-39-1. Short title.

1 This article may be cited as the “Patient Safety Act of
2 2001.”

§16-39-2. Legislative findings and purpose.

1 (a) The Legislature finds that:

2 (1) Patients receiving medical care in this state need stable
3 and consistent care from those providing health care services at
4 every level;

5 (2) Dedicated health care workers are instrumental in
6 providing quality patient care services and ensuring that the
7 patient’s best interests are at all times protected;

8 (3) During the course of caring for their patients, many
9 health care workers often observe instances of waste or wrong-
10 doing that detrimentally affect both the patients and the health
11 care facility;

12 (4) Health care workers who observe such matters are often
13 reluctant to report the waste or wrongdoing to the administrator
14 of the health care facility or other appropriate authority for fear
15 of retaliatory or discriminatory treatment through termination,
16 demotion, reduction of time, wages or benefits or other such
17 actions; and

18 (5) The quality of available health care will suffer in this
19 state if dedicated health care workers are discouraged from

20 reporting instances of waste or wrongdoing that affect the
21 quality of health care delivery in this state.

22 (b) Consequently, the Legislature intends by enacting this
23 article to protect patients by providing protections for those
24 health care workers with whom the patient has the most direct
25 contact.

§16-39-3. Definitions.

1 For purposes of this article:

2 (1) “Appropriate authority” means a federal, state, county
3 or municipal government body, agency or organization having
4 jurisdiction over criminal law enforcement, regulatory viola-
5 tions, professional conduct or ethics, or waste or any member,
6 officer, agent, representative or supervisory employee thereof.

7 (2) “Commissioner” means the commissioner of the
8 division of health;

9 (3) “Direct patient care” means health care that provides for
10 the physical, diagnostic, emotional or rehabilitational needs of
11 a patient or health care that involves examination, treatment or
12 preparation for diagnostic tests or procedures.

13 (4) “Discrimination or retaliation” includes any threat,
14 intimidation, discharge or any adverse change in a health care
15 worker’s position, location, compensation, benefits, privileges
16 or terms or conditions of employment that occurs as a result of
17 a health care worker engaging in any action protected by this
18 article.

19 (5) “Good faith report” means a report of conduct defined
20 in this article as wrongdoing or waste that is made without
21 malice or consideration of personal benefit and which the

22 person making the report has reasonable cause to believe is
23 true.

24 (6) "Health care entity" includes a health care facility, such
25 as a hospital, clinic, nursing facility or other provider of health
26 care services.

27 (7) "Health care worker" means a person who provides
28 direct patient care to patients of a health care entity and who is
29 an employee of the health care entity, a subcontractor or
30 independent contractor for the health care entity, or an em-
31 ployee of such subcontractor or independent contractor. The
32 term includes, but is not limited to, a nurse, nurse's aide,
33 laboratory technician, physician, intern, resident, physician
34 assistant, physical therapist or other such person who provides
35 direct patient care.

36 (8) "Waste" means the conduct, act or omission by a health
37 care entity that results in substantial abuse, misuse, destruction
38 or loss of funds, resources or property belonging to a patient, a
39 health care entity or any federal or state program.

40 (9) "Wrongdoing" means a violation of any law, rule,
41 regulation or generally recognized professional or clinical
42 standard that relates to care, services or conditions and which
43 potentially endangers one or more patients or workers or the
44 public.

§16-39-4. Prohibition against discrimination or retaliation.

1 (a) No person may retaliate or discriminate in any manner
2 against any health care worker because the worker, or any
3 person acting on behalf of the worker:

4 (1) Makes a good faith report, or is about to report, verbally
5 or in writing, to the health care entity or appropriate authority
6 an instance of wrongdoing or waste.

7 (2) Advocated on behalf of a patient or patients with respect
8 to the care, services or conditions of a health care entity;

9 (3) Initiated, cooperated or otherwise participated in any
10 investigation or proceeding of any governmental entity relating
11 to the care, services or conditions of a health care entity.

12 (b) A health care worker with respect to the conduct
13 described is acting in good faith if the health care worker
14 reasonably believes:

15 (1) That the information is true and

16 (2) Constitutes waste or wrongdoing as defined in section
17 three of this article.

§16-39-5. Confidentiality of complaints to government agencies.

1 The identity of a health care worker who complains in good
2 faith to a government agency or department about the quality of
3 care, services or conditions of a health care entity or any waste
4 or wrongdoing by the health care entity shall remain confiden-
5 tial and may not be disclosed by any person except upon the
6 knowing written consent of the health care worker and except
7 in the case in which there is imminent danger to health or public
8 safety or an imminent violation of criminal law.

§16-39-6. Enforcement.

1 (a) Any health care worker who believes that he or she has
2 been retaliated or discriminated against in violation of section
3 four of this article may file a civil action in any court of
4 competent jurisdiction against the health care entity and the
5 person believed to have violated section four of this article.

6 (b) A court, in rendering a judgment for a complainant in an
7 action brought under this article, shall order, as the court

8 considers appropriate, reinstatement of the health care worker,
9 the payment of back wages, full reinstatement of fringe benefits
10 and seniority rights, actual damages or any combination of
11 these remedies. A court may also award the complainant, all or
12 a portion of the costs of litigation, including reasonable
13 attorneys fees and witness fees, if the court determines that the
14 award is appropriate.

15 (c) An action may be brought under this subsection not later
16 than two years after the date of the last event constituting the
17 alleged violation for which the action is brought.

§16-39-7. Notice.

1 Each health care entity shall post and keep posted, in
2 conspicuous places on the premises of the health care entity
3 where notices to employees and applicants for employment are
4 customarily posted, a notice, to be prepared or approved by the
5 commissioner, setting forth excerpts from, or summaries of, the
6 pertinent provisions of this article and information pertaining to
7 the filing of a charge under section four of this article.

CHAPTER 145

**(Com. Sub. for S. B. 647 — By Senators Hunter, Mitchell,
Redd, Oliverio, Unger, Edgell, McCabe, Rowe, Burnette,
Caldwell, Prezioso and Fanning)**

[Passed April 13, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article twenty-eight, relating to creating a commission on holocaust education.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 28. COMMISSION ON HOLOCAUST EDUCATION.

§5-28-1. Legislative findings.

§5-28-2. Commission on holocaust education.

§5-28-3. Commission duties; compensation.

§5-28-4. Continuation of the commission.

§5-28-1. Legislative findings.

1 The Legislature finds and declares:

2 (1) That the holocaust perpetrated by the Nazis during the
3 period between one thousand nine hundred thirty-three and one
4 thousand nine hundred forty-five resulted in the genocide of six
5 million Jews and millions of non-Jews as part of a carefully
6 orchestrated central government program;

7 (2) That the holocaust stands as a grim reminder and
8 warning to all generations of genocidal crimes and atrocities
9 committed by man based on ignorance and fear and that all
10 people should rededicate themselves to the principles of human
11 rights and equal protection under the laws of a democratic
12 society;

13 (3) That education can ensure that citizens are knowledge-
14 able about the events leading up to the holocaust and about the
15 organizations and facilities that were created and used purpose-
16 fully for the systematic destruction of human beings and that
17 the lessons of holistic trust and respect for peoples of various
18 cultures are important for the citizens of West Virginia as they
19 enter the global marketplace and economy;

20 (4) That programs, workshops, institutes, seminars, exhibits
21 and other teacher training and public awareness activities for
22 the study of the holocaust have taken place during recent years,
23 but a central resource for schools, churches and communities
24 studying the holocaust is needed;

25 (5) That, toward that end, the governor, by executive order
26 No. 2-98, dated the sixteenth day of April, one thousand nine
27 hundred ninety-eight, created and established the West Virginia
28 holocaust commission on education; and

29 (6) That, in furtherance of the intent and purposes of the
30 aforesaid executive order, it is the intent of the Legislature to
31 create a permanent state commission which, as an organized
32 body and on a continuous basis, will survey, design, encourage
33 and promote implementation of holocaust education and
34 awareness programs in West Virginia and will be responsible
35 for organizing and promoting the memorialization of the
36 holocaust on a regular basis throughout the state.

§5-28-2. Commission on holocaust education.

1 (a) Effective the first day of July, two thousand one, there
2 is created the West Virginia commission on holocaust educa-
3 tion.

4 (b) The commission is composed of eleven members: Two
5 members currently serving on the state board of education,
6 selected by the board; the state superintendent of schools or his
7 or her designee; the director of the division of veterans' affairs;
8 one attorney from the attorney general's office, civil rights
9 division; one teacher who has completed professional develop-
10 ment related to holocaust education teaching at the high school
11 level and one teacher who has completed professional develop-
12 ment related to holocaust education teaching at the junior high
13 or middle school level, each appointed by the governor with the
14 advice and consent of the Senate; four state residents, appointed

15 by the governor, with the advice and consent of the Senate, who
16 shall be: Individuals who are holocaust scholars or individuals
17 experienced in the field of holocaust education or survivors,
18 second generation, eye-witness/liberators or individuals
19 recommended by the chair of the present holocaust education
20 commission, created by executive order, who, by virtue of their
21 interest, education or long-term involvement in human rights,
22 prejudice reduction and holocaust education have demonstrated,
23 through their past commitment and cooperation with the
24 existing holocaust commission on education, their willingness
25 to work for holocaust awareness and education in West Vir-
26 ginia.

27 (c) Members of the commission shall be appointed for
28 terms of three years or until their prospective successors are
29 appointed and qualified. Members are eligible for reappoint-
30 ment. Any member of the commission who fails to attend more
31 than two consecutive meetings without an excuse approved by
32 the commission may be removed from the commission. All
33 vacancies shall be filled by appointment in the same manner as
34 the original appointment, and the individual appointed to fill the
35 vacancy serves for the remainder of the unexpired term.

36 (d) The governor shall appoint a chairperson for the
37 commission for a term of three years and until his or her
38 successor is appointed and qualified.

39 (e) The speaker of the House of Delegates shall appoint a
40 member of the House of Delegates and the president of the
41 Senate shall appoint a member of the Senate to serve as
42 advisors to the commission.

§5-28-3. Commission duties; compensation.

1 (a) The commission shall:

2 (1) Provide, based upon the collective knowledge and
3 experience of its members, assistance and advice to public and
4 private schools, colleges and universities with respect to the
5 implementation of holocaust education and awareness pro-
6 grams;

7 (2) Meet with appropriate education officials and other
8 interested public and private organizations, including service
9 organizations, for the purpose of providing information,
10 planning, coordination or modification of courses of study or
11 programs dealing with the subject of the holocaust;

12 (3) Compile a roster of individual volunteers who are
13 willing to share their verifiable knowledge and experiences in
14 classrooms, seminars and workshops on the subject of the
15 holocaust. The volunteers may be survivors of the holocaust,
16 liberators of concentration camps, scholars, members of the
17 clergy, community relations professionals or other persons who,
18 by virtue of their experience, education or interest, have
19 experience with the holocaust;

20 (4) Coordinate events memorializing the holocaust and seek
21 volunteers who are willing and able to participate in commemo-
22 rative events that will enhance public awareness of the signifi-
23 cance of the holocaust; and

24 (5) Prepare annual reports for the governor and the Legisla-
25 ture regarding its findings and recommendations to facilitate the
26 inclusion of holocaust studies and special programs memorial-
27 izing the holocaust in educational systems in this state.

28 (b) Members of the commission are not entitled to compen-
29 sation for services performed as members and are not entitled
30 to reimbursement for expenses.

§5-28-4. Continuation of the commission.

1 Pursuant to the provisions of article ten, chapter four of this
2 code, the West Virginia holocaust commission on education
3 shall continue to exist until the first day of July, two thousand
4 three, unless sooner terminated, continued or reestablished by
5 act of the Legislature.

CHAPTER 146

(Com. Sub. for H. B. 3120 — By Delegates DeLong and Swartzmiller)

[Passed April 11, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eight, article twenty-three, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to authority of the racing commission; broadening the commission's authority to approve or reject license applications; and requiring legislative rules.

Be it enacted by the Legislature of West Virginia:

That section eight, 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.

§19-23-8. Consideration of application for license or permit; issuance or denial; contents of license or permit; grounds for denial of application; determination of racing dates; license or permit not transferable or assignable; limitation on license; validity of permit.

1 (a) The racing commission shall promptly consider any
2 application for a license or permit, as the case may be. Based
3 upon such application and all other information before it, the
4 racing commission shall make and enter an order either
5 approving or denying the application. The application may be
6 denied for any reason specified in subsection (b) of this section.
7 If an application for a license is approved, the racing commis-
8 sion shall issue a license to conduct a horse or dog race meet-
9 ing, and shall designate on the face of the license the kind or
10 type of horse or dog racing for which the same is issued, the
11 racing association to which the same is issued, the dates upon
12 which the horse or dog race meeting is to be held or conducted
13 (which may be any weekdays, or weeknights, including
14 Sundays), the location of the horse or dog racetrack, place or
15 enclosure where the horse or dog race meeting is to be held or
16 conducted and other information as the racing commission shall
17 consider proper. If an application for a permit is approved, the
18 racing commission shall issue a permit and shall designate on
19 the face of the permit such information as the racing commis-
20 sion shall consider proper.

21 (b) The racing commission may deny the application and
22 refuse to issue the license or permit, as the case may be, which
23 denial and refusal shall be final and conclusive unless a hearing
24 is demanded in accordance with the provisions of section
25 sixteen of this article, if the racing commission finds that the
26 applicant (individually, if an individual, or the partners or
27 members, if a partnership, firm or association, or the owners
28 and directors, if a corporation):

29 (1) Has knowingly made false statement of a material fact
30 in the application or has knowingly failed to disclose any
31 information called for in the application;

32 (2) Is or has been guilty of any corrupt or fraudulent act,
33 practice or conduct in connection with any horse or dog race
34 meeting in this or any other state;

35 (3) Has been convicted, within ten years prior to the date of
36 the application, of an offense which under the law of this state,
37 of any other state or of the United States of America, shall
38 constitute a felony or a crime involving moral turpitude;

39 (4) Has failed to comply with the provisions of this article
40 or any reasonable rules of the racing commission;

41 (5) Has had a license to hold or conduct a horse or dog race
42 meeting or a permit to participate therein denied for just cause,
43 suspended or revoked in any other state;

44 (6) Has defaulted in the payment of any obligation or debt
45 due to this state under the provisions of this article;

46 (7) Is, if a corporation, neither incorporated under the laws
47 of this state nor qualified to do business within this state;

48 (8) In the case of an application for a license, has failed to
49 furnish bond or other adequate security, if the same is required
50 by the racing commission under the provisions of section seven
51 of this article;

52 (9) In the case of an application for a permit, is unqualified
53 to perform the duties required for the permit sought; or

54 (10) In the case of an application for a permit, is, for just
55 cause, determined to be undesirable to perform the duties
56 required of the applicant.

57 (c) In issuing licenses and fixing dates for horse or dog race
58 meetings at the various horse racetracks and dog racetracks in
59 this state, the racing commission shall consider the horse racing

60 circuits and dog racing circuits with which the horse racetracks
61 and dog racetracks in this state are associated or contiguous to,
62 and shall also consider dates which are calculated to increase
63 the tax revenues accruing from horse racing and dog racing.

64 (d) A license issued under the provisions of this article is
65 neither transferable nor assignable to any other racing associa-
66 tion and may not permit the holding or conducting of a horse or
67 dog race meeting at any horse or dog racetrack, place or
68 enclosure not specified thereon. However, if the specified horse
69 or dog racetrack, place or enclosure becomes unsuitable for the
70 horse or dog race meeting because of flood, fire or other
71 catastrophe, or cannot be used for any reason, the racing
72 commission may, upon application, authorize the horse or dog
73 race meeting, or any remaining portion thereof, to be conducted
74 at any other racetrack, place or enclosure available for that
75 purpose, provided that the owner of the racetrack, place or
76 enclosure willingly consents to the use thereof.

77 (e) No type of horse racing or dog racing shall be conducted
78 by a licensee at any race meeting other than that type for which
79 a license was issued.

80 (f) Each permit issued under the provisions of this section
81 shall be for the period ending the thirty-first day of December
82 of the year for which it was issued, and shall be valid at all
83 horse or dog race meetings during the period for which it was
84 issued, unless it be sooner suspended or revoked in accordance
85 with the provisions of this article. A permit issued under the
86 provisions of this article is neither transferable nor assignable
87 to any other person.

88 (g) The racing commission shall propose rules for legisla-
89 tive approval in accordance with the provisions of article three,
90 chapter twenty-nine-a of this code which establish the criteria
91 for the approval or denial of a license or permit.

CHAPTER 147

(H. B. 3122 — By Delegates Faircloth, Doyle and Manuel)

[Passed April 14, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirteen-b, article twenty-three, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the West Virginia thoroughbred development fund and thoroughbred horse racing; increasing amount of money available from the fund for awards and purses in stakes races; removing limitation on number of stakes races; increasing frequency of restricted races; and giving West Virginia accredited thoroughbred horses preferences for entry in certain races.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 23. HORSE AND DOG RACING.

§19-23-13b. West Virginia thoroughbred development fund; distribution; restricted races; nonrestricted purse supplements; preference for West Virginia accredited thoroughbreds.

- 1 (a) The racing commission shall deposit moneys required
- 2 to be withheld by an association or licensee in subsection (b),
- 3 section nine of this article in a banking institution of its choice
- 4 in a special account to be known as "West Virginia racing

5 commission special account — West Virginia thoroughbred
6 development fund.” Notice of the amount, date and place of the
7 deposit shall be given by the racing commission, in writing, to
8 the state treasurer. The purpose of the fund is to promote better
9 breeding and racing of thoroughbred horses in the state through
10 awards and purses for accredited breeders/raisers, sire owners
11 and thoroughbred race horse owners. A further objective of the
12 fund is to aid in the rejuvenation and development of the
13 present horse tracks now operating in West Virginia for capital
14 improvements, operations or increased purses: *Provided*, That
15 five percent of the deposits required to be withheld by an
16 association or licensee in subsection (b), section nine of this
17 article shall be placed in a special revenue account hereby
18 created in the state treasury called the “administration and
19 promotion account.”

20 (b) The racing commission is authorized to expend the
21 moneys deposited in the administration and promotion account
22 at times and in amounts as the commission determines to be
23 necessary for purposes of administering and promoting the
24 thoroughbred development program: *Provided*, That during any
25 fiscal year in which the commission anticipates spending any
26 money from the account, the commission shall submit to the
27 executive department during the budget preparation period prior
28 to the Legislature convening before that fiscal year for inclusion
29 in the executive budget document and budget bill the recom-
30 mended expenditures, as well as requests of appropriations for
31 the purpose of administration and promotion of the program.
32 The commission shall make an annual report to the Legislature
33 on the status of the administration and promotion account,
34 including the previous year’s expenditures and projected
35 expenditures for the next year.

36 (c) The fund and the account established in subsection (a)
37 of this section shall operate on an annual basis.

38 (d) Funds in the thoroughbred development fund shall be
39 expended for awards and purses except as otherwise provided
40 in this section. Annually, the first three hundred thousand
41 dollars of the fund shall be available for distribution for stakes
42 races. One of the stakes races shall be the West Virginia futurity
43 and the second shall be the Frank Gall memorial stakes. The
44 remaining races may be chosen by the committee set forth in
45 subsection (g) of this section.

46 (e) Awards and purses shall be distributed as follows:

47 (1) The breeders/raisers of accredited thoroughbred horses
48 that earn a purse at any West Virginia meet shall receive a
49 bonus award calculated at the end of the year as a percentage of
50 the fund dedicated to the breeders/raisers, which shall be sixty
51 percent of the fund available for distribution in any one year.
52 The total amount available for the breeders'/raisers' awards
53 shall be distributed according to the ratio of purses earned by an
54 accredited race horse to the total amount earned in the races by
55 all accredited race horses for that year as a percentage of the
56 fund dedicated to the breeders/raisers. However, no
57 breeder/raiser may receive from the fund dedicated to breed-
58 ers'/raisers' awards an amount in excess of the earnings of the
59 accredited horse at West Virginia meets. In addition, should a
60 horse's breeder and raiser qualify for the same award on the
61 same horse, they will each be awarded one half of the proceeds.
62 The bonus referred to in this subdivision (1) may only be paid
63 on the first one hundred thousand dollars of any purse, and not
64 on any amounts in excess of the first one hundred thousand
65 dollars.

66 (2) The owner of a West Virginia sire of an accredited
67 thoroughbred horse that earns a purse in any race at a West
68 Virginia meet shall receive a bonus award calculated at the end
69 of the year as a percentage of the fund dedicated to sire owners,
70 which shall be fifteen percent of the fund available for distribu-

71 tion in any one year. The total amount available for the sire
72 owners' awards shall be distributed according to the ratio of
73 purses earned by the progeny of accredited West Virginia
74 stallions in the races for a particular stallion to the total purses
75 earned by the progeny of all accredited West Virginia stallions
76 in the races. However, no sire owner may receive from the fund
77 dedicated to sire owners an amount in excess of thirty-five
78 percent of the accredited earnings for each sire. The bonus
79 referred to in this subdivision (2) shall only be paid on the first
80 one hundred thousand dollars of any purse, and not on any
81 amounts in excess the first one hundred thousand dollars.

82 (3) The owner of an accredited thoroughbred horse that
83 earns a purse in any race at a West Virginia meet shall receive
84 a restricted purse supplement award calculated at the end of the
85 year, which shall be twenty-five percent of the fund available
86 for distribution in any one year, based on the ratio of the
87 earnings in the races of a particular race horse to the total
88 amount earned by all accredited race horses in the races during
89 that year as a percentage of the fund dedicated to purse supple-
90 ments. However, the owners may not receive from the fund
91 dedicated to purse supplements an amount in excess of thirty-
92 five percent of the total accredited earnings for each accredited
93 race horse. The bonus referred to in this subdivision shall only
94 be paid on the first one hundred thousand dollars of any purse,
95 and not on any amounts in excess of the first one hundred
96 thousand dollars.

97 (4) In no event may purses earned at a meet held at a track
98 which did not make a contribution to the thoroughbred develop-
99 ment fund out of the daily pool on the day the meet was held
100 qualify or count toward eligibility for an award under this
101 subsection.

102 (5) Any balance in the breeders/raisers, sire owners and
103 purse supplement funds after yearly distributions shall first be

104 used to fund the races established in subsection (g) of this
105 section. Any amount not so used shall revert back into the
106 general account of the thoroughbred development fund for
107 distribution in the next year.

108 Distribution shall be made on the fifteenth day of each
109 February for the preceding year's achievements.

110 (f) The remainder, if any, of the thoroughbred development
111 fund that is not available for distribution in the program
112 provided for in subsection (e) of this section in any one year is
113 reserved for regular purses, marketing expenses and for capital
114 improvements in the amounts and under the conditions pro-
115 vided in this subsection (f).

116 (1) Fifty percent of the remainder shall be reserved for
117 payments into the regular purse fund established in subsection
118 (b), section nine of this article.

119 (2) Up to five hundred thousand dollars per year shall be
120 available for:

121 (A) Capital improvements at the eligible licensed horse
122 racing tracks in the state; and

123 (B) Marketing and advertising programs above and beyond
124 two hundred fifty thousand dollars for the eligible licensed
125 horse racing tracks in the state: *Provided*, That moneys shall be
126 expended for capital improvements or marketing and advertis-
127 ing purposes as described in this subsection only in accordance
128 with a plan filed with and receiving the prior approval of the
129 racing commission, and on a basis of fifty percent participation
130 by the licensee and fifty percent participation by moneys from
131 the fund, in the total cost of approved projects: *Provided*,
132 *however*, That funds approved for one track may not be used at
133 another track unless the first track ceases to operate or is

134 viewed by the commission as unworthy of additional invest-
135 ment due to financial or ethical reasons.

136 (g)(1) Each pari-mutuel thoroughbred horse track shall
137 provide at least one restricted race per two racing days.

138 (2) The restricted races established in this subsection shall
139 be administered by a three-member committee consisting of:

140 (A) The racing secretary;

141 (B) A member appointed by the authorized representative
142 of a majority of the owners and trainers at the thoroughbred
143 track; and

144 (C) A member appointed by a majority of the thoroughbred
145 breeders.

146 (3) The purses for the restricted races established in this
147 subsection shall be twenty percent larger than the purses for
148 similar type races at each track.

149 (4) Restricted races shall be funded by each racing associa-
150 tion from:

151 (A) Moneys placed in the general purse fund up to a
152 maximum of three hundred fifty thousand dollars per year.

153 (B) Moneys as provided in subdivision (5), subsection (e)
154 of this section, which shall be placed in a special fund called the
155 "West Virginia accredited race fund."

156 (5) The racing schedules, purse amounts and types of races
157 are subject to the approval of the West Virginia racing commis-
158 sion.

159 (h) As used in this section, "West Virginia bred-foal"
160 means a horse that was born in the state of West Virginia.

161 (i) To qualify for the West Virginia accredited race fund,
162 the breeder must qualify under one of the following:

163 (1) The breeder of the West Virginia bred-foal is a West
164 Virginia resident;

165 (2) The breeder of the West Virginia bred-foal is not a West
166 Virginia resident, but keeps his or her breeding stock in West
167 Virginia year round; or

168 (3) The breeder of the West Virginia bred-foal is not a West
169 Virginia resident and does not qualify under subdivision (2) of
170 this subsection, but either the sire of the West Virginia bred-
171 foal is a West Virginia stallion, or the mare is covered by a
172 West Virginia stallion following the birth of that West Virginia
173 bred-foal.

174 (j) No association or licensee qualifying for the alternate tax
175 provision of subsection (b), section ten of this article is eligible
176 for participation in any of the provisions of this section:
177 *Provided*, That the provisions of this subsection do not apply to
178 a thoroughbred race track at which the licensee has participated
179 in the West Virginia thoroughbred development fund for a
180 period of more than four consecutive calendar years prior to the
181 thirty-first day of December, one thousand nine hundred
182 ninety-two.

183 (k) From the first day of July, two thousand one, West
184 Virginia accredited thoroughbred horses have preference for
185 entry in all accredited races at a thoroughbred race track at
186 which the licensee has participated in the West Virginia
187 thoroughbred development fund for a period of more than four
188 consecutive calendar years prior to the thirty-first day of
189 December, one thousand nine hundred ninety-two.

CHAPTER 148

(Com. Sub. for S. B. 692 — By Senators Tomblin,
Mr. President, and Chafin)

[Passed April 12, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-one, article two-c, chapter thirteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to an increase in the allocation of the state ceiling for private activity bonds to the West Virginia housing development fund.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2C. INDUSTRIAL DEVELOPMENT AND COMMERCIAL DEVELOPMENT BOND ACT.

§13-2C-21. Ceiling on issuance of private activity bonds; establishing procedure for allocation and disbursements; reservation of funds; limitations; unused allocation; expirations and carryovers.

1 (a) Private activity bonds (as defined in Section 141(a) of
2 the United States Internal Revenue Code of 1986, other than
3 those described in Section 146(g) of the Internal Revenue Code)
4 issued pursuant to this article, including bonds issued by the
5 West Virginia public energy authority pursuant to subsection
6 (11), section five, article one, chapter five-d of this code or

7 under article eighteen, chapter thirty-one of this code, during
8 any calendar year may not exceed the ceiling established by
9 Section 146(d) of the United States Internal Revenue Code. It
10 is hereby determined and declared as a matter of legislative
11 finding: (i) That, in an attempt to promote economic revitaliza-
12 tion of distressed urban and rural areas, certain special tax
13 incentives will be provided for empowerment zones and
14 enterprise communities to be designated from qualifying areas
15 nominated by state and local governments, all as set forth by
16 Section 1391 et seq. of the United States Internal Revenue
17 Code; (ii) that qualified businesses operating in enterprise
18 communities and empowerment zones will be eligible to
19 finance property and provide other forms of financial assistance
20 as provided for in Section 1394 of the United States Internal
21 Revenue Code; and (iii) that it is in the best interest of this state
22 and its citizens to facilitate the acquisition, construction and
23 equipping of projects within designated empowerment zones
24 and enterprise communities by providing an orderly mechanism
25 for the commitment of the annual ceiling for private activity
26 bonds for these projects. It is hereby further determined and
27 declared as a matter of legislative finding: (i) That the produc-
28 tion of bituminous coal in this state has resulted in coal waste
29 which is stored in areas generally referred to as gob piles;
30 (ii) that gob piles are unsightly and have the potential to pollute
31 the environment in this state; (iii) that the utilization of the
32 materials in gob piles to produce alternative forms of energy
33 needs to be encouraged; (iv) that Section 142(a)(6) of the
34 United States Internal Revenue Code of 1986 permits the
35 financing of solid waste disposal facilities through the issuance
36 of private activity bonds; and (v) that it is in the best interest of
37 this state and its citizens to facilitate the construction of
38 facilities for the generation of power through the utilization of
39 coal waste by providing an orderly mechanism for the commit-
40 ment of the annual ceiling for private activity bonds for these
41 projects.

42 (b) On or before the first day of each calendar year, the
43 executive director of the development office shall determine the
44 state ceiling for the year based on the criteria of the United
45 States Internal Revenue Code. The annual ceiling shall be
46 allocated among the several issuers of bonds under this article
47 or under article eighteen, chapter thirty-one of this code, as
48 follows:

49 (1) For the calendar year two thousand one, fifty million
50 dollars and for each subsequent calendar year, forty percent of
51 the state ceiling for that year shall be allocated to the West
52 Virginia housing development fund for the purpose of issuing
53 qualified mortgage bonds, qualified mortgage certificates or
54 bonds for qualified residential rental projects;

55 (2) The amount remaining after the allocation to the West
56 Virginia housing development fund described in subdivision (1)
57 of this subsection shall be retained by the West Virginia
58 development office and shall be referred to in this section as the
59 "state allocation";

60 (3) Thirty-five percent of the state allocation shall be set
61 aside by the development office to be made available for
62 lessees, purchasers or owners of proposed projects, hereafter in
63 this section referred to as "nonexempt projects", which do not
64 qualify as exempt facilities as defined by United States Internal
65 Revenue Code. All reservations of private activity bonds for
66 nonexempt projects shall be approved and awarded by the
67 committee based upon an evaluation of general economic
68 benefit and any rule that the council for community and
69 economic development promulgates pursuant to section three,
70 article two, chapter five-b of this code: *Provided*, That all
71 requests or reservations of funds from projects described in this
72 subsection are submitted to the development office on or before
73 the first day of November of each calendar year: *Provided*,
74 *however*, That on the fifteenth day of November of each

75 calendar year the uncommitted portion of this part of the state
76 allocation, shall revert to and become part of the state allocation
77 portion described in subsection (g) of this section; and

78 (4) Ten percent of the state allocation shall be made
79 available for lessees, purchasers or owners of proposed com-
80 mercial or industrial projects which qualify as exempt facilities
81 under Section 1394 of the United States Internal Revenue Code.
82 All reservations of private activity bonds for the projects shall
83 be approved and awarded by the committee based upon an
84 evaluation of general economic benefit and any rule that the
85 council for community and economic development promulgates
86 pursuant to section three, article two, chapter five-b of this
87 code: *Provided*, That all requests for reservations of funds from
88 projects described in this subsection shall be submitted to the
89 development office on or before the first day of November of
90 each calendar year: *Provided, however*, That on the fifteenth
91 day of November of each calendar year the uncommitted
92 portion of this part of the state allocation shall revert to and
93 become part of the state allocation portion described in subsec-
94 tion (g) of this section.

95 (c) The remaining fifty-five percent of the state allocation
96 shall be made available for lessees, purchasers or owners of
97 proposed commercial or industrial projects which qualify as
98 exempt facilities as defined by Section 142(a) of the United
99 States Internal Revenue Code. All reservations of private
100 activity bonds for exempt facilities shall be approved and
101 awarded by the committee based upon an evaluation of general
102 economic benefit and any rule that the council for community
103 and economic development promulgates pursuant to section
104 three, article two, chapter five-b of this code: *Provided*, That no
105 reservation may be in an amount in excess of fifty percent of
106 this portion of the state allocation: *Provided, however*, That all
107 requests for reservations of funds from projects described in
108 this subsection shall be submitted to the development office on

109 or before the first day of November of each calendar year:
110 *Provided further*, That on the fifteenth day of November of
111 each calendar year the uncommitted portion of this part of the
112 state allocation shall revert to and become part of the state
113 allocation portion described in subsection (g) of this section.

114 (d) No reservation may be made for any project until the
115 governmental body seeking the reservation submits a notice of
116 reservation of funds as provided in subsection (e) of this
117 section. The governmental body shall first adopt an inducement
118 resolution approving the prospective issuance of bonds and
119 setting forth the maximum amount of bonds to be issued. Each
120 governmental body seeking a reservation of funds following the
121 adoption of the inducement resolution shall submit a notice of
122 inducement signed by its clerk, secretary or recorder or other
123 appropriate official to the development office. The notice shall
124 include information required by the development office
125 pursuant to any rule of the council for community and eco-
126 nomic development. Notwithstanding the foregoing, when a
127 governmental body proposes to issue bonds for the purpose of:
128 (i) Constructing, acquiring or equipping a project described in
129 subdivision (3) or (4), subsection (b) of this section; or
130 (ii) constructing an energy producing project which relies, in
131 whole or in part, upon coal waste as fuel, to the extent the
132 project qualifies as a solid waste facility under Section
133 142(a)(6) of the United States Internal Revenue Code of 1986,
134 the project may be awarded a reservation of funds from the
135 state allocation available for three years subsequent to the year
136 in which the notice of reservation of funds is submitted, at the
137 discretion of the executive director of the development office:
138 *Provided*, That no discretionary reservation may be made for
139 any single project described in this subsection in an amount in
140 excess of thirty-five percent of the state allocation available for
141 the year subsequent to the year in which the request is made. A
142 discretionary reservation of the state allocation for a project
143 described in this subsection may not be granted by the execu-

144 tive director of the development office unless the project for
145 which the request is made has received a certification from the
146 federal energy regulatory commission as a qualifying facility or
147 a cogeneration project.

148 (e) Currently with or following the submission of its notice
149 of inducement, the governmental body at any time considered
150 expedient by it may submit its notice of reservation of funds
151 which shall include the following information:

152 (1) The date of the notice of reservation of funds;

153 (2) The identity of the governmental body issuing the
154 bonds;

155 (3) The date of inducement and the prospective date of
156 issuance;

157 (4) The name of the entity for which the bonds are to be
158 issued;

159 (5) The amount of the bond issue or, if the amount of the
160 bond issue for which a reservation of funds has been made has
161 been increased, the amount of the increase;

162 (6) The type of issue; and

163 (7) A description of the project for which the bonds are to
164 be issued.

165 (f) The development office shall accept the notice of
166 reservation of funds no earlier than the first calendar workday
167 of the year for which a reservation of funds is sought: *Provided*,
168 That a notice of reservation of funds with respect to a project
169 described in subdivision (4), subsection (b) of this section or an
170 energy producing project that is eligible for a reservation of
171 funds for a year subsequent to the year in which the notice of

172 reservation of funds is submitted may contain an application for
173 funds from a subsequent year's state allocation. Upon receipt of
174 the notice of reservation of funds, the development office shall
175 immediately note upon the face of the notice the date and time
176 of reception.

177 (g) If the bond issue for which a reservation has been made
178 has not been finally closed within one hundred twenty days of
179 the date of the reservation to be made by the committee, or the
180 thirty-first of December following the date of reservation if
181 sooner and a statement of bond closure which has been exe-
182 cuted by the clerk, secretary, recorder or other appropriate
183 official of the governmental body reserving the bond issue has
184 not been received by the development office within that time,
185 then the reservation shall expire and be considered to have been
186 forfeited and the funds reserved shall be released and revert to
187 the portion of the state allocation from which the funds were
188 originally reserved and shall then be made available for other
189 qualified issues in accordance with this section and the Internal
190 Revenue Code: *Provided*, That as to any reservation for a
191 nonexempt project or any reservation for a project described in
192 subdivision (4), subsection (b) of this section that is forfeited on
193 or after the first day of November in any calendar year, the
194 reservation shall revert to the state allocation for allocation by
195 the industrial revenue bond allocation review committee:
196 *Provided, however*, That as to any notice of reservation of funds
197 received by the development office during the month of
198 December in any calendar year with respect to any project
199 qualifying as an elective carry forward pursuant to Section
200 146(f)(5) of the Internal Revenue Code, the notice of reserva-
201 tion of funds and the reservation to which the notice relates may
202 not expire or be subject to forfeiture: *Provided further*, That any
203 unused state ceiling as of the thirty-first day of December in
204 any year not otherwise subject to a carry forward pursuant to
205 Section 146(f) of the Internal Revenue Code shall be allocated
206 to the West Virginia housing development fund which shall be

207 considered to have elected to carry forward the unused state
208 ceiling for the purpose of issuing qualified mortgage bonds,
209 qualified mortgage credit certificates or bonds for qualified
210 residential rental projects, each as defined in the Internal
211 Revenue Code. All requests for subsequent reservation of funds
212 upon loss of a reservation pursuant to this section shall be
213 treated in the same manner as a new notice of reservation of
214 funds in accordance with subsections (d) and (e) of this section.

215 (h) Once a reservation of funds has been made for a project
216 described in subdivision (4), subsection (b) of this section or for
217 an energy producing project which relies, in whole or in part,
218 upon coal waste as fuel and otherwise qualifies as a solid waste
219 facility under Section 142(a)(6) of the United States Internal
220 Revenue Code of 1986, notwithstanding the language of
221 subsection (g) of this section, the reservation shall remain fully
222 available with respect to the project until the first day of
223 October in the year from which the reservation was made at
224 which time, if the bond issue has not been finally closed, the
225 reservation shall expire and be considered forfeited and the
226 funds reserved are released as provided in subsection (g) of this
227 section.

CHAPTER 149

(H. B. 2905 — By Delegates Perdue, Kuhn and Angotti)

[Passed April 11, 2001; in effect ninety days of passage. Approved by the Governor.]

AN ACT to amend chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article eighteen-d, relating to the

establishment and administration of a West Virginia affordable housing trust fund; creating an affordable housing trust fund board of directors and specifying its powers and responsibilities; defining eligible activities and organizations; requiring an application period and selection criteria; requiring confidentiality; prohibiting conflicts; providing tax exemptions; requiring the publication of an annual report; requiring an annual audit by a licensed accountant; and providing for dissolution or liquidation of trust fund.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 18D. WEST VIRGINIA AFFORDABLE HOUSING TRUST FUND.

- §31-18D-1. Short title.
- §31-18D-2. Legislative finding and purpose.
- §31-18D-3. Definitions.
- §31-18D-4. Affordable housing trust fund.
- §31-18D-5. Housing trust fund board of directors.
- §31-18D-6. Powers and responsibilities of the board.
- §31-18D-7. Eligible activities; eligible organizations.
- §31-18D-8. Corporate powers.
- §31-18D-9. Applications and selection criteria.
- §31-18D-10. Documentary materials concerning financial or personal information; confidentiality.
- §31-18D-11. Conflicts.
- §31-18D-12. Tax exemption.
- §31-18D-13. Annual report.
- §31-18D-14. Exemption from certain requirements; audit.
- §31-18D-15. Dissolution or liquidation of trust fund.

§31-18D-1. Short title.

- 1 This article may be known and cited as the “West Virginia
- 2 Affordable Housing Trust Fund Act.”

§31-18D-2. Legislative finding and purpose.

1 The Legislature finds that current and past economic
2 conditions in this state, changing federal housing policies which
3 devolve responsibility for housing back to state government,
4 declining resources at the federal level and changing demo-
5 graphics have resulted in low and moderate income persons,
6 including elderly persons and persons with special needs, being
7 unable to obtain safe, decent and affordable housing in this
8 state. Lack of affordable housing affects the ability of commu-
9 nities to develop and maintain strong and stable economies and
10 impairs the health, stability and self-esteem of individuals and
11 families. The Legislature further finds that financing affordable
12 housing, especially in rural areas and small communities, is
13 becoming increasingly difficult and is often characterized by
14 fragmented, uncoordinated, burdensome and expensive funding
15 mechanisms. For these reasons, it is in the public interest to
16 establish a new resource known as the West Virginia affordable
17 housing trust fund to encourage stronger partnerships, collabo-
18 ration and greater involvement of local communities in meeting
19 housing needs in West Virginia. It is the intent of the Legisla-
20 ture that this trust fund assist in increasing the capacity of
21 community housing organizations and encourage private sector
22 businesses and individuals to contribute capital to community-
23 based organizations and assist them in providing safe, decent
24 and affordable housing to our citizens.

§31-18D-3. Definitions.

1 (a) “Board” is the board of directors of the West Virginia
2 affordable housing trust fund established pursuant to this
3 article.

4 (b) “Housing” includes owner-occupied dwellings, rental
5 units and other types of shelter for individuals and families.

6 (c) "Low or moderate income" means the income of
7 individuals or families that is determined from time to time by
8 the board as a percentage of the area median income for the
9 state. The board may use the income data provided by the
10 United States department of housing and urban development or
11 other reliable income data as determined by a resolution of the
12 board.

13 (d) "Technical assistance" means activities that are directly
14 related to a nonprofit organization's ability to provide housing
15 for low income persons and includes, but is not limited to, land
16 use and planning costs, design and engineering services, loan
17 packaging assistance, program development assistance and
18 construction consultation.

19 (e) "Trust fund" means the West Virginia affordable
20 housing trust fund established by this article.

§31-18D-4. Affordable housing trust fund.

1 The West Virginia affordable housing trust fund is estab-
2 lished as a governmental instrumentality of the state and public
3 body corporate.

§31-18D-5. Housing trust fund board of directors.

1 (a) The affordable housing trust fund has a board of
2 directors, which consists of eleven voting members. The
3 members of the board are responsible for administering the trust
4 fund.

5 (b) The trust fund board of directors consists of:

6 (1) The secretary of the department of health and human
7 resources, ex officio, or his or her designee;

8 (2) The executive director of the West Virginia develop-
9 ment office, ex officio, or his or her designee;

10 (3) The executive director of the West Virginia housing
11 development fund, ex officio, or his or her designee;

12 (4) One member who is chosen from the private directors
13 appointed by the governor to the board of the West Virginia
14 housing development fund;

15 (5) One member who is an officer of a corporation or
16 member of a limited liability company, which is currently
17 licensed to do business in West Virginia and is engaged in real
18 estate development;

19 (6) Three members who are executive directors or officers
20 of not-for-profit organizations, which are not affiliated with one
21 another through common management control and which are
22 currently licensed to do business in West Virginia and which
23 have been recognized as exempt from federal income tax under
24 Section 501(c)(3) of the Internal Revenue Code, as amended,
25 codified in 26 U.S.C. §501 (c) (3), and are organized and
26 operated exclusively for charitable purposes within the meaning
27 of that section, and in accordance with those purposes, provide
28 housing assistance to low or moderate income citizens of this
29 state;

30 (7) One member representative of the banking industry;

31 (8) One citizen member who is representative of the
32 population served by the trust fund; and

33 (9) One member who is an executive director of a public
34 housing authority operating in a county or municipality in this
35 state.

36 (c) Not more than three members, excluding the ex officio
37 members, shall be appointed from any one congressional
38 district. Not more than four of the members, excluding the ex
39 officio members, may belong to the same political party. Except
40 for initial appointments and midterm special appointments
41 made to fill irregular vacancies on the board, members shall be

42 appointed for terms of three years each. Initial appointments
43 shall consist of three members whose terms expire after two
44 years, three members whose terms expire after three years and
45 two members whose terms expire after four years. Members are
46 eligible for reappointment. However, no member may serve for
47 more than two consecutive full terms. Except for midterm
48 special appointments made to fill irregular vacancies on the
49 board, appointment terms shall begin on the first day of July of
50 the beginning year. All appointment terms, special and regular,
51 end on the thirtieth day of June of the final year of the term.

52 (d) All members of the board except those who serve ex
53 officio shall be appointed by the governor, with the advice and
54 consent of the Senate.

55 (e) The governor may remove any appointed member in
56 case of incompetency, neglect of duty, moral turpitude or
57 malfeasance in office, and the governor may declare the office
58 vacant and fill the vacancy as provided in other cases of
59 vacancy.

60 (f) The governor shall designate one of the initial members
61 as chairperson of the board. During or after the first meeting of
62 the board the board may select a new chairperson and shall
63 annually select its chairperson.

64 (g) The board shall meet not less than four times during the
65 fiscal year, and additional meetings may be held upon a call of
66 the chairperson or of a majority of the members. Board mem-
67 bers shall be reimbursed for sums necessary to carry out
68 responsibilities of the board and for reasonable travel expenses
69 to attend board meetings. The ex officio members may not be
70 reimbursed by the fund for travel expenses to attend board
71 meetings.

72 (h) Six members of the board is a quorum. No vacancy in
73 the membership of the board impairs the right of a quorum to
74 exercise all the rights and perform all the duties of the board.

75 No action may be taken by the board except upon the affirma-
76 tive vote of at least six of the members.

§31-18D-6. Powers and responsibilities of the board.

1 (a) It is the duty of the board to manage and control the
2 affordable housing trust fund. In order to carry out the
3 day-to-day management and control of the trust fund and
4 effectuate the purposes of this article, the board may appoint an
5 executive director and other staff. The board shall fix the
6 executive director's duties and compensation as well as that of
7 other staff. The executive director and other staff serve at the
8 will and pleasure of the board. The board may provide for staff
9 payroll and employee benefits in the same manner as the West
10 Virginia housing development fund provides for its employees.

11 (b) The members of the board and its officers are not liable
12 personally, either jointly or severally, for any debt or obligation
13 created by the board.

14 (c) Members of the board and its officers and employees
15 shall be provided insurance coverage by the state's risk and
16 insurance management board to the same extent and in the same
17 manner the coverage is applicable to state government agencies
18 and appointed state officials and employees. The board may
19 elect to obtain other forms of insurance coverage it considers
20 reasonable for its operations.

21 (d) The acts of the board are solely acts of its corporation
22 and are not those of an agent of the state, nor is any debt or
23 obligation of the board a debt or obligation of the state.

24 (e) The board shall:

25 (1) Develop and implement comprehensive policies and
26 programs for the use of the trust fund that ensures the equitable
27 distribution of moneys from the trust fund throughout the

28 various geographic areas of this state and between urban and
29 rural areas of this state;

30 (2) Develop and implement an application and selection
31 system to identify housing sponsors or providers of affordable
32 housing developments or programs that qualify to receive
33 assistance from the trust fund for eligible activities;

34 (3) Provide funds for technical assistance to prospective
35 applicants;

36 (4) Monitor services, developments, projects or programs
37 receiving assistance from the trust fund to ensure that the
38 developments are operated in a manner consistent with this
39 article and in accordance with the representations made to the
40 trust fund board by the sponsors of the services, developments,
41 projects or programs;

42 (5) Recommend legislation to further its mission of
43 providing housing for low to moderate income citizens of this
44 state;

45 (6) Provide funding to increase the capacity of nonprofit
46 community housing organizations to serve their communities;

47 (7) Research and study housing needs and potential
48 solutions to the substandard quality or lack of affordable
49 housing;

50 (8) Coordinate programs with other entities when doing so
51 fulfills its mission to provide housing to low to moderate
52 income citizens of this state;

53 (9) Convene public meetings to gather information or
54 receive public comments regarding housing policy or issues;

55 (10) Distribute available funds pursuant to policies estab-
56 lished by it which may permit the establishment of a permanent
57 endowment; and

58 (11) Serve as a clearing house for information regarding
59 housing services and providers within this state.

60 (f) The West Virginia housing development fund shall
61 provide office space and staff support services for the executive
62 director and the board, shall act as fiscal agent for the board
63 and, as such, shall provide accounting services for the board,
64 invest all funds as directed by the board, service all investment
65 and loan activities of the board as requested, and shall make the
66 disbursements of all funds as directed by the board, for which
67 the West Virginia housing development fund shall be reason-
68 ably compensated, as determined by the board.

§31-18D-7. Eligible activities; eligible organizations.

1 (a) The board shall use the moneys from the trust fund to
2 make, or participate in the making, of loans or grants for
3 eligible activities that shall include, but not be limited to:

4 (1) Providing funds for new construction, rehabilitation,
5 repair or acquisition of housing to assist low or moderate
6 income citizens including land and land improvements;

7 (2) Providing matching funds for federal housing moneys
8 requiring a local or state match;

9 (3) Providing funds for administrative costs for housing
10 assistance programs or nonprofit organizations eligible for
11 funding pursuant to subsection (b) of this section if the grants
12 or loans provided will substantially increase the recipient's
13 access to housing funds or increase its capacity to supply
14 affordable housing;

15 (4) Providing loan guarantees and other financial mecha-
16 nisms to facilitate the provision of housing products or services;

17 (5) Providing funds for down payments, closing costs,
18 foreclosure prevention, home ownership counseling and
19 security bonds which facilitate the construction, rehabilitation,
20 repair or acquisition of housing by low to moderate income
21 citizens; and

22 (6) Providing risk underwriting products not provided by
23 private sector entities to facilitate broader accessibility of
24 citizens to other federal or state housing funds or loan pro-
25 grams. The products shall be established using professional risk
26 underwriting standards and separate corporate vehicles may be
27 created and capitalized by the trust fund to provide the prod-
28 ucts.

29 (b) Organizations eligible for funding from the trust fund
30 include the following: (1) Local governments; (2) local govern-
31 ment housing authorities; (3) nonprofit organizations recog-
32 nized as exempt from federal income tax under Section
33 501(c)(3) of the Internal Revenue Code, as amended, codified
34 in 26 U.S.C. §501 (c) (3), and which are organized and operated
35 exclusively for charitable purposes within the meaning of that
36 section, and in accordance with those purposes provide assis-
37 tance to low or moderate income citizens of this state; and (4)
38 regional or statewide housing assistance organizations that have
39 been recognized as exempt under Section 501(c)(3) of the
40 Internal Revenue Code, as amended, and which provide
41 assistance to low and moderate income or low income citizens
42 of this state.

§31-18D-8. Corporate powers.

1 The board has the power:

2 (1) To make loans or grants;

3 (2) To accept appropriations, gifts, grants, bequests and
4 devises and to utilize or dispose of the same to carry out its

5 corporate purposes. The board has the discretion to refuse any
6 gift it considers inappropriate;

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

10 (4) To collect reasonable fees and charges in connection
11 with making and servicing loans, notes, bonds, obligations,
12 commitments and other evidences of indebtedness, and in
13 connection with providing technical, consultative and project
14 assistance services;

15 (5) To sue and be sued;

16 (6) To have a seal and alter the same at will;

17 (7) To hire its own employees and appoint officers and
18 consultants as it considers advisable, and to fix their compensa-
19 tion and prescribe their duties;

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

22 (9) To enter into agreements or other transactions with any
23 federal or state agency, any person and any domestic or foreign
24 partnership, corporation, association or organization;

25 (10) To acquire real property, or an interest in real property,
26 in its own name, by purchase, transfer, bequest, gift or foreclo-
27 sure, where appropriate or is necessary to protect any loan in
28 which the board has an interest and to sell, transfer and convey
29 any property to a buyer and, in the event that a sale, transfer or
30 conveyance cannot be effected with reasonable promptness or
31 at a reasonable price, to lease property to a tenant. Before any
32 real property is transferred to the trust, the seller or donor must
33 have clear title to the property. The board has the discretion to
34 require that the seller or donor agree, in the terms of the

35 transfer, that any liability for environmental defects on the
36 property is not waived by the transfer and that the seller or
37 donor indemnify the trust for any liability associated with
38 activities that occurred or conditions that exist on the property.
39 The board may require the transferor of the property to bear the
40 costs of an environmental assessment of the property, con-
41 ducted in a manner satisfactory to the board;

42 (11) To purchase or sell, at public or private sale, any
43 mortgage or other negotiable instrument or obligation securing
44 a loan;

45 (12) To procure insurance against any loss in connection
46 with its property in such amounts, and from such insurers, as
47 may be necessary or desirable;

48 (13) To consent, whenever it considers it necessary or
49 desirable in the fulfillment of its corporate purpose, to the
50 modification of the rate of interest, time of payment or any
51 installment of principal or interest or any other terms, of an
52 investment, loan, contract or agreement of any kind to which
53 the board is a party;

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

56 (15) To acquire, by purchase or otherwise, and to hold,
57 transfer, sell, assign, pool or syndicate or participate in the
58 syndication of, any loans, notes, mortgages, securities or debt
59 instruments or other instruments evidencing loans or equity
60 interests in or for the fostering, repairing, or providing afford-
61 able housing to the citizens of this state;

62 (16) The board has the authority to make, and from time to
63 time, amend and repeal bylaws and rules not inconsistent with
64 the provisions of this article; and

65 (17) To have and exercise all other general powers of a
66 corporation in this state.

§31-18D-9. Applications and selection criteria.

1 (a) The board shall announce by public notice at least two
2 periods annually for prospective applicants to submit proposals,
3 applications or requests for funding. Each period shall be for at
4 least ninety days duration during each calendar year in which
5 funds are available from the trust fund. The board shall approve
6 or deny properly submitted and completed applications,
7 proposals or requests within sixty days of their receipt.

8 (b) The board shall determine whether each person making
9 an application, proposal or request for funding is an eligible
10 entity and approve as many applications, proposals or requests
11 as will effectively use the available moneys in the trust fund
12 less costs required to administer the program. In selecting
13 entities to receive trust fund assistance, the board shall develop
14 a qualified allocation and selection plan as often as it considers
15 appropriate in order to provide affordable housing and improve
16 the capacity of nonprofit housing entities to supply affordable
17 housing to low and moderate income citizens of this state. The
18 allocation and selection plan for each period shall be available
19 for review of prospective applicants and the general public in
20 sufficient time for prospective applicants to reasonably prepare
21 an application, project proposal or request for funding.

22 (c) No moneys may be expended from the trust fund for
23 projects that discriminate against any buyer or renter because of
24 race, religion, sex, familial status or national origin.

25 (d) The board shall forward to the West Virginia housing
26 development fund for its review and information approved
27 requests, applications and proposals for funding containing
28 information as is necessary to permit the West Virginia housing
29 development fund to carry out its duties under this article.

§31-18D-10. Documentary materials concerning financial or personal information; confidentiality.

1 Any documentary material or data made or received by the
2 board for the purpose of furnishing assistance, to the extent that
3 the material or data consists of financial or personal information
4 regarding the financial position or activities of a for-profit
5 business or natural person, are not public records and are
6 exempt from any disclosure pursuant to the provisions of
7 chapter twenty-nine-b of this code. Any discussion or consider-
8 ation of the financial or personal information may be held by
9 the board in executive session closed to the public, notwith-
10 standing the provisions of article nine-a, chapter six of this
11 code.

§31-18D-11. Conflicts.

1 In addition to any requirements imposed in article two,
2 chapter six-b of this code, if the board receives an application,
3 request for funding or proposal from any entity of which a
4 member of the board, or an immediate family member of a
5 board member, is also an officer, director, employee or owner
6 of any entity which is a party to the proposed transaction, the
7 board member shall:

8 (1) Disclose the relationship to the board, in writing;

9 (2) Refrain from participating in board discussions concern-
10 ing the application, request for funding or proposal; and

11 (3) Refrain from voting the application, request for funding
12 or proposal.

§31-18D-12. Tax exemption.

1 The trust fund is not required to pay any taxes and assess-
2 ments to the state of West Virginia, or any county, municipality
3 or other governmental subdivision of the state of West Virginia,
4 upon any of its property or upon its obligations or other
5 evidences of indebtedness pursuant to the provisions of this

6 article, or upon any moneys, funds, revenues or other income
7 held or received by the trust fund and the income from it is
8 exempt from taxation, except for death and gift taxes, taxes on
9 transfers, sales taxes, real property taxes and business and
10 occupation taxes.

§31-18D-13. Annual report.

1 The board shall make a report to the governor and the
2 Legislature within ninety days of the close of each fiscal year.
3 The report shall include summaries of all meetings of the board,
4 an analysis of the overall progress of the program, fiscal
5 concerns, the relative impact the program is having on the state,
6 and any suggestions and policy or legislative recommendations
7 that the board may have. The report shall include: (1) The
8 applications funded in the previous calendar year; (2) the
9 identity of organizations receiving funds and significant private
10 sector partners of each project or program; (3) the location of
11 each project unless the disclosure would endanger occupants or
12 unduly invade the privacy of occupants; (4) the amount,
13 maturity, interest rate, collateral and other pertinent terms of
14 funding provided to the project or program and the amount of
15 other funds leveraged; (5) the number of units of housing
16 created by the project and the occupancy rate; (6) the expected
17 cost of rent or monthly payment for those units; and (7) the
18 amount of revenue deposited into the West Virginia affordable
19 housing trust fund. The report is public information and shall be
20 made available to the general public for examination and
21 copying.

§31-18D-14. Exemption from certain requirements; audit.

1 (a) In order to provide the greatest flexibility to entities
2 receiving funding from the trust fund, the proposals, applica-
3 tions and requests funded under this article are exempt from the
4 bidding and public sale requirements, from the approval of
5 contractual agreements by the department of administration or

6 the attorney general and from the requirements of chapter five-a
7 of this code.

8 (b) The trust fund's financial position, activities, transac-
9 tions, documents and records are subject to an annual audit by
10 an independent firm of certified public accountants.

§31-18D-15. Dissolution or liquidation of trust fund.

1 In the event that the trust fund is dissolved or liquidated by
2 the Legislature, after payment of all debts, obligations or
3 expenses of the trust fund, all assets then remaining in the trust
4 fund shall be distributed to the West Virginia housing develop-
5 ment fund, a governmental instrumentality of the state of West
6 Virginia created pursuant to section four, article eighteen of
7 chapter thirty-one.

CHAPTER 150

(H. B. 2814 — By Delegates Boggs, Beane,
Douglas, Stemple and Compton)

[Passed April 14, 2001; in effect July 1, 2001. Approved by the Governor.]

AN ACT to repeal article eight, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section eight, article two of said chapter; and to amend chapter nineteen of said code by adding thereto a new article, designated article thirty, all relating to transferring administration of the donated food program from the department of health and human resources to the department of agriculture.

Be it enacted by the Legislature of West Virginia:

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

Chapter

9. Human Services.

19. Agriculture.

CHAPTER 9. HUMAN SERVICES.

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

§9-2-8. Information and referral services.

1 (a) Each local human services office shall compile, main-
2 tain and post a current list of donated food banks and other
3 emergency food providers in the area served by the local food
4 stamp office and refer individuals who need food to local
5 programs that may be able to provide assistance.

6 (b) The department shall use its existing statewide toll free
7 telephone number to provide emergency food information and
8 to refer needy individuals to local programs that may be able to
9 provide assistance. The department shall publish the telephone
10 number for referrals in the emergency telephone numbers
11 section of local telephone books. The department shall display
12 this telephone number in all its offices that issue food stamps.

CHAPTER 19. AGRICULTURE.

ARTICLE 30. DONATED FOOD.

§19-30-1. Purpose.

- §19-30-2. Administration of donated food program transferred from department of health and human resources to department of agriculture.
- §19-30-3. Special revenue account created for donated food program.
- §19-30-4. Donation of food items; exemption from civil and criminal liability.
- §19-30-5. Definitions.
- §19-30-6. Authorization of donations; diversion of products by directors to organizations.
- §19-30-7. Surplus food collection and distribution centers.
- §19-30-8. Minimum standards for food banks.
- §19-30-9. State surplus buildings and equipment; availability to donated food banks.
- §19-30-10. Effect of article on other nonprofit organizations.
- §19-30-11. Application of article to food stamp act.
- §19-30-12. Donated food bank assistance fund; restriction.

§19-30-1. Purpose.

1 The purpose of this article is to address the problem of
2 hunger in this state by improving the distribution of food to the
3 hungry, providing a means of funding agencies which distribute
4 food on an emergency basis, gathering and disseminating
5 information related to the problem of hunger, assuring that
6 distribution activities are responsive to the needs of local
7 donated food banks, facilitating the creation of donated food
8 banks and ensuring maximum access to food banks.

**§19-30-2. Administration of donated food program transferred
from department of health and human resources
to department of agriculture.**

1 (a) Effective the first day of July, two thousand one, the
2 department of agriculture is designated as the state agency to:

3 (1) Receive food donated by the United States department
4 of agriculture, other federal or state agencies, corporations,
5 private persons or entities;

6 (2) Receive payments for storage and distribution of the
7 donated food;

8 (3) Distribute the food to educational or charitable institu-
9 tions;

10 (4) Allocate funds received relating to the donated food;
11 and

12 (5) Enter into agreements and take other actions necessary
13 to exercise the authority provided in this article.

14 (b) Effective the first day of July, two thousand one, all
15 responsibility for receiving, storing and distributing donated
16 food previously assigned to the department of health and human
17 resources is transferred to the department of agriculture. The
18 secretary of the department of health and human resources and
19 the commissioner of agriculture, acting jointly, are empowered
20 to facilitate an orderly, efficient and economical transfer of the
21 donated food program and related program functions, including
22 the transfer of employees.

23 (c) Effective the first day of July, two thousand one, all
24 unencumbered funds remaining with the department of health
25 and human resources related to the transferred donated food
26 program shall be transferred to the appropriate accounts of the
27 department of agriculture.

**§19-30-3. Special revenue account created for donated food
program.**

1 (a) There is hereby established in the state treasury a special
2 revenue account to be known as the “donated food fund”
3 account. Expenditures from said account shall be used by the
4 department of agriculture for the operation of the donated food
5 program and are not authorized from collections, but are to be
6 made only in accordance with appropriation by the Legislature
7 and in accordance with the provisions of article three, chapter
8 twelve of this code, and upon the fulfillment of the provisions
9 set forth in article two, chapter five-a of this code.

10 (b) The commissioner is authorized to solicit and accept
11 donations, gifts, grants, bequests and other funds made avail-
12 able to the department of agriculture from private sources for
13 the donated food program, which funds shall be placed in the
14 donated food fund special revenue account.

§19-30-4. Donation of food items; exemption from civil and criminal liability.

1 Any person who makes a good faith donation of prepared
2 or perishable food which appears to be fit for human consump-
3 tion at the time it is donated to a charitable or nonprofit
4 organization is not liable for damages in any civil action or
5 subject to criminal prosecution for any injury or death due to
6 the condition of the food unless the injury or death is a direct
7 result of the gross negligence, recklessness or intentional
8 misconduct of the donor.

9 A charitable or nonprofit organization or an officer,
10 employee or volunteer of the organization that in good faith
11 receives and distributes, without charge, food which appears to
12 be fit for human consumption at the time it is distributed is not
13 liable for damages in any civil action or subject to criminal
14 prosecution for any injury or death due to the condition of the
15 food unless the injury or death is a direct result of the gross
16 negligence, recklessness or intentional misconduct of the
17 organization or its officers, employees or volunteer workers.

18 This section applies to all good faith donations of perish-
19 able food which is not readily marketable due to appearance,
20 freshness, grade, surplus supply or other conditions.

§19-30-5. Definitions.

1 In this article, unless the context otherwise requires:

2 “Agricultural product” means any fowl, animal, vegetable
3 or other item, product or article which is customary food or
4 which is proper food for human consumption.

5 “Donated food bank” means a nonprofit organization that
6 solicits, stores, or redistributes food products to charitable
7 organizations and individuals for the purpose of feeding needy
8 families and individuals.

9 “Nonprofit charitable organization” means an organization
10 which is organized and operates for a charitable purpose.

**§19-30-6. Authorization of donations; diversion of products by
directors to organizations.**

1 A person engaged in the business of processing, distributing
2 or selling any agricultural product may donate, free of charge,
3 any agricultural product to a donated food bank.

4 To assist in accomplishing the purposes of this section, the
5 director of each department of state government shall divert,
6 whenever possible, surplus agricultural products to organiza-
7 tions operating pursuant to this article.

§19-30-7. Surplus food collection and distribution centers.

1 The department of agriculture shall continue operation of
2 and shall publicize the services of an information and food
3 collection center. The center shall receive and transmit informa-
4 tion concerning available agricultural products and information
5 on each organization desiring or needing agricultural products
6 to be donated. The center shall also collect, receive, handle,
7 store and distribute donated agricultural products. A nonprofit
8 charitable organization which regularly needs agricultural
9 products may be listed with a food collection center to be
10 notified if agricultural products are available.

§19-30-8. Minimum standards for food banks.

1 In order to qualify as a donated food bank, an organization
2 shall meet all of the following minimum standards:

3 (a) Have access to storage facilities and refrigeration
4 equipment for the purpose of collecting, receiving, handling,
5 storing and distributing donated agricultural products;

6 (b) Be incorporated as a nonprofit tax exempt organization
7 and eligible as a charitable organization under the Internal
8 Revenue Code (26 United States code section 501 (c) (3)) or
9 affiliated with a qualified organization;

10 (c) Maintain records for the proper control of inventory;

11 (d) Demonstrate the availability of adequate liability
12 insurance to cover the activities conducted pursuant to this
13 article; and

14 (e) Show local support through funding sources, letters of
15 endorsement and a board of directors which reflects the
16 community and population to be served.

§19-30-9. State surplus buildings and equipment; availability to donated food banks.

1 The commissioner of the department of administration shall
2 assist a food bank by locating and providing available state
3 surplus buildings or equipment necessary for the operation of
4 a donated food bank for use without charge.

§19-30-10. Effect of article on other nonprofit organizations.

1 Nothing in this article may restrict or limit the operation of
2 any other nonprofit organization which is engaged in the
3 distribution of agricultural products to nonprofit charitable
4 organizations.

§19-30-11. Application of article to food stamp act.

1 Consonant with 7 C.F.R. 273.9(c)(1), programs operated in
2 accordance with this article shall complement and not in any
3 way lessen assistance to families and individuals pursuant to the
4 Food Stamp Act of 1977 as amended, (7 U.S.C. 2011 through
5 7 U.S.C. 2026).

§19-30-12. Donated food bank assistance fund; restriction.

1 (a) The fund formerly known as the charity food bank
2 assistance fund is redesignated the donated food bank assistance
3 fund and is continued. The fund consists of moneys provided by
4 appropriation.

5 (b) A donated food bank which meets the minimum
6 standards for food banks may qualify, subject to available
7 moneys, for assistance from this fund for any of its operations.

8 (c) Assistance granted pursuant to this article shall be
9 administered by the commissioner of agriculture. No more than
10 five percent of the assistance granted to a donated food bank
11 pursuant to this article may be used for administrative purposes.

CHAPTER 151

(Com. Sub. for S. B. 525 — By Senators Unger, Prezioso,
Oliverio, Snyder, Facemyer, Edgell, Rowe, Helmick, Fanning,
Sharpe, Ross, Hunter, Caldwell, Redd, Burnette, Minear,
Minard, Kessler, Plymale, Love, Mitchell, Boley, Bowman,
Anderson, McCabe and Tomblin, Mr. President)

[Passed April 12, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article ten-m, relating to establishing the statewide independent living council; providing for the powers and duties of the council; providing for a state plan for the provision of independent living services to people with disabilities to be jointly developed by the council and the division of rehabilitation services; providing that available funding for independent living services shall be administered by the division of rehabilitation services; and specifying funding eligibility criteria for centers for independent living.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10M. WEST VIRGINIA INDEPENDENT LIVING ACT.

§18-10M-1. Short title.

§18-10M-2. Legislative findings and declarations.

§18-10M-3. Purpose.

§18-10M-4. Definitions.

§18-10M-5. Eligibility for services.

§18-10M-6. Statewide independent living council.

§18-10M-7. State plan for independent living.

§18-10M-8. Funding and grants.

§18-10M-1. Short title.

- 1 This article shall be known and may be cited as the “West
- 2 Virginia Independent Living Act”.

§18-10M-2. Legislative findings and declarations.

- 1 The Legislature hereby finds and declares the following:

2 (1) The state recognizes the value of independent living
3 services in enabling people with disabilities to live more
4 independently in their own homes and communities.

5 (2) Persons with disabilities have the best capacity to
6 design, develop, manage and implement the programs and
7 services which are intended to assist them.

8 (3) The federal rehabilitation act requires this state to
9 develop a state plan for independent living to describe and
10 direct independent living services in West Virginia.

11 (4) The federal rehabilitation act further calls for the
12 establishment and operation of a statewide independent living
13 council to monitor, review and evaluate the implementation of
14 the state's plan for independent living services.

15 (5) There are approximately one quarter of a million
16 residents in this state with disabilities who could benefit
17 directly or indirectly from the provision of independent living
18 services by the division of rehabilitation services and the state's
19 centers for independent living.

20 (6) Twenty-five percent of West Virginia's total population
21 is over fifty-five years of age and thirteen and one-half percent
22 of that population requires assistance with activities of daily
23 living in order to live independently in their own homes.

24 (7) A need exists for a coordinated network of con-
25 sumer-controlled centers for independent living that effectively
26 reaches persons with disabilities in all fifty-five counties of the
27 state.

§18-10M-3. Purpose.

1 The purpose of this article is to authorize, facilitate or
2 provide for services and activities that will enable individuals

3 with disabilities to live as independently as possible in their
4 own homes and communities; to promote the philosophy of
5 independent living, including consumer control, peer support,
6 self-help, self-determination, equal access and individual and
7 systems advocacy; to enhance and maximize the leadership
8 abilities, empowerment, independence and productivity of
9 individuals with significant disabilities; and to promote and
10 maximize the integration and full inclusion of individuals with
11 significant disabilities into the mainstream of our society. To
12 this end, services provided pursuant to this article shall be
13 offered in the most integrated settings to the maximum extent
14 possible, within available resources.

§18-10M-4. Definitions.

1 Terms used in this article have the same meanings as those
2 provided in the federal rehabilitation act, as follows:

3 (a) “Consumer control” means circumstances in which
4 individuals with disabilities having decision-making authority.

5 (b) “Council” means the statewide independent living
6 council.

7 (c) “Division” means the division of rehabilitation services.

8 (d) “Independent living services” means advocacy, inde-
9 pendent living skills, training, information and referral, peer
10 counseling, peer support and any other service directed by the
11 state plan which may include, but is not limited to, the follow-
12 ing:

13 (1) Assistive devices and equipment;

14 (2) Communication services;

15 (3) Counseling and related services;

16 (4) Community awareness programs to enhance the
17 understanding and integration into society of individuals with
18 disabilities;

19 (5) Environmental modifications;

20 (6) Family services;

21 (7) Mobility training;

22 (8) Personal assistance services;

23 (9) Prostheses and other appliances and devices; and

24 (10) Rehabilitation technology.

25 (e) "State plan" means the state plan for independent living
26 required by the federal rehabilitation act of 1973, as amended.

§18-10M-5. Eligibility for services.

1 Any individual with a significant disability, as defined in
2 the state plan, is eligible for services that may be made avail-
3 able pursuant to this article.

§18-10M-6. Statewide independent living council.

1 (a) The West Virginia statewide independent living council
2 is hereby established, as it has heretofore existed under the
3 federal rehabilitation act, as a not-for-profit corporation which
4 shall be organized to meet the requirements of the federal act:
5 *Provided*, That the council may not be established as an entity
6 within any agency or political subdivision of the state. The
7 council shall be governed by a board of directors, consisting of
8 the voting members of the council, as provided in this section.
9 The composition of this board of directors, as well as the
10 composition of the full council's membership, shall include a
11 majority of members who are persons with disabilities, as

12 defined in the state plan, and a majority of members who are
13 not employed by any agency of the state or center for independ-
14 ent living. The council's membership shall reflect balanced
15 geographical representation, diverse backgrounds and the full
16 range of disabilities recognized under the federal act, including
17 physical, mental, cognitive, sensory and multiple.

18 (b) The council shall function as a partner with the division
19 of rehabilitation services in the planning and provision of
20 independent living services in the state. In conjunction with the
21 division, the council shall develop, approve and submit to the
22 proper federal authorities the state plan for independent living,
23 as required by the federal act. The council shall monitor, review
24 and evaluate the effectiveness of the implementation of the state
25 plan.

26 (c) *Voting members.* — The council shall consist of twenty-
27 four voting members as follows: One director of an independent
28 living center, chosen by the directors of the independent living
29 centers in the state; and twenty-three members appointed by the
30 governor. The governor shall select appointments from among
31 the nominations submitted by organizations representing a wide
32 range of individuals with disabilities and other interested
33 groups, as coordinated by the council, by and with the advice
34 and consent of the Senate. These members may include other
35 representatives from centers for independent living, parents and
36 guardians of individuals with disabilities, advocates of individ-
37 uals with disabilities, representatives from the business and
38 educational sectors, representatives of organizations that
39 provide services for individuals with disabilities and other
40 interested individuals, as appropriate to the purpose of the
41 council.

42 (d) *Nonvoting members.* — The membership of the council
43 shall also include the following, non-voting, ex officio mem-
44 bers, or their designees:

- 45 (1) The director of the division of rehabilitation services;
- 46 (2) The director of the office of behavioral health services
47 within the department of health and human resources;
- 48 (3) The director of the West Virginia housing development
49 fund;
- 50 (4) The president of the West Virginia association of
51 rehabilitation facilities;
- 52 (5) The commissioner of the bureau of senior services; and
- 53 (6) The director of the office of special education programs
54 and assurance in the department of education;

55 The nonvoting membership may also include additional
56 representatives of groups represented on the board of directors.

57 (e) *Terms of appointment.* — Each appointed member of
58 the council shall serve for a term of three years, except that a
59 member appointed to fill a vacancy occurring prior to the
60 expiration of the term for which a predecessor was appointed
61 shall be appointed for the remainder of the unexpired term; and
62 the terms of service of the members initially appointed shall be
63 for such fewer number of years as will provide for the expira-
64 tion of terms on a staggered basis, as specified by the governor.
65 No member of the council may serve more than two consecu-
66 tive full terms.

67 (f) *Vacancies.* — Any vacancy occurring in the appointed
68 membership of the council shall be filled in the same manner as
69 the original appointment. A vacancy does not affect the power
70 of the remaining members to execute the duties of the council.

71 (g) *Delegation.* — The governor may delegate the
72 authority to fill a vacancy to the remaining voting members of
73 the council after initial appointments have been made.

74 (h) *Duties.* — The council shall:

75 (1) In conjunction with the division of rehabilitation
76 services, develop and sign the state plan for independent living;

77 (2) Monitor, review and evaluate the implementation of the
78 state plan;

79 (3) Coordinate activities with the state rehabilitation
80 council and other bodies that address the needs of specific
81 disability populations and issues under other federal and state
82 law;

83 (4) Ensure that all regularly scheduled meetings of the
84 council are open to the public and sufficient advance notice is
85 provided; and

86 (5) Submit to the federal funding agency such periodic
87 reports as are required and keep such records and afford access
88 to such records, as may be necessary to verify such reports.

89 (i) *Staffing and resources.* — The council may employ staff
90 as necessary to perform the functions of the council, including
91 an executive director, an administrative assistant and other staff
92 as may be determined necessary by the council. The council
93 shall supervise and evaluate staff. The council shall prepare, in
94 conjunction with the division, a plan for the use of available
95 resources as may be necessary to carry out the functions and
96 duties of the council pursuant to this article, utilizing eligible
97 federal funds, funds made available under this article and funds
98 from other public and private sources. This resource plan shall,
99 to the maximum extent possible, rely on the use of existing
100 resources during the period of plan implementation.

101 (j) *Compensation and expenses.* — The council may use
102 resources that are available to it to reimburse members of the
103 council for reasonable and necessary expenses incurred in the
104 performance of their duties, including attending council
105 meetings, and to pay reasonable compensation to any member
106 of the council who is either not employed by the state or is not
107 otherwise compensated by his or her employer for performance
108 of duties associated with the council, up to fifty dollars per day.

§18-10M-7. State plan for independent living.

1 (a) The state plan shall direct the use of federal funds
2 provided to the state under the federal act and appropriated by
3 the Legislature to the division in a line item for this purpose, in
4 addition to any state funds that may be appropriated to the
5 division for the provision of independent living services. The
6 state plan, and each subsequent plan or amendment thereto shall
7 address the priorities set forth in the federal act for establishing
8 a statewide program of independent living services, including
9 a statewide network of centers for independent living. The state
10 plan may be amended at any time at the agreement of the
11 council and the division.

12 (b) The state plan, and each subsequent plan and any
13 amendments thereto shall be presented to the legislative
14 oversight commission on health and human resources account-
15 ability, created pursuant to article twenty-nine-e, chapter
16 sixteen of this code, for review and consultation.

§18-10M-8. Funding and grants.

1 (a) Funds appropriated to the division for independent
2 living services shall be administered by the division and may be
3 used to fund any service or activity included in the state plan for
4 independent living, including funding centers for independent
5 living. In order to qualify for funding, a center for independent

6 living shall meet the definition and comply with the standards
7 and indicators therefor, as established in the federal act.

8 (b) Subject to availability, the state plan may designate
9 funds for purposes including, but not limited to, the following:

10 (1) To provide independent living services to eligible
11 individuals with significant disabilities;

12 (2) To demonstrate ways to expand and improve independ-
13 ent living services;

14 (3) To support the operation of centers for independent
15 living;

16 (4) To support activities to increase the capacities of centers
17 for independent living to develop comprehensive approaches or
18 systems for providing independent living services;

19 (5) To conduct studies and analyses, gather information,
20 develop model policies and procedures and present information,
21 approaches, strategies, findings, conclusions and recommenda-
22 tions to policymakers in order to enhance independent living
23 services for individuals with disabilities;

24 (6) To train individuals with disabilities and individuals
25 who provide services to them and other persons regarding the
26 independent living philosophy; and

27 (7) To provide outreach to populations that are unserved or
28 underserved by programs under this act, including minority
29 groups and urban and rural populations.

30 As provided in the state plan, funds appropriated for the
31 purposes of this article shall be utilized directly by the division

32 for the provision of independent living services or through
33 grants or contracts, with the approval of the council, to agencies
34 that meet the definition of and comply with the standards and
35 indicators for centers for independent living set forth in the
36 federal act.

CHAPTER 152

(Com. Sub. for H. B. 2209 — By Mr. Speaker, Mr. Kiss,
and Delegate Trump)
[By Request of the Executive]

[Passed April 14, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirteen, article sixteen, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the public employees insurance agency; prohibiting the conversion of accrued annual and sick leave for extended insurance coverage upon retirement for covered employees hired after a certain date; and exempting certain employees who are rehired from the prohibition.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

§5-16-13. Payment of costs by employer and employee; spouse and dependent coverage; involuntary employee termination coverage; conversion of annual leave and sick leave authorized for health or retirement

benefits; authorization for retiree participation; continuation of health insurance for surviving dependents of deceased employees; requirement of new health plan, limiting employer contribution.

1 (a) *Cost-sharing.* — The director shall provide under any
2 contract or contracts entered into under the provisions of this
3 article that the costs of any group hospital and surgical insur-
4 ance, group major medical insurance, group prescription drug
5 insurance, group life and accidental death insurance benefit
6 plan or plans shall be paid by the employer and employee.

7 (b) *Spouse and dependent coverage.* — Each employee is
8 entitled to have his or her spouse and dependents, as defined by
9 the rules of the public employees insurance agency, included in
10 any group hospital and surgical insurance, group major medical
11 insurance or group prescription drug insurance coverage to
12 which the employee is entitled to participate: *Provided*, That the
13 spouse and dependent coverage is limited to excess or second-
14 ary coverage for each spouse and dependent who has primary
15 coverage from any other source. For purposes of this section,
16 the term “primary coverage” means individual or group hospital
17 and surgical insurance coverage or individual or group major
18 medical insurance coverage or group prescription drug cover-
19 age in which the spouse or dependent is the named insured or
20 certificate holder. The director may require proof regarding
21 spouse and dependent primary coverage and shall adopt rules
22 governing the nature, discontinuance and resumption of any
23 employee’s coverage for his or her spouse and dependents.

24 (c) *Continuation after termination.* — If an employee
25 participating in the plan is terminated from employment
26 involuntarily or in reduction of work force, the employee’s
27 insurance coverage provided under this article shall continue for
28 a period of three months at no additional cost to the employee
29 and the employer shall continue to contribute the employer’s

30 share of plan premiums for the coverage. An employee dis-
31 charged for misconduct shall not be eligible for extended
32 benefits under this section. Coverage may be extended up to the
33 maximum period of three months, while administrative reme-
34 dies contesting the charge of misconduct are pursued. If the
35 discharge for misconduct be upheld, the full cost of the ex-
36 tended coverage shall be reimbursed by the employee. If the
37 employee is again employed or recalled to active employment
38 within twelve months of his or her prior termination, he or she
39 shall not be considered a new enrollee and may not be required
40 to again contribute his or her share of the premium cost, if he or
41 she had already fully contributed such share during the prior
42 period of employment.

43 (d) *Conversion of accrued annual and sick leave for*
44 *extended insurance coverage upon retirement for employees*
45 *who elected to participate in the plan before July, one thousand*
46 *nine hundred eighty-eight.* — Except as otherwise provided in
47 subsection (g) of this section, when an employee participating
48 in the plan, who elected to participate in the plan before the first
49 day of July, one thousand nine hundred eighty-eight, is com-
50 pelled or required by law to retire before reaching the age of
51 sixty-five, or when a participating employee voluntarily retires
52 as provided by law, that employee's accrued annual leave and
53 sick leave, if any, shall be credited toward an extension of the
54 insurance coverage provided by this article, according to the
55 following formulae: The insurance coverage for a retired
56 employee shall continue one additional month for every two
57 days of annual leave or sick leave, or both, which the employee
58 had accrued as of the effective date of his or her retirement. For
59 a retired employee, his or her spouse and dependents, the
60 insurance coverage shall continue one additional month for
61 every three days of annual leave or sick leave, or both, which
62 the employee had accrued as of the effective date of his or her
63 retirement.

64 (e) *Conversion of accrued annual and sick leave for*
65 *extended insurance coverage upon retirement for employees*
66 *who elected to participate in the plan after June, one thousand*
67 *nine hundred eighty-eight.* — Notwithstanding subsection (d) of
68 this section, and except as otherwise provided in subsections (g)
69 and (l) of this section when an employee participating in the
70 plan who elected to participate in the plan on and after the first
71 day of July, one thousand nine hundred eighty-eight, is com-
72 pelled or required by law to retire before reaching the age of
73 sixty-five, or when the participating employee voluntarily
74 retires as provided by law, that employee's annual leave or sick
75 leave, if any, shall be credited toward one half of the premium
76 cost of the insurance provided by this article, for periods and
77 scope of coverage determined according to the following
78 formulae: (1) One additional month of single retiree coverage
79 for every two days of annual leave or sick leave, or both, which
80 the employee had accrued as of the effective date of his or her
81 retirement; or (2) one additional month of coverage for a
82 retiree, his or her spouse and dependents for every three days of
83 annual leave or sick leave, or both, which the employee had
84 accrued as of the effective date of his or her retirement. The
85 remaining premium cost shall be borne by the retired employee
86 if he or she elects the coverage. For purposes of this subsection,
87 an employee who has been a participant under spouse or
88 dependent coverage and who reenters the plan within twelve
89 months after termination of his or her prior coverage shall be
90 considered to have elected to participate in the plan as of the
91 date of commencement of the prior coverage. For purposes of
92 this subsection, an employee shall not be considered a new
93 employee after returning from extended authorized leave on or
94 after the first day of July, one thousand nine hundred
95 eighty-eight.

96 (f) *Increased retirement benefits for retired employees with*
97 *accrued annual and sick leave.* — In the alternative to the
98 extension of insurance coverage through premium payment

99 provided in subsections (d) and (e) of this section, the accrued
100 annual leave and sick leave of an employee participating in the
101 plan may be applied, on the basis of two days retirement service
102 credit for each one day of accrued annual and sick leave, toward
103 an increase in the employee's retirement benefits with those
104 days constituting additional credited service in computation of
105 the benefits under any state retirement system. However, the
106 additional credited service shall not be used in meeting initial
107 eligibility for retirement criteria, but only as additional service
108 credited in excess thereof.

109 (g) *Conversion of accrued annual and sick leave for*
110 *extended insurance coverage upon retirement for certain higher*
111 *education employees.* — Except as otherwise provided in
112 subsection (l) of this section, when an employee, who is a
113 higher education full-time faculty member employed on an
114 annual contract basis other than for twelve months, is com-
115 pelled or required by law to retire before reaching the age of
116 sixty-five, or when such a participating employee voluntarily
117 retires as provided by law, that employee's insurance coverage,
118 as provided by this article, shall be extended according to the
119 following formulae: The insurance coverage for a retired higher
120 education full-time faculty member, formerly employed on an
121 annual contract basis other than for twelve months, shall
122 continue beyond the effective date of his or her retirement one
123 additional year for each three and one-third years of teaching
124 service, as determined by uniform guidelines established by the
125 university of West Virginia board of trustees and the board of
126 directors of the state college system, for individual coverage, or
127 one additional year for each five years of teaching service for
128 "family" coverage.

129 (h) Any employee who retired prior to the twenty-first day
130 of April, one thousand nine hundred seventy-two, and who also
131 otherwise meets the conditions of the "retired employee"
132 definition in section two of this article, shall be eligible for
133 insurance coverage under the same terms and provisions of this

134 article. The retired employee's premium contribution for any
135 such coverage shall be established by the finance board.

136 (i) *Retiree participation.* — All retirees under the provisions
137 of this article, including those defined in section two of this
138 article; those retiring prior to the twenty-first day of April, one
139 thousand nine hundred seventy-two; and those hereafter retiring
140 are eligible to obtain health insurance coverage. The retired
141 employee's premium contribution for the coverage shall be
142 established by the finance board.

143 (j) *Surviving spouse and dependent participation.* — A
144 surviving spouse and dependents of a deceased employee, who
145 was either an active or retired employee participating in the
146 plan just prior to his or her death, are entitled to be included in
147 any group insurance coverage provided under this article to
148 which the deceased employee was entitled, and the spouse and
149 dependents shall bear the premium cost of the insurance
150 coverage. The finance board shall establish the premium cost of
151 the coverage.

152 (k) *Elected officials.* — In construing the provisions of this
153 section or any other provisions of this code, the Legislature
154 declares that it is not now nor has it ever been the Legislature's
155 intent that elected public officials be provided any sick leave,
156 annual leave or personal leave, and the enactment of this
157 section is based upon the fact and assumption that no statutory
158 or inherent authority exists extending sick leave, annual leave
159 or personal leave to elected public officials and the very nature
160 of those positions preclude the arising or accumulation of any
161 leave, so as to be thereafter usable as premium paying credits
162 for which the officials may claim extended insurance benefits.

163 (l) *Participation of certain former employees.* — An
164 employee, eligible for coverage under the provisions of this
165 article who has twenty years of service with any agency or
166 entity participating in the public employees insurance program
167 or who has been covered by the public employees insurance

168 program for twenty years may, upon leaving employment with
169 a participating agency or entity, continue to be covered by the
170 program if the employee pays one hundred and five percent of
171 the cost of retiree coverage: *Provided*, That the employee shall
172 elect to continue coverage under this subsection within two
173 years of the date the employment with a participating agency or
174 entity is terminated.

175 (m) *Prohibition on conversion of accrued annual and sick*
176 *leave for extended coverage upon retirement for new employees*
177 *who elect to participate in the plan after June, two thousand*
178 *one.* — Any employee hired on or after the first day of July, two
179 thousand one who elects to participate in the plan may not
180 apply accrued annual or sick leave toward the cost of premiums
181 for extended insurance coverage upon his or her retirement.
182 This prohibition does not apply to the conversion of accrued
183 annual or sick leave for increased retirement benefits, as
184 authorized by this section: *Provided*, That any person who has
185 participated in the plan prior to the first day of July, two
186 thousand one, is not a new employee for purposes of this
187 subsection if he or she becomes re-employed with an employer
188 participating in the plan within two years following his or her
189 separation from employment and he or she elects to participate
190 in the plan upon his or her re-employment.

CHAPTER 153

(H. B. 3009 — By Delegates Beane, Browning and G. White)

[Passed April 12, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section nine-a, article two, chapter thirty-three of
the code of West Virginia, one thousand nine hundred thirty-one,

as amended; to amend and reenact section twenty-two, article three, chapter twenty-nine of said code; to amend and reenact section fifteen, article two, chapter thirty-three of said code; to amend and reenact sections fourteen, fourteen-a, fourteen-c, fourteen-d and thirty-three, article three of said chapter; to amend and reenact section five, article thirty-two of said chapter; and to amend said chapter by adding thereto a new article, designated article forty-three, all relating to the procedures for administering taxes and fees required to be paid or remitted to the commissioner of insurance; the tax on insurers pursuant to the fire prevention and control act; the commissioner's annual report to the governor on the condition of insurers; the filing of annual financial statements and premium tax returns; the computation and payment of taxes to the insurance commissioner; fire and casualty insurance premium tax; the surcharge on fire and casualty insurance policies to benefit volunteer and part volunteer fire departments, certain retired teachers and the teachers retirement reserve fund; the premium tax imposed upon risk retention groups; the enactment of an insurance tax procedures act; the power of the commissioner to conduct hearings and impose penalties for failure to comply with tax statutes and rules; authority of the commissioner to bring or join suit; the obligation to file tax returns; imposition of penalties for taxpayer's failure to file or pay tax liability; the issuance of tax assessments; the right to hearing and appeal; the procedure for claiming tax refunds and credits; the imposition of interest on unpaid assessments; the allocation of payments; notice of overpayments and underpayments; and retroactive monetary relief for unconstitutional taxes.

Be it enacted by the Legislature of West Virginia:

That section nine-a, article two, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section twenty-two, article three, chapter twenty-nine of said code be amended and reenacted; that section fifteen, article two, chapter thirty-three of said code be amended and reenacted; that

sections fourteen, fourteen-a, fourteen-c, fourteen-d and thirty-three, article three of said chapter be amended and reenacted; that section five, article thirty-two of said chapter be amended and reenacted; and that said chapter be amended by adding thereto a new article, designated article forty-three, all to read as follows:

Chapter

29. Miscellaneous Boards and Officers.

33. Insurance.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 3. FIRE PREVENTION AND CONTROL ACT.

§29-3-22. Tax on insurance companies.

1 Every insurance company doing business in this state,
2 except farmers' mutual fire insurance companies, shall pay to
3 the state insurance commissioner annually on or before the first
4 day of March, in addition to the taxes now required by law to be
5 paid by the companies, one half of one percent of the taxable
6 premiums of the companies on insurance against the hazard of
7 fire and on that portion of all other taxable premiums reason-
8 ably applicable to insurance against the hazard of fire which are
9 included in other coverages, and received by it for insurance on
10 property or risks in this state during the calendar year next
11 preceding as shown by their annual statement under oath to the
12 insurance department. The money so received by the state
13 insurance commissioner is paid by him or her into the treasury
14 and credited to the state general revenue fund.

CHAPTER 33. INSURANCE.

Article

2. Insurance Commissioner.

3. Licensing, Fees and Taxation of Insurers.

32. Risk Retention Act.

43. Insurance Tax Procedures Act.

ARTICLE 2. INSURANCE COMMISSIONER.**§33-2-15. Annual report by commissioner.**

1 The commissioner shall annually, on or before the first day
2 of November, submit to the governor a report for the previous
3 calendar year of his or her official acts, and of the condition of
4 insurers doing business in this state, with a condensed statement
5 of their reports to him or her, abstracts of all accounts rendered
6 to any court by receivers of insolvent insurers, abstracts or
7 reports to the commissioner by the receivers, together with a
8 statement of all assessments, fees, taxes and related charges
9 received from insurers and other licensees and paid by him or
10 her into the state treasury.

ARTICLE 3. LICENSING, FEES AND TAXATION OF INSURERS.

§33-3-14. Annual financial statement and premium tax return; remittance by insurer of premium tax, less certain deductions; special revenue fund created.

§33-3-14a. Additional premium tax.

§33-3-14c. Computation and payment of tax.

§33-3-14d. Additional fire and casualty insurance premium tax; allocation of proceeds; effective date.

§33-3-33. Surcharge on fire and casualty insurance policies to benefit volunteer and part volunteer fire departments; special fund created; allocation of proceeds; effective date.

***§33-3-14. Annual financial statement and premium tax return;
remittance by insurer of premium tax, less certain
deductions; special revenue fund created.**

1 (a) Every insurer transacting insurance in West Virginia
2 shall file with the commissioner, on or before the first day of
3 March, each year, a financial statement made under oath of its
4 president or secretary and on a form prescribed by the commis-
5 sioner. The insurer shall also, on or before the first day of
6 March of each year subject to the provisions of section

***Clerk's Note:** This section was also amended by H. B. 3156 (Chapter 66), which passed subsequent to this act.

7 fourteen-c of this article, under the oath of its president or
8 secretary, make a premium tax return for the previous calendar
9 year, on a form prescribed by the commissioner showing the
10 gross amount of direct premiums, whether designated as a
11 premium or by some other name, collected and received by it
12 during the previous calendar year on policies covering risks
13 resident, located or to be performed in this state and compute
14 the amount of premium tax chargeable to it in accordance with
15 the provisions of this article, deducting the amount of quarterly
16 payments as required to be made pursuant to the provisions of
17 section fourteen-c of this article, if any, less any adjustments to
18 the gross amount of the direct premiums made during the
19 calendar year, if any, and transmit with the return to the
20 commissioner a remittance in full for the tax due. The tax is the
21 sum equal to two percent of the taxable premium and also
22 includes any additional tax due under section fourteen-a of this
23 article.

24 (b) There is created in the state treasury a special revenue
25 fund, administered by the treasurer, designated the "insurance
26 tax fund." This fund is not part of the general revenue fund of
27 the state. It consists of all taxes received by the commissioner
28 not allocated to another fund, any appropriations to the fund, all
29 interest earned from investment of the fund and any gifts, grants
30 or contributions received by the fund.

31 (c) The treasurer shall dedicate and transfer from the
32 insurance tax fund to the regional jail and correctional facility
33 investment fund created under the provisions of section twenty-
34 one, article six, chapter twelve of this code, on or before the
35 tenth day of each month, an amount equal to one twelfth of the
36 projected annual investment earnings to be paid and the capital
37 invested to be returned, as certified to the treasurer by the
38 investment management board: *Provided*, That the amount
39 dedicated and transferred may not exceed twenty million dollars
40 in any fiscal year. In the event there are insufficient funds

41 available in any month to transfer the amount required pursuant
42 to this subsection to the regional jail and correctional facility
43 investment fund, the deficiency shall be added to the amount
44 transferred in the next succeeding month in which revenues are
45 available to transfer the deficiency. Each month a lien on the
46 revenues generated from the insurance premium tax, the
47 annuity tax and the minimum tax, provided in this section and
48 sections fifteen and seventeen of this article, up to a maximum
49 amount equal to one twelfth of the projected annual principal
50 and return is granted to the investment management board to
51 secure the investment made with the regional jail and correc-
52 tional facility authority pursuant to section twenty, article six,
53 chapter twelve of this code. The treasurer shall, no later than the
54 last business day of each month, transfer amounts the treasurer
55 determines are not necessary for making refunds under this
56 article to meet the requirements of subsection (d), section
57 twenty-one, article six, chapter twelve of this code, to the credit
58 of the general revenue fund.

59 (d) The amendment to this section enacted during the
60 regular session of the Legislature in the year one thousand nine
61 hundred ninety-eight, is effective on the first day of July, one
62 thousand nine hundred ninety-eight.

§33-3-14a. Additional premium tax.

1 For the purpose of providing additional revenue for the
2 state general revenue fund, there is hereby levied and imposed,
3 in addition to the taxes imposed by section fourteen of this
4 article, an additional premium tax equal to one percent of
5 taxable premiums. Except as otherwise provided in this section,
6 all provisions of this article relating to the levy, imposition and
7 collection of the regular premium tax shall be applicable to the
8 levy, imposition and collection of the additional tax. All
9 moneys received from the additional tax imposed by this
10 section, less deductions allowed by this article for refunds and

11 for costs of administration, shall be received by the commis-
12 sioner and shall be paid by him or her into the state treasury for
13 the benefit of the state fund.

§33-3-14c. Computation and payment of tax.

1 The taxes levied hereunder shall be due and payable in
2 quarterly installments on or before the twenty-fifth day of the
3 month succeeding the end of the quarter in which they accrue,
4 except for the fourth quarter, for which taxes shall be due and
5 payable on or before the first day of March of the succeeding
6 year. The insurer subject to making the payments shall, by the
7 due date, prepare an estimate of the tax based on the estimated
8 amount of taxable premium during the preceding quarter, and
9 mail the estimate together with a remittance of the amount of
10 tax to the office of the commissioner.

**§33-3-14d. Additional fire and casualty insurance premium tax;
allocation of proceeds; effective date.**

1 (a) For the purpose of providing additional revenue for
2 municipal policemen's and firemen's pension and relief funds
3 and the teachers retirement system reserve fund and for
4 volunteer and part volunteer fire companies and departments,
5 there is hereby levied and imposed an additional premium tax
6 equal to one percent of taxable premiums for fire insurance and
7 casualty insurance policies. For purposes of this section,
8 casualty insurance does not include insurance on the life of a
9 debtor pursuant to or in connection with a specific loan or other
10 credit transaction or insurance on a debtor to provide indemnity
11 for payments becoming due on a specific loan or other credit
12 transaction while the debtor is disabled as defined in the policy.

13 All moneys collected from this additional tax shall be
14 received by the commissioner and paid by him or her into a
15 special account in the state treasury, designated the municipal

16 pensions and protection fund. The net proceeds of this tax after
17 appropriation thereof by the Legislature is distributed in
18 accordance with the provisions of this section.

19 (b)(1) Before the first day of August of each calendar year,
20 the treasurer of each municipality in which a municipal
21 policemen's or firemen's pension and relief fund has been
22 established shall report to the state treasurer the average
23 monthly number of members who worked at least one hundred
24 hours per month and the average monthly number of retired
25 members of municipal policemen's or firemen's pension
26 systems during the preceding fiscal year.

27 (2) Before the first day of September of each calendar year,
28 the state treasurer shall allocate and authorize for distribution
29 the revenues in the municipal pensions and protection fund
30 which were collected during the preceding calendar year for the
31 purposes set forth in this section. Sixty-five percent of the
32 revenues are allocated to municipal policemen's and firemen's
33 pension and relief funds; twenty-five percent of the revenues
34 shall be allocated to volunteer and part volunteer fire companies
35 and departments; and ten percent of such allocated revenues are
36 allocated to the teachers retirement system reserve fund created
37 by section eighteen, article seven-a, chapter eighteen of this
38 code: *Provided*, That in any year the actuarial report required
39 by section twenty, article twenty-two, chapter eight of this code
40 indicates no actuarial deficiency in the municipal policemen's
41 or firemen's pension and relief fund, no revenues may be
42 allocated from the municipal pensions and protection fund to
43 that fund. The revenues from the municipal pensions and
44 protection fund shall then be allocated to all other pension funds
45 which have an actuarial deficiency.

46 (3) The moneys, and the interest earned thereon, in the
47 municipal pensions and protection fund allocated to volunteer
48 and part volunteer fire companies and departments shall be

49 allocated and distributed quarterly to the volunteer fire compa-
50 nies and departments. Before each distribution date, the state
51 fire marshal shall report to the state treasurer the names and
52 addresses of all volunteer and part volunteer fire companies and
53 departments within the state which meet the eligibility require-
54 ments established in section eight-a, article fifteen, chapter
55 eight of this code.

56 (c) (1) Each municipal pension and relief fund shall have
57 allocated and authorized for distribution a pro rata share of the
58 revenues allocated to municipal policemen's and firemen's
59 pension and relief funds based upon the corresponding municipi-
60 pality's average monthly number of members who worked at
61 least one hundred hours per month during the preceding fiscal
62 year. On and after the first day of July, one thousand nine
63 hundred ninety-seven, from the growth in any moneys collected
64 pursuant to the tax imposed by this section there shall be
65 allocated and authorized for distribution to each municipal
66 pension and relief fund, a pro rata share of the revenues
67 allocated to municipal policemen's and firemen's pension and
68 relief funds based upon the corresponding municipalities
69 average number of members who worked at least one hundred
70 hours per month and average monthly number of retired
71 members. For the purposes of this subsection, the growth in
72 moneys collected from the tax collected pursuant to this section
73 is determined by subtracting the amount of the tax collected
74 during the fiscal year ending the thirtieth day of June, one
75 thousand nine hundred ninety-six, from the tax collected during
76 the fiscal year for which the allocation is being made. All
77 moneys received by municipal pension and relief funds under
78 this section may be expended only for those purposes described
79 in sections sixteen through twenty-eight, inclusive, article
80 twenty-two, chapter eight of this code.

81 (2) Each volunteer fire company or department shall
82 receive an equal share of the revenues allocated for volunteer
83 and part volunteer fire companies and departments.

84 (3) In addition to the share allocated and distributed in
85 accordance with subdivision (1) of this subsection, each
86 municipal fire department composed of full-time paid members
87 and volunteers and part volunteer fire companies and depart-
88 ments shall receive a share equal to the share distributed to
89 volunteer fire companies under subdivision (2) of this subsec-
90 tion reduced by an amount equal to the share multiplied by the
91 ratio of the number of full-time paid fire department members
92 who are also members of a municipal firemen's pension system
93 to the total number of members of the fire department.

94 (d) The allocation and distribution of revenues provided for
95 in this section are subject to the provisions of section twenty,
96 article twenty-two, and sections eight-a and eight-b, article
97 fifteen, chapter eight of this code.

**§33-3-33. Surcharge on fire and casualty insurance policies to
benefit volunteer and part volunteer fire depart-
ments; special fund created; allocation of proceeds;
effective date.**

1 (a) For the purpose of providing additional revenue for
2 volunteer fire departments, part-volunteer fire departments,
3 certain retired teachers and the teachers retirement reserve fund,
4 there is hereby authorized and imposed on and after the first
5 day of July, one thousand nine hundred ninety-two, on the
6 policyholder of any fire insurance policy or casualty insurance
7 policy issued by any insurer, authorized or unauthorized, or by
8 any risk retention group, a policy surcharge equal to one
9 percent of the taxable premium for each such policy. For
10 purposes of this section, casualty insurance may not include
11 insurance on the life of a debtor pursuant to or in connection
12 with a specific loan or other credit transaction or insurance on
13 a debtor to provide indemnity for payments becoming due on a
14 specific loan or other credit transaction while the debtor is
15 disabled as defined in the policy. The policy surcharge may not

16 be subject to premium taxes, agent commissions or any other
17 assessment against premiums.

18 (b) The policy surcharge shall be collected and remitted to
19 the commissioner by the insurer or in the case of excess lines
20 coverage, by the resident excess lines broker, or if the policy is
21 issued by a risk retention group, by the risk retention group.
22 The amount required to be collected under this section shall be
23 remitted to the commissioner on a quarterly basis on or before
24 the twenty-fifth day of the month succeeding the end of the
25 quarter in which they are collected, except for the fourth quarter
26 for which the surcharge shall be remitted on or before the first
27 day of March of the succeeding year.

28 (c) Any person failing or refusing to collect and remit to the
29 commissioner any policy surcharge and whose surcharge
30 payments are not postmarked by the due dates for quarterly
31 filing is liable for a civil penalty of up to one hundred dollars
32 for each day of delinquency, to be assessed by the commis-
33 sioner. The commissioner may suspend the insurer, broker or
34 risk retention group until all surcharge payments and penalties
35 are remitted in full to the commissioner.

36 (d) One half of all money from the policy surcharge shall be
37 collected by the commissioner who shall disburse the money
38 received from the surcharge into a special account in the state
39 treasury, designated the "fire protection fund." The net proceeds
40 of this portion of the tax, and the interest thereon after appropri-
41 ation by the Legislature shall be distributed quarterly on the
42 first day of the months of January, April, July and October to
43 each volunteer fire company or department on an equal share
44 basis by the state treasurer.

45 (1) Before each distribution date, the state fire marshal shall
46 report to the state treasurer the names and addresses of all
47 volunteer and part volunteer fire companies and departments

48 within the state which meet the eligibility requirements
49 established in section eight-a, article fifteen, chapter eight of
50 this code.

51 (2) The remaining fifty percent of the moneys collected
52 shall be transferred to the teachers retirement system to be
53 disbursed according to the provisions of sections twenty-six-j,
54 twenty-six-k and twenty-six-l, article seven-a, chapter eighteen
55 of this code. Any balance remaining after the disbursements
56 authorized by this subdivision have been paid shall be paid by
57 the teachers retirement system into the teachers retirement
58 system reserve fund.

59 (e) The allocation, distribution and use of revenues pro-
60 vided in the fire protection fund are subject to the provisions of
61 sections eight-a and eight-b, article fifteen, chapter eight of this
62 code.

ARTICLE 32. RISK RETENTION ACT.

§33-32-5. Tax on premiums collected.

1 (a) Each risk retention group shall pay to the commissioner,
2 on the first day of March of each year, a tax at the rate of two
3 percent of the taxable premiums on policies or contracts of
4 insurance covering property or risks in this state and on risk and
5 property situated elsewhere upon which no premium tax is
6 otherwise paid during the previous year. Each risk retention
7 group shall also be subject to the additional premium taxes
8 levied by sections fourteen-a and fourteen-d of article three of
9 this chapter and the examination assessment fee levied by
10 section nine of article two of this chapter.

11 (b) The taxes provided for in this section shall constitute all
12 taxes collectible under the laws of this state from any risk
13 retention group, and no other premium tax or other taxes shall
14 be levied or collected from any risk retention group by the state

15 or any county, city or municipality within this state, except ad
16 valorem taxes. Each risk retention group shall be subject to the
17 same interests, additions, fines and penalties for nonpayment as
18 are generally applicable to insurers.

19 (c) To the extent that a risk retention group utilizes insur-
20 ance agents, each agent shall keep a complete and separate
21 record of all policies procured from each risk retention group,
22 which record shall be open to examination by the commis-
23 sioner, as provided in section nine, article two of this chapter.
24 These records shall, for each policy and each kind of insurance
25 provided thereunder, include the following:

26 (1) The limit of liability;

27 (2) The time period covered;

28 (3) The effective date;

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

31 (5) The gross premium charged; and

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

ARTICLE 43. INSURANCE TAX PROCEDURES ACT.

§33-43-1. Short title.

§33-43-2. Application.

§33-43-3. Definitions.

§33-43-4. Powers of the commissioner.

§33-43-5. Limitation on actions.

§33-43-6. Returns.

§33-43-7. Penalties.

§33-43-8. Assessments.

§33-43-9. Hearing and appeal; judicial review.

§33-43-10. Refunds and credits.

§33-43-11. Interest.

§33-43-12. Allocation of payments.

§33-43-13. Overpayments and underpayments.

§33-43-14. Retroactive monetary relief for unconstitutional taxes.

§33-43-15. Taxes collected on behalf of the commissioner.

§33-43-1. Short title.

1 This article shall be known and may be referred to as the
2 “Insurance Tax Procedures Act.”

§33-43-2. Application.

1 (a) The provisions of this article applies to all taxes,
2 surcharges, assessments, penalties and fees, however denomi-
3 nated, which are remitted to the commissioner.

4 (b) This article supersedes any provisions in this code
5 which concern the matters addressed in this article, but only to
6 the extent that those other provisions are inconsistent with this
7 article.

§33-43-3. Definitions.

1 For the purposes of this article and where not otherwise
2 defined in this chapter:

3 (a) “Assessment” means a written notice by the commis-
4 sioner of an amount due by a taxpayer for payment of any tax,
5 fee, penalty or related charge administered under this article.

6 (b) “Days” means calendar days.

7 (c) “Filing date” for a return means the date prescribed by
8 the Legislature for the filing of a return, or if no date is pre-
9 scribed, the payment date for the tax which is the subject of the
10 return.

11 (d) "Final decision" means a decision for which the
12 availability of an appeal has been exhausted, either because the
13 time for filing a petition has elapsed or because the petition has
14 been denied.

15 (e) "Payment date" for a tax means the date prescribed by
16 the Legislature for the payment of the tax, or if no date is
17 prescribed, on the first day of March next following the end of
18 the taxable year for the tax.

19 (f) "Related charges" includes fees, and additions and
20 interest called for by this article.

21 (g) "Surcharge" means a tax payable by a policyholder but
22 collected and remitted to the commissioner by the insurer.

23 (h) "Tax" means any tax to which this article applies.

24 (i) "Taxable premium" means the amount of the gross
25 direct premiums, annuity considerations or dividends on
26 participating policies applied in reduction of premiums less
27 premiums returned to policyholders due to cancellation of
28 policies.

29 (j) "Taxpayer" includes any legal entity which is liable for
30 the remittance of a tax to the commissioner in a particular
31 taxable year, and any legal entity that is required to file a return
32 under this article.

§33-43-4. Powers of the commissioner.

1 (a) All powers granted to the commissioner by this article
2 are in addition to those powers granted to the commissioner
3 elsewhere in this code, and no provision of this article may be
4 construed to eliminate or diminish the other powers.

5 (b) The commissioner may prescribe any forms as he or she
6 considers necessary for the fair, uniform and efficient adminis-
7 tration of taxes. All forms now used by the commissioner shall
8 be prescribed until the commissioner requires otherwise.

9 (c) The commissioner may propose rules for legislation
10 approval in accordance with the provisions of article three,
11 chapter twenty-nine-a of this code which he or she considers
12 necessary for the fair, uniform and efficient administration of
13 taxes. All currently existing rules remain in effect until
14 amended or repealed.

15 (d) For the purpose of ascertaining the application of this
16 article to a taxpayer, the commissioner may:

17 (1) Examine any books, papers, records, memoranda or
18 property of the taxpayer, legal entity, or any other person which
19 may be relevant in determining its tax liability, compliance or
20 taxpayer status;

21 (2) Require the attendance for the purpose of giving
22 testimony of the taxpayer or legal entity, or of an employee,
23 officer or agent of the taxpayer or legal entity who reasonably
24 is believed to possess knowledge which may be relevant in
25 determining its tax liability, compliance or taxpayer status;

26 (3) Exercise any of the powers conferred by sections four
27 through eight of article two of this chapter.

28 (e) If the commissioner determines, after notice and
29 hearing, that a person has failed or refused to comply with the
30 provisions of this article, or of any legislative rule proposed by
31 the commissioner and approved by the Legislature pursuant to
32 this article, the commissioner may order that the person comply
33 with the provisions and that the person take any other steps as
34 are reasonably necessary to allow the provisions to be enforced.
35 If the person holds a license issued by the commissioner, the

36 commissioner may revoke that license upon the person's failure
37 or refusal to obey an order issued under this subsection or in the
38 commissioner's discretion may in the alternative assess a
39 penalty against the person in an amount up to five thousand
40 dollars per occurrence.

41 (f) The commissioner has exclusive authority to bring or
42 join suit in a court of competent jurisdiction, or to pursue any
43 other action allowed by law, to enforce the provisions of this
44 article, or of legislative rules proposed pursuant to this article
45 and approved by the Legislature, or to enforce any order,
46 subpoena or other directive issued by the commissioner
47 pursuant to this article to best promote the fair, uniform and
48 efficient administration of taxes.

§33-43-5. Limitation on actions.

1 The commissioner has exclusive authority to bring or join
2 suit in a court of competent jurisdiction, or pursue any other
3 action allowed by law, to obtain the payment of taxes and
4 related charges: *Provided*, That the commissioner must so act
5 within ten years following the date upon which the assessment
6 or order establishing the taxpayer's liability becomes final.

§33-43-6. Returns.

1 (a) Any person who is subject to a tax in a given taxable
2 year shall file a return for that tax and that taxable year, even if
3 the person has no tax liability for that taxable year.

4 (1) Each return shall be filed by the applicable filing date.
5 The commissioner at his or her discretion may accept a return
6 after the filing date.

7 (2) Should a taxpayer file more than one return for the same
8 tax, only the return last filed shall be effective. The commis-

9 sioner at his or her discretion may approve the withdrawal of a
10 return by the taxpayer.

11 (b) Each return shall be executed by the taxpayer in a
12 manner prescribed by the commissioner. Each return so
13 executed shall constitute a sworn statement by the signatory
14 that to the best of his or her knowledge and belief, the informa-
15 tion provided in the return or in any supporting materials which
16 accompany the return is true and accurate.

17 (c) All returns shall be prepared on forms prescribed by the
18 commissioner. If no form has been prescribed for a particular
19 tax, the return may be in a form chosen by the taxpayer but
20 shall clearly set forth the following information: The taxpayer's
21 name, address and telephone number; the identification number
22 used by the taxpayer in filing federal income tax returns; the tax
23 and taxable year to which the return applies; and all information
24 used to calculate the tax liability of the taxpayer.

25 (d) For purposes of this article, a return is not regarded as
26 filed if:

27 (1) It is not filed by the applicable filing date, unless the
28 commissioner accepts the return; or

29 (2) It has not been received by the commissioner; or

30 (3) It has not been properly executed by the taxpayer; or

31 (4) It is not in the proper form; or

32 (5) It is incomplete or inaccurate in any material respect; or

33 (6) It is not accompanied by supporting material required
34 by the commissioner; or

35 (7) It is withdrawn by the taxpayer with the approval of the
36 commissioner; or

37 (8) It is not accompanied by the payment for any tax due.

38 (e) If a tax is to be paid in installments, the taxpayer shall
39 file an appropriate return for each period for which an install-
40 ment payment is calculated, even if the taxpayer is not required
41 to make an installment payment for that period. The returns
42 shall satisfy all requirements established for annual returns by
43 this section except that the filing date for an installment return
44 is the date prescribed for the installment payment for the period
45 described by the return.

46 (f) If a taxpayer has failed to file a return by the applicable
47 filing date, or has filed a false or fraudulent return, the commis-
48 sioner may use any information which is available to him or her
49 to determine the taxpayer's tax liability: *Provided*, That a
50 determination of tax liability by the commissioner pursuant to
51 this subsection does not relieve the taxpayer of the duty to file
52 a true, accurate and complete return and does not reduce or
53 preclude any penalty based upon the taxpayer's failure to file.

54 (g) A taxpayer to whom a credit has been issued may apply
55 the credit as payment for any like tax due to be remitted by the
56 taxpayer upon written notice to the commissioner stating the
57 amount of the credit to be so applied.

§33-43-7. Penalties.

1 (a) If any taxpayer fails to file a return by the applicable
2 filing date, then for each day throughout which the taxpayer
3 fails to file, the taxpayer is liable for a penalty of twenty-five
4 dollars.

5 (b) If a taxpayer fails to pay a tax liability in full by the
6 applicable payment date, then for each day throughout which a

7 portion of the liability remains unpaid, the taxpayer is liable for
8 a penalty in an amount equal to one percent of the unpaid
9 portion: *Provided*, That the sum of the penalties imposed under
10 this subsection may not exceed one hundred percent of the tax
11 liability.

12 (c) A penalty imposed under this section may be waived or
13 reduced by the commissioner if the taxpayer establishes, to the
14 satisfaction of the commissioner, that the failure upon which
15 the penalty is based was not, in whole or in part, willful or due
16 to the neglect of the taxpayer.

17 (d) The assessment of a penalty under this section is
18 automatic unless a waiver or reduction of the penalty is agreed
19 to by the commissioner in writing.

§33-43-8. Assessments.

1 (a) The commissioner may issue assessments for tax
2 liabilities and related charges, or any portions thereof, which
3 are due and payable but unpaid. At any time before an assess-
4 ment becomes final, the commissioner may amend the assess-
5 ment, in whole or in part. Except as otherwise provided in this
6 article, an assessment which is amended by the commissioner
7 shall be regarded as a new assessment.

8 (b) The commissioner shall give the taxpayer notice of
9 every assessment or amendment thereto. The date upon which
10 the notice is sent to the taxpayer shall be regarded as the date
11 upon which the assessment is issued.

12 (c) The notice of assessment shall specify the amount of
13 each tax liability or related charge which is the subject of the
14 assessment: *Provided*, That the notice may list interest and
15 penalties which accrue or are imposed from the time that the
16 assessment is issued to the time that the assessment is paid.

17 (d) Notwithstanding any other provisions of this article,
18 assessments may be issued only within the following time
19 periods:

20 (1) For tax liabilities, if the taxpayer has filed a return for
21 the tax and taxable year at issue, within three years of the filing
22 date for the return or the date upon which the return actually
23 was filed, whichever comes later;

24 (2) For fees, within three years of the date prescribed for
25 payment of the fee;

26 (3) For penalties based upon a failure to pay a tax, at any
27 time.

28 (e) The commissioner shall, within ninety days of a written
29 request by a taxpayer, issue an assessment: *Provided*, That the
30 commissioner may refuse to issue an assessment until the
31 taxpayer has provided the commissioner with all information
32 necessary to determine or verify the taxpayer's outstanding
33 liabilities for taxes and related charges.

34 (f) If the taxpayer does not timely request a hearing on an
35 assessment pursuant to section nine of this article, the assess-
36 ment shall become final. A final assessment is conclusive of the
37 liability of the taxpayer and is not subject to either administra-
38 tive or judicial review.

§33-43-9. Hearing and appeal; judicial review.

1 (a) Within sixty days of the issuance of an assessment or
2 imposition of a penalty, a taxpayer may request a hearing
3 before the commissioner on the amount or validity of the
4 assessment or penalty. Except as otherwise provided in this
5 article or in legislative rules proposed and approved by the
6 Legislature thereto, the hearings are subject to the requirements

7 established in sections thirteen and fourteen, article two of this
8 chapter.

9 (b) A request for a hearing shall be in writing and shall set
10 forth with reasonable particularity the taxpayer's objections to
11 the assessment or penalty and the factual basis therefore. At any
12 time prior to the hearing, the commissioner may allow a
13 taxpayer to amend the request.

14 (c) The taxpayer's request shall be executed by the taxpayer
15 in a manner prescribed by the commissioner, and a request so
16 executed shall constitute a sworn statement by the signatory
17 that to the best of his or her knowledge and belief, the informa-
18 tion provided in the request is true and accurate.

19 (d) Assessments issued by the commissioner shall be
20 presumed correct, and the taxpayer shall bear the burden of
21 proving, by a preponderance of the evidence, that the assess-
22 ment is incorrect or contrary to law.

23 (e) If the taxpayer does not timely appeal the commis-
24 sioner's order, that order shall become final as of the expiration
25 of the period during which the taxpayer may have brought an
26 appeal. Upon becoming final, an order shall be conclusive of
27 the liability of the taxpayer and is not subject to either adminis-
28 trative or judicial review.

29 (f) An agreed order signed by the taxpayer and the commis-
30 sioner is final and shall constitute a waiver of the taxpayer's
31 right to a hearing or appeal under this chapter.

§33-43-10. Refunds and credits.

1 (a) This section is the sole method of receiving a refund or
2 credit for any tax or related charge administered under this
3 article.

4 (b) Any taxpayer claiming to be due a refund or credit for
5 overpayment of any tax or related charge administered under
6 this article may, within five years from the date of the filing of
7 the return under which the tax was imposed or within four years
8 from the date the tax was paid, whichever term expires later,
9 file with the commissioner a petition in writing requesting a
10 refund of the tax or any part thereof:

11 (1) If the petition and the proofs filed in support thereof
12 persuades the commissioner that the payment of the tax or
13 related charges or any part thereof was improperly required, he
14 or she shall refund or issue a credit to the taxpayer for the
15 improper amounts;

16 (2) If the commissioner is in doubt as to whether or not the
17 taxes or related charges were proper, or if the commissioner is
18 of the opinion that the payment of the tax collected, or any part
19 thereof was proper, then the commissioner shall within thirty
20 days hold a hearing to determine the issue;

21 (3) If a taxpayer is considered to be due a credit or refund,
22 the commissioner shall, if the amount exceeds one thousand
23 dollars, at his or her discretion, pay the amount in equal, annual
24 installments over not more than three years. The commissioner
25 may issue a credit against future taxes in lieu of a refund
26 payment, whether lump sum or installment;

27 (4) The payment of refunds or issuance of credits to a
28 taxpayer pursuant to this section shall constitute a complete and
29 final settlement of all of the taxpayer's claims for which the
30 refunds or credits are paid. No cause of action or liability,
31 whether for damages, attorney's fees, costs or of any other
32 nature, shall arise against the commissioner or against his or her
33 agents for administering or litigating the constitutionality of a
34 tax subsequently determined to be unconstitutional.

§33-43-11. Interest.

1 A taxpayer shall be liable for interest on any unpaid final
2 assessment or penalty or portion thereof: *Provided*, That
3 interest may not be charged on interest. Interest shall be
4 calculated using the annual rates which are established by the
5 tax commissioner pursuant to section seventeen-a of article ten,
6 chapter eleven of this code and shall accrue daily.

§33-43-12. Allocation of payments.

1 (a) Payments made by a taxpayer, other than installment
2 payments of a tax liability which is required to be paid in
3 installments, shall be allocated to the taxpayer's outstanding
4 liabilities as follows:

5 (1) First, to any assessment which has become final;

6 (2) Next, to any fee which has not yet been assessed;

7 (3) Next, to any tax or related charge which has not yet
8 been assessed;

9 (4) Finally, to any assessment which has not yet become
10 final.

§33-43-13. Overpayments and underpayments.

1 (a) Upon discovering that a taxpayer has made payments in
2 excess of the taxpayer's outstanding liabilities, the commis-
3 sioner shall give notice of the overpayment to the taxpayer.

4 (b) Payments by a taxpayer in excess of the amounts
5 required to satisfy the taxpayer's liabilities for taxes and related
6 charges shall give rise to a credit against the taxpayer's future
7 liabilities unless the taxpayer, within thirty days of receiving
8 the notice, either requests a refund under this article and is
9 granted the refund, or establishes to the satisfaction of the

10 commissioner that no future liabilities will be incurred by the
11 taxpayer.

12 (c) Upon discovering that a taxpayer has made payments
13 less than the taxpayer's outstanding liabilities, or that the
14 taxpayer has made no payments, the commissioner shall give
15 notice of the underpayment to the taxpayer, which notice will
16 be considered an assessment of the amount due.

§33-43-14. Retroactive monetary relief for unconstitutional taxes.

1 (a) The remedies provided by this article are exclusive and
2 shall be in lieu of any and all remedies provided by common
3 law or by other provisions of this code.

4 (b) Retroactive monetary relief for an unconstitutional tax
5 shall be granted only at the express order of a court of compe-
6 tent jurisdiction which appears in a final decision of that court.
7 Notwithstanding any other provision of this code, a final
8 decision ordering retroactive monetary relief may not be
9 considered to override any statute of limitations contained
10 within this article, or to require relief for any claim which is *res*
11 *judicata*.

12 (c) Retroactive monetary relief shall comprise only a refund
13 of the unconstitutional tax, or of the portion thereof that the
14 court has ordered refunded, which actually has been paid by the
15 taxpayer, together with any penalties or interest which are based
16 upon the taxpayer's failure to pay the unconstitutional tax and
17 which actually have been paid by the taxpayer.

18 (1) Except as otherwise provided in this section, retroactive
19 monetary relief shall be paid to the taxpayer in a lump sum
20 within one hundred eighty days of the final decision which
21 orders the relief.

22 (2) If the amount of retroactive monetary relief due to any
23 individual taxpayer exceeds one thousand dollars or the
24 aggregate amount of the relief due to all taxpayers exceeds one
25 hundred thousand dollars, the commissioner at his or her

26 discretion may pay all refunds issued pursuant to the final
27 decision in equal, annual installments over not more than three
28 years. For purposes of this subsection, a year shall be a period
29 of twelve calendar months measured from the date upon which
30 the final decision which orders the relief is entered.

31 (3) With the approval of the taxpayer, the commissioner
32 may issue a credit against future taxes in lieu of a refund
33 payment due pursuant to this section, whether lump sum or
34 installment.

35 (d) The payment of refunds or issuance of credits to a
36 taxpayer pursuant to this section shall constitute a complete and
37 final settlement of all of the taxpayer's claims which are based
38 upon the unconstitutional tax for which the refunds are paid or
39 the credits issued. No cause of action or liability, whether for
40 damages, attorney's fees, costs or of any other nature, shall
41 arise against the commissioner or against his or her agents for
42 administering or litigating the constitutionality of a tax subse-
43 quently determined to be unconstitutional.

§33-43-15. Taxes collected on behalf of the commissioner.

1 When a person is required to collect a tax or surcharge from
2 another and remit the amount thus collected to the commis-
3 sioner, the moneys collected are considered to be held by that
4 person in trust for the state of West Virginia. With respect to
5 the filing of returns, assessments and interest, taxes that are
6 collected by a person to be remitted to the commissioner are
7 treated as would a tax paid directly by that person to the
8 commissioner. The person collecting the tax shall return to the
9 policyholder or person paying the tax or surcharge any refund
10 made for overpayment of the amount collected.

CHAPTER 154

(S. B. 494 — By Senators Minard and Kessler)

[Passed April 13, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article one, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-two, relating to associations; and providing that all associations be bona fide.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. DEFINITIONS.

§33-1-22. Association.

1 “Association” means, as used in this chapter and corre-
2 sponding rules, a bona fide association which has been actively
3 in existence for at least five years; has been formed and
4 maintained in good faith for purposes other than obtaining
5 insurance; does not condition membership in the association on
6 any health status-related factor relating to an individual; makes
7 accident and sickness insurance offered through the association
8 available to all members regardless of any health status-related
9 factor relating to members or individuals eligible for coverage
10 through a member; does not make accident and sickness

- 11 insurance coverage offered through the association available
- 12 other than in connection with a member of the association; and
- 13 meets any additional requirements as may be set forth in this
- 14 chapter or by rule.

CHAPTER 155

(S. B. 493 — By Senators Minard and Kessler)

[Passed April 14, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine, article two, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section four, article twenty-four of said chapter, all relating to examination of persons transacting insurance in the state; and requiring examination of domestic insurers and hospital, medical, dental and health service corporations every five years with discretion to perform examinations more frequently.

Be it enacted by the Legislature of West Virginia:

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

Article

2. **Insurance Commissioner.**
24. **Hospital Service Corporations, Medical Service Corporations, Dental Service Corporations and Health Service Corporations.**

ARTICLE 2. INSURANCE COMMISSIONER.

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

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

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

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

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

29 (3) "Department" means the department of insurance of this
30 state; and

31 (4) "Examiners" means the commissioner of insurance or
32 any individual or firm having been authorized by the commis-
33 sioner to conduct an examination pursuant to this section,
34 including, but not limited to, the commissioner's deputies, other
35 employees, appointed examiners or other appointed individuals
36 or firms who are not employees of the department of insurance.

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

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

58 (1) The insurance department was at the time of the
59 examination accredited under the national association of

60 insurance commissioners' financial regulation standards and
61 accreditation program; or

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

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

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

84 (g) The commissioner may also cause to be examined, at
85 the times as he or she considers necessary, the books, records,
86 papers, documents, correspondence and methods of doing
87 business of any agent, broker, excess lines broker or solicitor
88 licensed by this state. For these purposes, the commissioner or
89 his or her examiners shall have free access to all books, records,
90 papers, documents and correspondence of all the agents,
91 brokers, excess lines brokers and solicitors wherever the books,

92 records, papers, documents and records are situate. The
93 commissioner may revoke the license of any agent, broker,
94 excess lines broker or solicitor who refuses to submit to the
95 examination.

96 (h) In addition to conducting an examination, the commis-
97 sioner or his or her examiners may, as the commissioner
98 considers necessary, analyze or review any phase of the
99 operations or methods of doing business of an insurer, agent,
100 broker, excess lines broker, solicitor or other individual or
101 corporation transacting or attempting to transact an insurance
102 business in the state of West Virginia. The commissioner may
103 use the full resources provided by this section in carrying out
104 these responsibilities, including any personnel and equipment
105 provided by this section as the commissioner considers neces-
106 sary.

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

109 (1) Upon determining that an examination should be
110 conducted, the commissioner or his or her designee shall issue
111 an examination warrant appointing one or more examiners to
112 perform the examination and instructing them as to the scope of
113 the examination. In conducting the examination, the examiner
114 shall observe those guidelines and procedures set forth in the
115 examiners' handbook adopted by the national association of
116 insurance commissioners. The commissioner may also employ
117 any other guidelines or procedures as the commissioner may
118 consider appropriate;

119 (2) Every company or person from whom information is
120 sought, its officers, directors and agents shall provide to the
121 examiners appointed under subdivision (1) of this subsection
122 timely, convenient and free access at all reasonable hours at its
123 offices to all books, records, accounts, papers, documents and

124 any or all computer or other recordings relating to the property,
125 assets, business and affairs of the company being examined.
126 The officers, directors, employees and agents of the company
127 or person shall facilitate the examination and aid in the exami-
128 nation so far as it is in their power to do so;

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

139 (4) The commissioner or his or her examiners shall have the
140 power to issue subpoenas, to administer oaths and to examine
141 under oath any person as to any matter pertinent to the exami-
142 nation, analysis or review. The subpoenas shall be enforced
143 pursuant to the provisions of section six, article two of this
144 chapter;

145 (5) When making an examination, analysis or review under
146 this section, the commissioner may retain attorneys, appraisers,
147 independent actuaries, independent certified public accountants
148 or other professionals and specialists as examiners, the cost of
149 which shall be borne by the company which is the subject of the
150 examination, analysis or review or, in the commissioner's
151 discretion, paid from the commissioner's examination revolving
152 fund. The commissioner may recover costs paid from the
153 commissioner's examination revolving fund pursuant to this
154 subdivision from the company upon which the examination,
155 analysis or review is conducted unless the subject of the

156 examination, analysis or review is an individual, described in
157 subdivision (2), subsection (q) of this section;

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

168 (7) Nothing contained in this section may be construed to
169 limit the commissioner's authority to use and, if appropriate, to
170 make public any final or preliminary examination report, any
171 examiner or company workpapers or other documents or any
172 other information discovered or developed during the course of
173 any examination, analysis or review in the furtherance of any
174 legal or regulatory action which the commissioner may, in his
175 or her sole discretion, consider appropriate. An examination
176 report, when filed, shall be admissible in evidence in any action
177 or proceeding brought by the commissioner against an insur-
178 ance company, its officers or agents and shall be prima facie
179 evidence of the facts stated therein.

180 (j) Examination reports prepared pursuant to the provisions
181 of this section shall comply with the following requirements:

182 (1) All examination reports shall be comprised of only facts
183 appearing upon the books, records or other documents of the
184 company, its agents or other persons examined or as ascertained
185 from the testimony of its officers or agents or other persons
186 examined concerning its affairs and any conclusions and

187 recommendations the examiners find reasonably warranted
188 from the facts;

189 (2) No later than sixty days following completion of the
190 examination, the examiner in charge shall file with the commis-
191 sioner a verified written report of examination under oath. Upon
192 receipt of the verified report, the commissioner shall transmit
193 the report to the company examined, together with a notice
194 which shall afford the company examined a reasonable opportu-
195 nity of not more than ten days to make a written submission or
196 rebuttal with respect to any matters contained in the examina-
197 tion report;

198 (3) Within thirty days of the end of the period allowed for
199 the receipt of written submissions or rebuttals, the commis-
200 sioner shall fully consider and review the report, together with
201 any written submissions or rebuttals and any relevant portions
202 of the examiner's workpapers, and enter an order:

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

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

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

216 (4) All orders entered pursuant to this subsection shall be
217 accompanied by findings and conclusions resulting from the

218 commissioner's consideration and review of the examination
219 report, relevant examiner workpapers and any written submis-
220 sions or rebuttals. Any order issued pursuant to paragraph (A),
221 subdivision (3) of this subsection shall be considered a final
222 administrative decision and may be appealed pursuant to
223 section fourteen, article two of this chapter and shall be served
224 upon the company by certified mail, together with a copy of the
225 adopted examination report. Within thirty days of the issuance
226 of the adopted report, the company shall file affidavits executed
227 by each of its directors stating under oath that they have
228 received a copy of the adopted report and related orders.

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

231 (1) Any hearing conducted pursuant to this section by the
232 commissioner or the commissioner's authorized representative
233 shall be conducted as a nonadversarial confidential investiga-
234 tory proceeding as necessary for the resolution of any inconsis-
235 tencies, discrepancies or disputed issues apparent upon the face
236 of the filed examination report or raised by or as a result of the
237 commissioner's review of relevant workpapers or by the written
238 submission or rebuttal of the company. Within twenty days of
239 the conclusion of any hearing, the commissioner shall enter an
240 order pursuant to paragraph (A), subdivision (3), subsection (j)
241 of this section;

242 (2) The commissioner may not appoint an examiner as an
243 authorized representative to conduct the hearing. The hearing
244 shall proceed expeditiously with discovery by the company
245 limited to the examiner's workpapers which tend to substantiate
246 any assertions set forth in any written submission or rebuttal.
247 The commissioner or the commissioner's representative may
248 issue subpoenas for the attendance of any witnesses or the
249 production of any documents considered relevant to the
250 investigation whether under the control of the commissioner,

251 the company or other persons. The documents produced shall
252 be included in the record and testimony taken by the commis-
253 sioner or the commissioner's representative shall be under oath
254 and preserved for the record. Nothing contained in this section
255 shall require the commissioner to disclose any information or
256 records which would indicate or show the existence or content
257 of any investigation or activity of a criminal justice agency;

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

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

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

276 (2) Nothing contained in this section may prevent or be
277 construed as prohibiting the commissioner from disclosing the
278 content of an examination report, preliminary examination
279 report or results or any matter relating thereto or the results of
280 any analysis or review to the insurance department of this or
281 any other state or country or to law-enforcement officials of this
282 or any other state or agency of the federal government at any

283 time, so long as the agency or office receiving the report or
284 matters relating thereto agrees in writing to hold it confidential
285 and in a manner consistent with this section;

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

290 (4) All working papers, recorded information, documents
291 and copies thereof produced by, obtained by or disclosed to the
292 commissioner or any other person in the course of an examina-
293 tion, analysis or review made under this section must be given
294 confidential treatment and are not subject to subpoena and may
295 not be made public by the commissioner or any other person,
296 except to the extent provided in subdivision (5), subsection (i)
297 of this section. Access may also be granted to the national
298 association of insurance commissioners. The parties must agree
299 in writing prior to receiving the information to provide to it the
300 same confidential treatment as required by this section, unless
301 the prior written consent of the company to which it pertains
302 has been obtained.

303 (m) No examiner may be appointed by the commissioner if
304 the examiner, either directly or indirectly, has a conflict of
305 interest or is affiliated with the management of or owns a
306 pecuniary interest in any person subject to examination under
307 this section. This section shall not be construed to automatically
308 preclude an examiner from being:

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

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

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

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

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

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

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

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

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

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

361 (p) The moneys collected by the commissioner from an
362 increase or additional examination assessment fee shall be paid
363 to the treasurer of the state to be credited to the commissioner's
364 examination revolving fund. Any funds expended or obligated
365 by the commissioner from the commissioner's examination
366 revolving fund may be expended or obligated solely for
367 defrayment of the costs of examinations, analyses or reviews of
368 the financial affairs and business practices of insurance compa-
369 nies, agents, brokers, excess lines brokers, solicitors or other
370 individuals or corporations transacting or attempting to transact
371 an insurance business in this state made by the commissioner
372 pursuant to this section or for the purchase of equipment and
373 supplies, travel, education and training for the commissioner's
374 deputies, other employees and appointed examiners necessary

375 for the commissioner to fulfill the statutory obligations created
376 by this section.

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

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

388 (2) If an individual agent, broker or solicitor is being
389 examined, analyzed or reviewed, bill and receive payments
390 directly from the commissioner's examination revolving fund
391 for their work, travel and living expenses as previously pro-
392 vided for in this section. The commissioner may recover costs
393 paid from the commissioner's examination revolving fund
394 pursuant to this subdivision from the person upon whom the
395 examination, analysis or review is conducted.

396 (r) The commissioner and his or her examiners shall be
397 entitled to immunity to the following extent:

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

402 (2) No cause of action shall arise, nor shall any liability be
403 imposed, against any person for the act of communicating or
404 delivering information or data to the commissioner or his or her
405 examiners pursuant to an examination, analysis or review made

406 under this section if the act of communication or delivery was
407 performed in good faith and without fraudulent intent or the
408 intent to deceive;

409 (3) The commissioner or any examiner shall be entitled to
410 an award of attorney's fees and costs if he or she is the prevail-
411 ing party in a civil cause of action for libel, slander or any other
412 relevant tort arising out of activities in carrying out the provi-
413 sions of this section and the party bringing the action was not
414 substantially justified in doing so. For purposes of this section
415 a proceeding is "substantially justified" if it had a reasonable
416 basis in law or fact at the time that it was initiated;

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

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

***§33-24-4. Exemptions; applicability of insurance laws.**

1 Every corporation defined in section two of this article is
2 hereby declared to be a scientific, nonprofit institution and
3 exempt from the payment of all property and other taxes. Every
4 corporation, to the same extent the provisions are applicable to
5 insurers transacting similar kinds of insurance and not inconsis-
6 tent with the provisions of this article, shall be governed by and
7 be subject to the provisions as hereinbelow indicated, of the
8 following articles of this chapter: Article two (insurance
9 commissioner); article four (general provisions), except that
10 section sixteen of said article shall not be applicable thereto;
11 section thirty-four, article six (fee for form and rate filing);
12 article six-c (guaranteed loss ratio); article seven (assets and

***Clerk's Note:** This section was also amended by S. B. 513 (Chapter 163), which passed subsequent to this act.

13 liabilities); article eleven (unfair trade practices); article twelve
14 (agents, brokers and solicitors), except that the agent's license
15 fee shall be twenty-five dollars; section two-a, article fifteen
16 (definitions); section two-b, article fifteen (guaranteed issue);
17 section two-d, article fifteen (exception to guaranteed renew-
18 ability); section two-e, article fifteen (discontinuation of
19 coverage); section two-f, article fifteen (certification of
20 creditable coverage); section two-g, article fifteen (applicabil-
21 ity); section four-e, article fifteen (benefits for mothers and
22 newborns); section fourteen, article fifteen (individual accident
23 and sickness insurance); section sixteen, article fifteen (cover-
24 age of children); section eighteen, article fifteen (equal treat-
25 ment of state agency); section nineteen, article fifteen (coordi-
26 nation of benefits with medicaid); article fifteen-a (long-term
27 care insurance); article fifteen-c (diabetes insurance); section
28 three, article sixteen (required policy provisions); section
29 three-a, article sixteen (mental health); section three-c, article
30 sixteen (group accident and sickness insurance); section three-d,
31 article sixteen (medicare supplement insurance); section three-f,
32 article sixteen (treatment of temporomandibular joint disorder
33 and craniomandibular disorder); section three-j, article sixteen
34 (benefits for mothers and newborns); section three-k, article
35 sixteen (preexisting condition exclusions); section three-l,
36 article sixteen (guaranteed renewability); section three-m,
37 article sixteen (creditable coverage); section three-n, article
38 sixteen (eligibility for enrollment); section eleven, article
39 sixteen (coverage of children); section thirteen, article sixteen
40 (equal treatment of state agency); section fourteen, article
41 sixteen (coordination of benefits with medicaid); section
42 sixteen, article sixteen (diabetes insurance); article sixteen-a
43 (group health insurance conversion); article sixteen-d (market-
44 ing and rate practices for small employers); article twenty-six-a
45 (West Virginia life and health insurance guaranty association
46 act), after the first day of October, one thousand nine hundred
47 ninety-one; article twenty-seven (insurance holding company

48 systems); article twenty-eight (individual accident and sickness
49 insurance minimum standards); article thirty-three (annual
50 audited financial report); article thirty-four (administrative
51 supervision); article thirty-four-a (standards and commis-
52 sioner's authority for companies considered to be in hazardous
53 financial condition); article thirty-five (criminal sanctions for
54 failure to report impairment); article thirty-seven (managing
55 general agents); article forty-one (privileges and immunity);
56 and no other provision of this chapter may apply to these
57 corporations unless specifically made applicable by the
58 provisions of this article. If, however, the corporation is
59 converted into a corporation organized for a pecuniary profit or
60 if it transacts business without having obtained a license as
61 required by section five of this article, it shall thereupon forfeit
62 its right to these exemptions.

CHAPTER 156

(H. B. 2823 — By Delegate Beane)

[Passed April 14, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article two, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section ten-a, relating to empowering the insurance commissioner, by order, to suspend and replace deadlines for steps in the claims settlement process that are imposed by legislative rule.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. INSURANCE COMMISSIONER.

§33-2-10a. Insurance emergencies — suspension of deadlines.

1 Upon finding that an insurance emergency has occurred, the
 2 commissioner, by order, may suspend any deadlines established
 3 by rule that apply to actions taken in the course of evaluating or
 4 settling claims and, may establish new deadlines in place of
 5 those that have been suspended. For purposes of this section,
 6 “insurance emergency” means an event, either natural or man-
 7 made, which in the opinion of the commissioner is reasonably
 8 likely to produce a volume of claims, for a particular place and
 9 time, that significantly exceeds the number of claims normally
 10 arising in that place and for that time. The commissioner shall
 11 limit the order to accommodate the anticipated increase in
 12 claims by specifying the geographic area in which claims to
 13 which the new deadlines apply arise, the time period during
 14 which the claims arise, the cause or nature of the claims, the
 15 relative priority of the claims or other characteristics of the
 16 claims that the commissioner considers appropriate.

CHAPTER 157

(H. B. 3081 — By Delegates Beane, Webb and G. White)

[Passed April 14, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section fourteen-b, article three, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to insurance; insurers; premium taxes; credits against tax; and defining certain terms.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. LICENSING, FEES AND TAXATION OF INSURERS.

§33-3-14b. Credits against premium tax for investment in West Virginia securities.

1 (a) If the annual statement of any insurer covering a
2 calendar year shows it to have investments at the close of the
3 year in West Virginia securities, of at least twenty-five percent
4 of its admitted assets, it is entitled to a credit against the
5 premium tax levied by sections fourteen and fourteen-a of this
6 article in an amount equal to one hundred percent of the tax for
7 the calendar year: *Provided*, That the insurer proves to the
8 satisfaction of the commissioner that it employs less than
9 twenty full-time employees, has gross direct premiums of less
10 than ten million dollars and derives a minimum of fifty percent
11 of its gross direct premiums from insurance provided to under-
12 served areas of West Virginia.

13 (b) As used in this section:

14 (1) "Full-time employees" means all elected officers, all
15 full-time employees, all part-time employees each counted as
16 one-half full-time employee equivalents and all full and part-
17 time equivalent employees of affiliated companies within an
18 insurance holding company system providing any type of
19 service by contract or by any other arrangement;

20 (2) “Underserved areas” means those counties of the state
21 for which the insurer demonstrates to the satisfaction of the
22 commissioner that consumers in that county have an inadequate
23 choice of insurance providers;

24 (3) “West Virginia securities” means real estate situate in
25 this state; bonds or interest-bearing notes or obligations of this
26 state; and bonds or interest-bearing notes or obligations of any
27 county, district, school district or independent school district,
28 municipality or any other political subdivision of this state;
29 revenue bonds issued by any West Virginia state agency, board,
30 department or commission authorized to issue such bonds by
31 the laws of this state; and cash balances in regularly established
32 accounts in West Virginia state banks and reflected as an asset
33 in such annual statement; provided that the amount of such cash
34 shall be calculated based on fifty percent of the average
35 quarterly balance of such accounts and provided further that
36 such cash may make up no more than forty percent of the
37 insurer’s investments in West Virginia securities.

CHAPTER 158

(S. B. 504 — By Senators Minard and Kessler)

[Passed April 14, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal sections four and twenty, article one, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to repeal sections eighteen, nineteen, twenty, twenty-one, twenty-two, twenty-three, twenty-four, twenty-five, twenty-six, twenty-seven, twenty-eight, twenty-nine, thirty, thirty-one and thirty-two, article three of said chapter; to amend and reenact section one of said article; and to further

amend said chapter by adding thereto a new article, designated article forty-four, all relating to the remedies available to West Virginia residents harmed by unauthorized insurers; defining the unlawful transaction of insurance; establishing the method for service of process on unauthorized insurers; providing for injunctive relief; providing for administrative relief; providing for civil relief; including payment of interest, restitution and punitive damages; establishing criminal penalties; bond requirements; requirements for proof of federal regulation; establishing procedures for collection and distribution of restitution to West Virginia residents harmed by unauthorized insurers; procedure for enforcement of foreign decrees; and exemptions.

Be it enacted by the Legislature of West Virginia:

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

Article

3. Licensing, Fees and Taxation of Insurers.

44. Unauthorized Insurers Act.

ARTICLE 3. LICENSING, FEES AND TAXATION OF INSURERS.

§33-3-1. License required.

- 1 (a) No person may act as an insurer and no insurer may
- 2 transact insurance in West Virginia except as authorized by a
- 3 valid license issued by the commissioner, except as to the
- 4 transactions as are expressly otherwise provided for in this
- 5 chapter.

6 (b) No license may be required for an insurer, formerly
7 holding a valid license, to enable it to investigate and settle
8 losses under its policies lawfully written in West Virginia while
9 the license was in effect, or to liquidate the assets and liabilities
10 of the insurer as may have resulted from its former authorized
11 operations in West Virginia: *Provided*, That nothing herein
12 allows an insurer to issue new policies or renew policies of
13 insurance or collect premiums on those policies unless the
14 insurer is authorized by a valid license issued by the commis-
15 sioner, except as to the transactions that are otherwise provided
16 for in this chapter.

17 (c) An insurer not transacting new insurance business in
18 West Virginia but collecting premiums on and servicing of
19 policies in force as to residents of or risks located in West
20 Virginia, and where the policies were originally issued on
21 nonresidents of or risks located outside of this state, is transact-
22 ing insurance in West Virginia for the purpose of premium and
23 annuity tax requirements but is not required to have a license
24 therefor.

25 (d) A domestic insurer or a foreign insurer from offices or
26 by personnel or facilities located in this state may not solicit
27 insurance applications or otherwise transact insurance in
28 another state or country unless it holds a subsisting license
29 granted to it by the commissioner authorizing it to transact the
30 same kind or kinds of insurance in this state.

31 (e) Any officer, director, agent, representative or employee
32 of any insurer who willfully authorizes, negotiates, makes or
33 issues any insurance contract in violation of this section shall be
34 subject to the provisions set forth in article forty-four of this
35 chapter.

ARTICLE 44. UNAUTHORIZED INSURERS ACT.

- §33-44-1. Short title.
- §33-44-2. Purpose of enactment of provisions regarding unauthorized insurers.
- §33-44-3. Definitions.
- §33-44-4. Unlawful transaction of insurance.
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§33-44-1. Short title.

- 1 This article may be cited as the “Unauthorized Insurers
- 2 Act”.

§33-44-2. Purpose of enactment of provisions regarding unauthorized insurers.

- 1 The purpose of this article is to subject certain persons and
- 2 insurers to the jurisdiction of the commissioner and to the
- 3 courts of this state in suits by or on behalf of the state. The
- 4 Legislature declares that it is concerned with the protection of
- 5 residents of this state against unscrupulous acts by insurers not
- 6 authorized to transact an insurance business in this state. It is
- 7 the intent of the Legislature to maintain fair and honest insur-
- 8 ance markets, to protect authorized insurers which are subject
- 9 to regulation from unfair competition by unauthorized insurers,
- 10 and to protect against the evasion of the insurance regulatory
- 11 laws of this state. The Legislature declares that it is a subject of
- 12 concern that certain insurers, while not licensed to transact
- 13 insurance in this state, are soliciting the sale of insurance and
- 14 selling insurance to residents of this state, thus presenting the
- 15 insurance commissioner with the problem of resorting to courts

16 of foreign jurisdictions for the purpose of enforcing the
17 insurance laws of this state for the protection of our citizens.
18 The Legislature declares that it is also a subject of concern that
19 many residents of this state hold policies of insurance issued or
20 delivered in this state by insurers not licensed to transact
21 insurance in this state, thus presenting to the residents the often
22 insurmountable obstacle of resorting to distant fora for the
23 purpose of asserting legal rights under these policies. In
24 furtherance of the state interest, the Legislature herein provides
25 a method of substituted service of process upon the insurers and
26 declares that in so doing it exercises its powers to protect its
27 residents and to define, for the purpose of this article, what
28 constitutes transacting insurance in this state.

§33-44-3. Definitions.

1 (a) “Administrator” or “third-party administrator” means,
2 as used in this article unless otherwise indicated, a person who
3 for residents of this state, or for residents of another jurisdiction
4 from a place of business in this state, performs administrative
5 functions including claims administration or payment, market-
6 ing, premium accounting, premium billing, coverage verifica-
7 tion, underwriting authority or certificate issuance in regard to
8 insurance.

9 (b) “Assist” means to aid, counsel, represent, opine,
10 administer or, in any capacity, to help another.

11 (c) “Commissioner” means the insurance commissioner for
12 the state of West Virginia.

13 (d) “Effectuating” means to bring about; to effect.

14 (e) “Foreign decree” means any decree or order of a court
15 located in a reciprocal state or other state including a court of
16 the United States located therein, against any insurer incorpo-
17 rated or authorized to do business in this state or against any

18 unauthorized insurer with its principal place of business located
19 in this state.

20 (f) "Insurance" is a contract whereby one undertakes to
21 indemnify another or to pay a specified amount upon determi-
22 nable contingencies.

23 (g) "Insured" means, as used in this article unless otherwise
24 indicated, any individual, member, named insured, beneficiary,
25 subscriber or group who has obtained insurance from an
26 unauthorized insurer or who is insured under a contract of
27 insurance obtained from an unauthorized insurer.

28 (h) "Insurer" means, as used in this article unless otherwise
29 indicated, any person engaged in the transaction of insurance.

30 (i) "Negotiation" means, as used in this article unless
31 otherwise indicated, the deliberation, discussion or conference
32 upon the terms of a proposed agreement; it is that which passes
33 between parties or their agents in the course of or incident to the
34 making of a contract; to conduct communications or confer-
35 ences with a view to reaching an agreement.

36 (j) "Person" means, as used in this article unless otherwise
37 indicated, any natural person or entity, including, but not
38 limited to, individuals, partnerships, associations, bona fide
39 associations, trusts, trustees, companies, insurers, unauthorized
40 insurers, organizations, societies, reciprocals, syndicates,
41 administrators, third-party administrators, agents, producers,
42 advertisers, customer service representatives, promoters,
43 officers, directors, lawyers, incorporators or any other legal
44 entity.

45 (k) "Principal place of business" means the single state in
46 which the policy for the direction, control and coordination of
47 the operations of the insurer as a whole are primarily exercised,
48 with consideration being given to, but not limited to:

49 (1) The state in which the primary executive and adminis-
50 trative headquarters of the entity is located;

51 (2) The state in which the principal office of the chief
52 executive officer of the entity is located;

53 (3) The state in which the board of directors (or similar
54 governing body) of the entity conducts the majority of its
55 meetings;

56 (4) The state in which the executive or management
57 committee of the board of directors (or similar governing body)
58 of the entity conducts the majority of its meetings; and

59 (5) The state from which the management of the overall
60 operations of the entity is directed.

61 (l) "Procure" means to cause a thing to be done, to instigate,
62 contrive, bring about, effect or cause; to persuade, induce or
63 prevail upon; it is the act of obtaining, attainment or acquisi-
64 tion.

65 (m) "Qualified party" means a state regulatory agency
66 acting in its capacity to enforce the insurance laws of its state.

67 (n) "Reciprocal state" means any state or territory of the
68 United States the laws of which contain procedures substan-
69 tially similar to those specified in this section for the enforce-
70 ment of decrees or orders issued by courts located in the states
71 or territories of the United States, against any insurer incorpo-
72 rated or authorized to do business in such state or territory or
73 any unauthorized insurer with its principal place of business in
74 such state or territory.

75 (o) "Solicitation" and "solicit" mean attempting to sell
76 insurance or asking or urging a person to apply for a particular
77 kind of insurance from a particular company, including without

78 limitation, providing rate comparisons of various insurers based
79 on information provided by the person.

80 (p) "Transaction of insurance" means that for purposes of
81 this article, any of the following acts in this state effected by
82 mail or otherwise is considered to constitute the transaction of
83 an insurance business in or from this state:

84 (1) The making of or proposing to make an insurance
85 contract;

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

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

91 (4) The receiving or collection of any premium, commis-
92 sion, membership fees, assessments, dues or other consideration
93 required for obtaining or renewing insurance;

94 (5) The issuance or delivery in this state of certificates or
95 contacts of insurance to residents of this state or to persons
96 authorized to do business in this state;

97 (6) The solicitation, negotiation, procurement or effectua-
98 tion of insurance or renewals thereof;

99 (7) The dissemination of information as to coverage or
100 rates, or forwarding of applications, or delivery of policies or
101 contracts, or inspection of risks, the fixing of rates or investiga-
102 tion or adjustment of claims or losses or the transaction of
103 matters subsequent to effectuation of the contract and arising
104 out of it, or any other manner of representing or assisting a
105 person or insurer in the transaction of insurance with respect to
106 any risk or exposure located or to be performed in this state;

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

110 (9) The offering of insurance or the transacting of insurance
111 business; or

112 (10) Offering an agreement or contract which purports to
113 alter, amend or void coverage of an insurance contract.

114 (q) "Unauthorized insurer" means a person or insurer
115 engaged in the transaction of insurance without a license in
116 force pursuant to the laws of this state unless exempted by the
117 insurance laws of this state, or any person assisting an unautho-
118 rized insurer.

§33-44-4. Unlawful transaction of insurance.

1 (a) It is unlawful for any person to engage in any act which
2 constitutes the transaction of insurance under the provisions of
3 this article unless authorized by a license in force pursuant to
4 the laws of this state, or unless exempted by the insurance laws
5 of this state. Any person or insurer engaged in any act which
6 constitutes the unauthorized transaction of insurance shall be
7 subject to the provisions contained in chapter thirty-three of the
8 code and the provisions and penalties set forth in this article.

9 (b) It is unlawful for any person to, directly or indirectly,
10 represent, aid, counsel, opine, administer, assist in any manner
11 or capacity or otherwise act as an agent for or on behalf of an
12 unauthorized insurer in the unauthorized transaction of insur-
13 ance. Any person who represents, aids or assists, in any manner
14 or capacity, an unauthorized insurer in violation of this article
15 shall be subject to the provisions and penalties set forth in this
16 article.

17 (c) An unauthorized insurer shall be bound by the terms of
18 the insurance contract, certificate or agreement as if the
19 contract, certificate or agreement were legally procured under
20 the insurance laws of this state.

21 (d) This article does not apply to: (i) Any transaction for
22 which a license is not required pursuant to section one, article
23 three of this chapter, including the lawful transaction of surplus
24 lines insurance and reinsurance by insurers; (ii) transactions in
25 this state relative to a policy issued or to be issued outside this
26 state involving insurance on cargo vessels, their craft or hulls,
27 their cargoes, marine builder's risk, commercial marine
28 protection and indemnity or other risk, including strikes and
29 war risks commonly insured under ocean marine forms of
30 policy; (iii) transactions in this state involving group life
31 insurance, group accident and sickness insurance or group
32 annuities providing coverage under policies that are recognized
33 under articles fourteen and sixteen, respectively, of this chapter
34 where: (1) The master policy of such groups was lawfully
35 issued and delivered in and pursuant to the laws of a state in
36 which the insurer was authorized to do an insurance business,
37 to a group organized for purposes other than the procurement of
38 insurance, and where the policyholder is domiciled or otherwise
39 has a bona fide situs; and (2) except for group annuities, the
40 insurer complies with section thirty-five, article six of this
41 chapter. The commissioner may require the insurer which has
42 issued such master policy to submit such information as the
43 commissioner requires in order to determine if probable cause
44 exists to convene a hearing to determine whether the total
45 charges for the insurance to the persons insured are reasonable
46 in relation to the benefits provided under such policy.

§33-44-5. Service of process on unauthorized insurers.

1 (a) Any act of transacting insurance by any unauthorized
2 insurer is equivalent to and constitutes an irrevocable appoint-

3 ment by an unauthorized insurer, binding upon him or her, his
4 or her executor or administrator, or successor in interest, of the
5 secretary of state or his or her successor in office, to be the true
6 and lawful attorney of an unauthorized insurer upon whom may
7 be served all lawful process in any action, suit or proceeding in
8 any court by the commissioner, the state or an insured and upon
9 whom may be served any notice, order, pleading or process in
10 any proceeding before the commissioner and which arises out
11 of transacting an insurance business in this state by such an
12 insurer. Any act of transacting insurance in this state by any
13 unauthorized insurer or any person acting in furtherance of an
14 unauthorized insurer's business, signifies the agreement of the
15 person or unauthorized insurer that any lawful process in such
16 a court action, suit or proceeding or any notice, order, pleading
17 or process in an administrative proceeding before the commis-
18 sioner so served is of the same legal force and validity as
19 personal service or process in this state upon an insurer.

20 (b) Service of process in an action must be made by
21 delivering to and leaving with the secretary of state, or some
22 person in apparent charge of his or her office, two copies
23 thereof and by payment to the secretary of state the fee pre-
24 scribed by section two, article one, chapter fifty-nine of this
25 code together with any other fees prescribed by law. Service
26 upon the secretary of state as attorney is service upon the
27 principal.

28 (c) Upon receipt by the secretary of state of two copies of
29 the process to be served, and the payment of all relevant fees,
30 the secretary of state shall cause the process to be served in the
31 manner prescribed in subsection (d) of this section.

32 (d) The secretary of state shall forward a copy of the
33 process by registered or certified mail to the unauthorized
34 insurer or any person acting in furtherance of an unauthorized
35 insurer's business at its last-known principal place of business

36 and shall keep a record of all process so served upon the person
37 or unauthorized insurer. Service of process is sufficient,
38 provided notice of service and a copy of the process are sent
39 within ten days thereafter by or on behalf of the moving party
40 to the responding party, at its last-known principal place of
41 business by registered or certified mail with return receipt
42 requested. The moving party shall file with the clerk of the
43 court in which the action is pending, or with the judge or
44 magistrate of the court in case there be no clerk, or in the
45 official records of the commissioner if an administrative
46 proceeding before the commissioner, an affidavit of compliance
47 herewith, a copy of the process and either a return receipt
48 purporting to be signed by the defendant or responding party or
49 a person qualified to receive its registered or certified mail in
50 accordance with the rules and customs of the post office
51 department; or, if acceptance was refused by the defendant or
52 responding party or an agent thereof, the original envelope
53 bearing a notation by the postal authorities that receipt was
54 refused. Service of process so made is considered to have been
55 made within the territorial jurisdiction of any court in this state.

56 (e) In addition to the manner provided in subsection (d) of
57 this section, service of process in any action, suit or administra-
58 tive proceeding shall be valid if served upon any person who
59 engages in any act which constitutes the transaction of unautho-
60 rized insurance: *Provided*, That notice of service and a copy of
61 process are sent within ten days thereafter, by or on behalf of
62 the moving party to the responding party at the last-known
63 principal place of business of the responding party, by regis-
64 tered or certified mail with return receipt requested. The
65 moving party shall file with the clerk of the court in which the
66 action is pending, or with the judge or magistrate of the court in
67 case there be no clerk, or in the official records of the commis-
68 sioner if an administrative proceeding before the commissioner,
69 an affidavit of compliance herewith, a copy of the process and
70 either a return receipt purporting to be signed by the responding

71 party, or a person qualified to receive its registered or certified
72 mail in accordance with the rules and customs of the post office
73 department; or, if acceptance was refused by the responding
74 party or an agent thereof, the original envelope bearing a
75 notation by the postal authorities that receipt was refused. In the
76 instance that service of process is refused by the responding
77 party or an agent thereof, service shall be considered sufficient
78 to bestow jurisdiction on the tribunal in which the action was
79 filed.

80 (f) The papers referred to in subsections (d) and (e) of this
81 section shall be filed within thirty days after the return receipt
82 or other official proof of delivery or the original envelope
83 bearing a notation of refusal, as the case may be, is received by
84 the moving party. Service of process shall be complete ten days
85 after the process and the accompanying papers are filed in
86 accordance with this section.

87 (g) Nothing contained in this section shall limit or abridge
88 the right to serve any process, notice or demand upon any
89 unauthorized insurer or upon any person engaged in the
90 transaction of insurance in any other manner now or hereafter
91 permitted by law.

92 (h) For the purposes of this section, "process" in an action
93 in a court includes only a summons or the initial documents
94 served in an action. The secretary of state is not required to
95 serve any documents in an action after the initial service of
96 process.

§33-44-6. Injunctive relief.

1 (a) Whenever the commissioner believes, from evidence
2 satisfactory to him or her, that any insurer is violating or is
3 about to violate the provisions of this article, in addition to the
4 administrative remedies available in this article, the commis-

5 sioner may cause a complaint to be filed in any appropriate
6 circuit court of this state seeking to enjoin and restrain the
7 insurer from continuing the violation or engaging therein or
8 doing any act in furtherance thereof.

9 (b) The circuit court shall have jurisdiction of the proceed-
10 ing and have the power to make and enter an order or judgment
11 awarding preliminary or final injunctive relief as in its judg-
12 ment is proper. The commissioner may elect to file a complaint
13 in any circuit where transactions have occurred or in the circuit
14 court of Kanawha County.

§33-44-7. Administrative relief.

1 (a) Any person engaged in any act which constitutes the
2 unauthorized transaction of insurance as set forth in this article
3 may, after notice and hearing pursuant to section thirteen,
4 article two of this chapter, be fined by the commissioner a sum
5 not to exceed twenty thousand dollars for each unauthorized act
6 or transaction of unauthorized insurance.

7 (b) Any person engaged in any act which constitutes the
8 unauthorized transaction of insurance as set forth in this article
9 may be assessed restitution by the insurance commissioner in
10 an amount sufficient to reimburse any and all insureds for the
11 unpaid claims, if, after notice and hearing pursuant to section
12 thirteen, article two of this chapter, the commissioner finds that
13 the unauthorized insurer has failed to pay claims of its insureds
14 in accordance with the terms of the contracts.

§33-44-8. Civil relief.

1 (a) No insurance contract entered into in violation of this
2 article shall preclude the insured from enforcing his or her
3 rights under the contract in accordance with the terms and
4 provisions of the contract and the laws of this state against any
5 unauthorized insurer or any person assisting the unauthorized

6 insurer to the same degree those rights would have been
7 enforceable had the contract been lawfully procured.

8 (b) No insurance contract entered into in violation of this
9 article shall preclude a provider of health care services from
10 enforcing the rights of the insured under the contract in accor-
11 dance with the terms and provisions of the contract and the laws
12 of this state against any unauthorized insurer or any person
13 assisting the unauthorized insurer pursuant to an assignment of
14 rights executed between the insured and the health care pro-
15 vider.

16 (c) In an action against an unauthorized insurer upon a
17 contract of insurance issued or delivered to a resident of this
18 state or to a corporation authorized to do business in this state,
19 if the trier of fact finds by a preponderance of the evidence that
20 the unauthorized insurer has failed to make payment in accor-
21 dance with the terms of the contract, the trier of fact shall award
22 to the insured or the health care provider:

23 (1) Contract damages in accordance with the terms and
24 provisions of the contract and the laws of this state to the same
25 degree those rights would have been enforceable had the
26 contract been lawfully procured;

27 (2) Simple interest at a rate of prime plus one percent on the
28 total amount awarded as restitution, accruing from the date
29 payment was due;

30 (3) If in addition to a finding that the unauthorized insurer
31 has failed to make payment in accordance with the terms of the
32 contract, the trier of fact finds by a preponderance of the
33 evidence that failure to make payment was without reasonable
34 cause, the trier of fact shall award the plaintiff a reasonable
35 attorney fee and include the fee in any judgment that may be
36 rendered in the action. The fee shall not exceed thirty-three

37 percent of the amount that the trier of fact finds the plaintiff is
38 entitled to recover against the unauthorized insurer;

39 (4) If in addition to a finding that the unauthorized insurer
40 has failed to make payment in accordance with the terms of the
41 contract, the trier of fact further finds that failure to make
42 payment was willful, wanton and malicious, the trier of fact
43 may award the plaintiff punitive damages in an amount that the
44 trier of fact finds the plaintiff is entitled to recover against the
45 insurer.

§33-44-9. Criminal penalties.

1 Any unauthorized insurer who violates the provisions of
2 this article is guilty of a felony and, upon conviction thereof,
3 may be fined not more than twenty thousand dollars per each
4 unauthorized act or transaction of unauthorized insurance or
5 confined in the state correctional facility not less than one nor
6 more than five years, or both fined and imprisoned.

§33-44-10. Defense of action or proceeding by unauthorized insurer; bond requirements.

1 (a) Before any unauthorized insurer shall file or cause to be
2 filed any pleading in any action, suit or proceeding instituted
3 against it, or any notice, order, pleading or process in an
4 administrative proceeding before the commissioner instituted
5 against the insurer, the unauthorized insurer shall either:

6 (1) Deposit with the clerk of the court in which the action,
7 suit or proceeding is pending, or with the commissioner in an
8 administrative proceeding, cash or securities or file with the
9 clerk or the commissioner a bond with good and sufficient
10 sureties, to be approved by the court or the commissioner, in an
11 amount to be fixed by the court or commissioner sufficient to
12 secure the payment of any final judgment which may be
13 rendered in the action or administrative proceeding; or

14 (2) Deposit with the clerk of the court in which the action,
15 suit or proceeding is pending, or with the commissioner in an
16 administrative proceeding, cash or securities or file with the
17 clerk or the commissioner a bond with good and sufficient
18 sureties, to be approved by the court or the commissioner, in an
19 amount required to procure a license to transact insurance in
20 this state pursuant to the provisions contained within article
21 three of this chapter.

22 (b) The court or the commissioner in any action, suit or
23 proceeding in which service is made in the manner provided in
24 subsection (d) or (e), section five of this article, may, in its, his
25 or her respective discretion, order the postponement as may be
26 necessary to afford the responding party reasonable opportunity
27 to comply with the provisions of subsection (a) of this section
28 and thereafter to defend the action or proceeding.

§33-44-11. Person providing specified coverage; proof of regulation by a federal government agency.

1 (a) Any person who transacts insurance, transacts an
2 insurance business or provides insurance coverage in this state
3 for the cost of:

4 (1) Medical care;

5 (2) Surgery;

6 (3) Chiropractic;

7 (4) Physical therapy;

8 (5) Speech pathology;

9 (6) Audiology;

10 (7) Professional care of mental health;

11 (8) Dental care;

12 (9) Hospital care; or

13 (10) Ophthalmic care, whether the coverage provides for
14 direct payment, reimbursement or any other method of pay-
15 ment, is subject to regulation by the commissioner and to the
16 provisions of this code unless he or she shows that while
17 transacting insurance, or transacting an insurance business or
18 providing the coverage he or she is subject to regulation by an
19 agency of the federal government.

20 (b) A person may show that he or she is subject to regula-
21 tion by an agency of the federal government by providing the
22 commissioner with an advisory opinion issued pursuant to
23 ERISA Procedure 76-1, 41 Federal Register 36281 (Aug. 27,
24 1976).

**§33-44-12. Collection, maintenance and distribution of restitution
to insureds.**

1 All restitution ordered by the commissioner pursuant to the
2 authority set forth in section seven of this article and received
3 from unauthorized insurers shall be collected by the commis-
4 sioner and distributed to the affected insureds on a pro rata
5 basis. The commissioner shall maintain a record reflecting the
6 names of each of the insureds for which the restitution was
7 ordered, the total amount of the unpaid claims for each of the
8 insureds to which the restitution will be paid and the actual
9 amount of restitution to be paid to the insured. The commis-
10 sioner shall likewise maintain an account into which restitution
11 received shall be placed until it is distributed to the affected
12 insureds.

§33-44-13. Enforcement of foreign decrees.

1 (a) The commissioner may proceed in the courts of this
2 state, any reciprocal state or any other state to enforce an order
3 or decision in any court proceeding or in any administrative
4 proceeding before the commissioner.

5 (b) The commissioner shall determine which states and
6 territories qualify as reciprocal states.

7 (c) A certified copy of any foreign decree may be filed in
8 the office of the clerk of any circuit court of this state. The clerk
9 of the circuit court, upon verifying with the commissioner that
10 the decree or order qualified as a foreign decree, shall treat the
11 foreign decree in the same manner as a decree of a circuit court
12 of this state. A foreign decree, so filed, has the same effect and
13 is considered as a decree of a circuit court of this state, and is
14 subject to the same procedures, defenses and proceedings for
15 reopening, vacating or staying a decree of a circuit court of this
16 state and may be enforced or satisfied in like manner.

17 (d) At the time of the filing of the foreign decree, counsel
18 for the commissioner shall make and file with the clerk of the
19 circuit court an affidavit setting forth the name and last known
20 post office address of the defendant. Promptly upon the filing
21 of the foreign decree and the affidavit, the clerk of the circuit
22 court shall mail notice of the filing of the foreign decree to the
23 defendant at the address given and to the commissioner and
24 shall make a note of the mailing in the docket. In addition,
25 counsel for the commissioner may mail a notice of the filing of
26 the foreign decree to the defendant and to the commissioner and
27 may file proof of mailing with the clerk of the circuit court.
28 Lack of mailing notice of filing by the clerk of the circuit court
29 may not affect the enforcement proceedings if proof of mailing
30 by the counsel for the commissioner has been filed. No execu-
31 tion or other process for enforcement of a foreign decree filing

32 under this section may issue until thirty days after the date the
33 decree is filed.

34 (e) If the defendant shows the circuit court:

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

42 (2) Any ground upon which enforcement of a decree of any
43 circuit court of this state would be stayed, the court may stay
44 enforcement of the foreign decree.

45 (f) Any person filing a foreign decree shall pay to the clerk
46 of the circuit court such fees as are required by law.

CHAPTER 159

**(H. B. 2970 — By Delegates Michael, Beane, G. White,
Amores, Staton, Angotti and Beach)**

[Passed April 14, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article six, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section thirty-one-f, relating to excess or umbrella policies of insurance; and requiring

offers of uninsurance and underinsurance motorist coverage in such policies.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. THE INSURANCE POLICY.

§33-6-31f. Uninsured and underinsured motorists' coverage optional on umbrella and excess type liability policies.

1 (a) Notwithstanding any other provisions of this article,
2 insurers issuing or providing liability policies that are of an
3 excess or umbrella type and which are written to cover automo-
4 bile liability shall offer uninsured and underinsured motor
5 vehicle coverage on such policies in an amount not less than the
6 amount of liability insurance purchased by the named insured:
7 *Provided*, That the named insured may decline any or all of the
8 coverage offered under the excess or umbrella type policy.

9 (b) Offers of optional uninsured and underinsured motor
10 vehicle coverage required by subsection (a) of this section shall
11 be made to the named insured on a form prepared and made
12 available by the insurance commissioner on or before the
13 effective date of this section. The form shall allow any named
14 insured to decline any or all of the coverage offered.

15 (c) Offers of optional uninsured and underinsured motor
16 vehicle coverage required by subsection (a) of this section shall
17 be made to the named insured by delivering the form at the time
18 of initial application for insurance policies described in
19 subsection (a) of this section or by mailing the form to the

20 named insured along with the initial premium notice. The
21 named insured shall complete, date, sign, and return the form to
22 the insurer within thirty days after receipt thereof. No insurer or
23 agent thereof is liable for payment of any damages applicable
24 under any optional uninsured or underinsured coverage de-
25 scribed in this section which occurs from the date the form was
26 mailed or delivered to the named insured until the insurer
27 receives the form and accepts payment of the premium for the
28 coverage requested therein from the named insured: *Provided*,
29 That if prior to the insurer's receipt of the executed form, the
30 insurer issues a policy described in this section to the named
31 insured which provides for such optional uninsured or
32 underinsured coverage, the insurer shall be liable for payment
33 of claims against such optional coverage up to the limits
34 provided in such policy. The contents of a form described in
35 this section which has been signed by a named insured shall
36 create a presumption that such named insured and all named
37 insureds received an effective offer of the optional coverages
38 described in this section and that such named insured exercised
39 a knowing and intelligent election or rejection, as the case may
40 be, of such offer specified in the form. Such election or
41 rejection shall be binding on all persons insured under the
42 policy.

43 (d) Failure of the named insured to return the form de-
44 scribed in this section to the insurer as required by this section
45 within the time periods specified in this section creates a
46 presumption that such person received an effective offer of the
47 optional coverages described in this section and that such
48 person exercised a knowing and intelligent rejection of such
49 offer. Such rejection is binding on all persons insured under the
50 policy.

51 (e) The insurer shall make such forms available to any
52 named insured who requests different coverage limits on or
53 after the effective date of this section. No insurer is required to

54 make forms described herein available or notify any person of
55 the availability of such optional coverages authorized by this
56 section except as required by this section.



CHAPTER 160

(S. B. 507 — By Senator Minard)



[Passed April 14, 2001; in effect from passage. Approved by the Governor.]



AN ACT to amend chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article six-f, relating to the privacy rights of West Virginia insureds; and providing for commissioner authority to promulgate rules in accordance with Title V of the Gramm-Leach-Bliley Act, Pub. L. 106-102 (1999).

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6F. DISCLOSURE OF NONPUBLIC PERSONAL INFORMATION.

§33-6F-1. Privacy; rules.

- 1 (a) No person shall disclose any nonpublic personal
- 2 information contrary to the provisions of Title V of the
- 3 Gramm-Leach-Bliley Act, Pub. L. 106-102 (1999).

4 (b) On or before the first day of July, two thousand one, the
5 commissioner shall propose rules for legislative approval in
6 accordance with article twenty, chapter twenty-nine-a of this
7 code necessary to carry out the provisions of Title V of the
8 Gramm-Leach-Bliley Act, Pub. L. 106-102 (1999) and this
9 article.

CHAPTER 161

(Com. Sub. for H. B. 3080 — By Delegate Beane)

[Passed April 12, 2001; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections five, seven, fourteen and fifteen, article eight, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to permissible investments by insurers; allowing insurers to invest in certain securities; and modifying the types and amount of stocks in which insurers may invest.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 8. INVESTMENTS.

§33-8-5. Limitation of investments in one person.

§33-8-7. Government obligations.

§33-8-14. Common stocks.

§33-8-15. Real property mortgages.

§33-8-5. Limitation of investments in one person.

1 An insurer shall not, except with the consent of the com-
2 missioner, have at one time any combination of investments in
3 or loans upon the security of the obligations, property, or
4 securities of any one person, institution or corporation, aggreg-
5 ating an amount exceeding five percent of the insurer's assets.
6 This restriction shall not apply to investments in or loans upon
7 the security of general obligations of the United States or fully
8 guaranteed by the United States or the District of Columbia or
9 any state of the United States or of political subdivisions of the
10 state of West Virginia or other states of the United States, or
11 such other funds or obligations of the United States made
12 pursuant to section seven of this article, or include policy loans
13 made under section nineteen of this article or investments in
14 foreign securities pursuant to section eight of this article.
15 Pursuant to section 106(b) of the "Secondary Mortgage Market
16 Enhancement Act of 1984," an act of the Congress of the
17 United States, this section prohibits domestic insurers from
18 exercising the investment authority granted any person, trust,
19 corporation, partnership, association, business trust or business
20 entity pursuant to section 106(a) (1) or (2) of that act.

§33-8-7. Government obligations.

1 An insurer may invest any of its funds in:

2 (a) Bonds or securities which are the direct obligation of or
3 which are secured or guaranteed, in whole or in part, as to
4 principal and interest by the United States, any state or territory
5 of the United States or the District of Columbia, where there
6 exists the power to levy taxes for the prompt payment of the
7 principal and interest of such bonds or evidences of indebted-
8 ness, and in bonds issued by the federal land banks or securities
9 issued by the federal home loan bank system. Pursuant to
10 section 106(b) of the "Secondary Mortgage Market Enhance-

11 ment Act of 1984,” an act of the Congress of the United States,
12 this section prohibits domestic insurers from exercising the
13 investment authority granted any person, trust, corporation,
14 partnership, association, business trust or business entity
15 pursuant to section 106(a) (1) or (2) of that act, except as
16 provided in subsection (c).

17 (b) Bonds or evidences of indebtedness which are direct
18 general obligations of any county, district, city, town, village,
19 school district, park district or other political subdivision of this
20 state or any other state or territory of the United States or the
21 District of Columbia, which shall not be in default in the
22 payment of any of its general obligation bonds, either principal
23 or interest, at the date of such investment; where they are
24 payable from ad valorem taxes levied on all the taxable
25 property located therein and the total indebtedness after
26 deducting sinking funds and all debts incurred for self-sustain-
27 ing public works does not exceed ten per centum of the actual
28 value of all taxable property therein on the basis of which the
29 last assessment was made before the date of such investment.

30 (c) Securities issued or guaranteed by the Federal Home
31 Loan Mortgage Corporation or the Federal National Mortgage
32 Association aggregating an amount not to exceed twenty
33 percent of the insurer’s assets.

§33-8-14. Common stocks.

1 Subject to the limits set forth in sections five and six of this
2 article, an insurer may invest in the nonassessable shares of
3 capital stock of any solvent corporation created under the laws
4 of the United States or of any state: *Provided, That:*

5 (a) The capital stock is one which is included in a nationally
6 recognized index of companies, including, but not limited to,
7 Standard & Poors 500 and Wilshire 2000;

8 (b) The insurer's investment in any one entity under this
9 section would not exceed three percent of its admitted assets;
10 and

11 (c) As a result of and after giving effect to the investment,
12 the aggregate amount of investments then held by the insurer
13 under this section would not exceed twenty percent of its
14 admitted assets.

§33-8-15. Real property mortgages.

1 (a) An insurer may invest in entire first mortgages on
2 improved unencumbered real estate or the entire issue of bonds
3 secured thereby located within any state worth at least
4 thirty-three and one-third per centum more than the amount
5 loaned thereon, based on sound appraisal by a competent
6 appraiser and duly certified by him or her, provided that the
7 investment in any one mortgage or any one issue of bonds or
8 any one contract for deed does not exceed twenty-five thousand
9 dollars or two per centum of the insurer's assets, whichever is
10 the greater.

11 (b) "Improved real estate," as used in this section, means all
12 farmland which has been reclaimed and is used for the purpose
13 of husbandry, whether for tillage or pasture, and all real
14 property on which permanent buildings suitable for residence
15 or commercial use are situated.

16 (c) Real property shall not be considered to be encumbered
17 within the meaning of this section by reason of the existence of
18 instruments reserving or excepting mineral rights and interests,
19 rights-of-way, sewer rights and rights in walls or easements, nor
20 by reason of building restrictions or other restrictive covenants,
21 nor by reason of the fact that it is subject to lease under which
22 rents or profits are reserved to the owners: *Provided*, That the
23 security for such investment is a full and unrestricted first lien

24 upon such real property and that there is no condition nor right
25 of reentry or forfeiture under which such investments can be cut
26 off, subordinated or otherwise disturbed.

27 (d) Notwithstanding the restrictions set forth in this section
28 any insurer may invest: (1) In bonds or notes secured by
29 mortgage or trust deed insured by the federal housing adminis-
30 tration or in debentures issued by it under the terms of an act of
31 Congress of the United States entitled the "National Housing
32 Act," as heretofore or hereafter amended; (2) in securities
33 issued by national mortgage associations established by or
34 under the authority of the National Housing Act; and (3) in
35 bonds or notes secured by mortgage or trust deed guaranteed as
36 to principal by the administrator of veterans' affairs pursuant to
37 the provisions of Title III of an act of Congress of the United
38 States as of June twenty-two, one thousand nine hundred forty-
39 four, entitled the "Servicemen's Re-Adjustment Act of one
40 thousand nine hundred forty-four," as heretofore or hereafter
41 amended. Pursuant to section 106(b) of the "Secondary Mort-
42 gage Market Enhancement Act of 1984," an act of the Congress
43 of the United States, this section prohibits domestic insurers
44 from exercising the investment authority granted any person,
45 trust, corporation, partnership, association, business trust or
46 business entity pursuant to section 106(a) (1) or (2) of that act,
47 except that the investments as provided in subsection (c) of
48 section seven of this article are considered to be permissible.

49 (e) Notwithstanding the restrictions herein set forth, the
50 amount of any first mortgage investment as limited by subsec-
51 tion (a) of this section may be exceeded if and to the extent that
52 such excess shall be guaranteed by the administrator of veter-
53 ans' affairs pursuant to the provisions of Title III of an act of
54 Congress of the United States of June twenty-two, one thousand
55 nine hundred forty-four, entitled the "Servicemen's Re-Adjust-
56 ment Act of one thousand nine hundred forty-four," as hereto-
57 fore or hereafter amended. Pursuant to section 106(b) of the

58 “Secondary Mortgage Market Enhancement Act of 1984,” an
59 act of the Congress of the United States, this section prohibits
60 domestic insurers from exercising the investment authority
61 granted any person, trust, corporation, partnership, association,
62 business trust or business entity pursuant to section 106(a) (1)
63 or (2) of that act, except that the investments as provided in
64 subsection (c) of section seven of this article are considered to
65 be permissible.

66 (f) No such insurer shall in any manner, either directly or
67 indirectly, by means of corporations, holding companies,
68 trustees or otherwise, invest in real estate securities junior to
69 first mortgages unless the first mortgage in its entirety is owned
70 by the insurer.

CHAPTER 162

(Com. Sub. for S. B. 492 — By Senator Minard)

[Passed April 14, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article twenty-three, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to providing that fraternal benefit societies be subject to the laws regulating variable contracts.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 23. FRATERNAL BENEFIT SOCIETIES.**§33-23-2. Applicability of other provisions.**

1 Every fraternal benefit society shall be governed and be
2 subject to the same extent as other insurers transacting like
3 kinds of insurance, to the following articles of this chapter:
4 Article one (definitions); article two (insurance commissioner);
5 article four (general provisions); section thirty, article six (fee
6 for form and rate filing); article seven (assets and liabilities);
7 article ten (rehabilitation and liquidation); article eleven (unfair
8 trade practices); article twelve (agents, brokers, solicitors and
9 excess lines); article thirteen (life insurance); article thirteen-a
10 (variable contracts); article fifteen-a (long-term care insurance);
11 article twenty-seven (insurance holding company systems);
12 article thirty-three (annual audited financial report); article
13 thirty-four (administrative supervision); article thirty-four-a
14 (standards and commissioner's authority for companies
15 considered to be in hazardous financial condition); article
16 thirty-five (criminal sanctions for failure to report impairment);
17 article thirty-seven (managing general agents); and article
18 thirty-nine (disclosure of material transactions).

CHAPTER 163

(S. B. 513 — By Senator Minard)

[Passed April 14, 2001; in effect ninety days from passage. Approved by the Governor.]

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

section twenty-four, article twenty-five-a of said chapter, all relating to permitting health maintenance organizations and hospital, medical and dental service corporations to borrow money for surplus funds and other operating expenses.

Be it enacted by the Legislature of West Virginia:

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

Article

24. Hospital Service Corporations, Medical Service Corporations, Dental Service Corporations and Health Service Corporations.

25A. Health Maintenance Organization Act.

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

***§33-24-4. Exemptions; applicability of insurance laws.**

1 Every corporation defined in section two of this article is
 2 hereby declared to be a scientific, nonprofit institution and
 3 exempt from the payment of all property and other taxes. Every
 4 corporation, to the same extent the provisions are applicable to
 5 insurers transacting similar kinds of insurance and not inconsis-
 6 tent with the provisions of this article, shall be governed by and
 7 be subject to the provisions as herein below indicated, of the
 8 following articles of this chapter: Article two (insurance
 9 commissioner), except that, under section nine of said article,
 10 examinations shall be conducted at least once every four years;
 11 article four (general provisions), except that section sixteen of
 12 said article shall not be applicable thereto; section twenty,
 13 article five (borrowing by insurers); section thirty-four, article
 14 six (fee for form and rate filing); article six-c (guaranteed loss
 15 ratio); article seven (assets and liabilities); article eleven (unfair

***Clerk's Note:** This section was also amended by S. B. 493 (Chapter 155), which passed prior to this act.

16 trade practices); article twelve (agents, brokers and solicitors),
17 except that the agent's license fee shall be twenty-five dollars;
18 section two-a, article fifteen (definitions); section two-b, article
19 fifteen (guaranteed issue); section two-d, article fifteen (excep-
20 tion to guaranteed renewability); section two-e, article fifteen
21 (discontinuation of coverage); section two-f, article fifteen
22 (certification of creditable coverage); section two-g, article
23 fifteen (applicability); section four-e, article fifteen (benefits for
24 mothers and newborns); section fourteen, article fifteen
25 (individual accident and sickness insurance); section sixteen,
26 article fifteen (coverage of children); section eighteen, article
27 fifteen (equal treatment of state agency); section nineteen,
28 article fifteen (coordination of benefits with medicaid); article
29 fifteen-a (long-term care insurance); article fifteen-c (diabetes
30 insurance); section three, article sixteen (required policy
31 provisions); section three-a, article sixteen (mental health);
32 section three-c, article sixteen (group accident and sickness
33 insurance); section three-d, article sixteen (medicare supple-
34 ment insurance); section three-f, article sixteen (treatment of
35 temporomandibular joint disorder and craniomandibular
36 disorder); section three-j, article sixteen (benefits for mothers
37 and newborns); section three-k, article sixteen (preexisting
38 condition exclusions); section three-l, article sixteen (guaran-
39 teed renewability); section three-m, article sixteen (creditable
40 coverage); section three-n, article sixteen (eligibility for
41 enrollment); section eleven, article sixteen (coverage of
42 children); section thirteen, article sixteen (equal treatment of
43 state agency); section fourteen, article sixteen (coordination of
44 benefits with medicaid); section sixteen, article sixteen (diabe-
45 tes insurance); article sixteen-a (group health insurance
46 conversion); article sixteen-c (small employer group policies);
47 article sixteen-d (marketing and rate practices for small
48 employers); article twenty-six-a (West Virginia life and health
49 insurance guaranty association act), after the first day of
50 October, one thousand nine hundred ninety-one; article twenty-
51 seven (insurance holding company systems); article twenty-
52 eight (individual accident and sickness insurance minimum

53 standards); article thirty-three (annual audited financial report);
54 article thirty-four (administrative supervision); article thirty-
55 four-a (standards and commissioner's authority for companies
56 considered to be in hazardous financial condition); article
57 thirty-five (criminal sanctions for failure to report impairment);
58 article thirty-seven (managing general agents); and article
59 forty-one (privileges and immunity); and no other provision of
60 this chapter may apply to these corporations unless specifically
61 made applicable by the provisions of this article. If, however,
62 the corporation is converted into a corporation organized for a
63 pecuniary profit or if it transacts business without having
64 obtained a license as required by section five of this article, it
65 shall thereupon forfeit its right to these exemptions.

ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.

§33-25A-24. Statutory construction and relationship to other laws.

1 (a) Except as otherwise provided in this article, provisions
2 of the insurance laws and provisions of hospital or medical
3 service corporation laws are not applicable to any health
4 maintenance organization granted a certificate of authority
5 under this article. The provisions of this article shall not apply
6 to an insurer or hospital or medical service corporation licensed
7 and regulated pursuant to the insurance laws or the hospital or
8 medical service corporation laws of this state except with
9 respect to its health maintenance corporation activities autho-
10 rized and regulated pursuant to this article. The provisions of
11 this article shall not apply to an entity properly licensed by a
12 reciprocal state to provide health care services to employer
13 groups, where residents of West Virginia are members of an
14 employer group and the employer group contract is entered into
15 in the reciprocal state. For purposes of this subsection, a
16 "reciprocal state" means a state which physically borders West
17 Virginia and which has subscriber or enrollee hold harmless

18 requirements substantially similar to those set out in section
19 seven-a of this article.

20 (b) Factually accurate advertising or solicitation regarding
21 the range of services provided, the premiums and copayments
22 charged, the sites of services and hours of operation and any
23 other quantifiable, nonprofessional aspects of its operation by
24 a health maintenance organization granted a certificate of
25 authority, or its representative shall not be construed to violate
26 any provision of law relating to solicitation or advertising by
27 health professions: *Provided*, That nothing contained in this
28 subsection shall be construed as authorizing any solicitation or
29 advertising which identifies or refers to any individual provider
30 or makes any qualitative judgment concerning any provider.

31 (c) Any health maintenance organization authorized under
32 this article shall not be considered to be practicing medicine
33 and is exempt from the provisions of chapter thirty of this code,
34 relating to the practice of medicine.

35 (d) The provisions of sections fifteen and twenty, article
36 four (general provisions); section seventeen, article six (non-
37 complying forms); section twenty, article five (borrowing by
38 insurers), article six-c (guaranteed loss ratio); article seven
39 (assets and liabilities); article eight (investments); article nine
40 (administration of deposits); article twelve (agents, brokers,
41 solicitors and excess line); section fourteen, article fifteen
42 (individual accident and sickness insurance); section sixteen,
43 article fifteen (coverage of children); section eighteen, article
44 fifteen (equal treatment of state agency); section nineteen,
45 article fifteen (coordination of benefits with medicaid); article
46 fifteen-b (uniform health care administration act); section three,
47 article sixteen (required policy provisions); section three-f,
48 article sixteen (treatment of temporomandibular disorder and
49 craniomandibular disorder); section eleven, article sixteen
50 (coverage of children); section thirteen, article sixteen (equal

51 treatment of state agency); section fourteen, article sixteen
52 (coordination of benefits with medicaid); article sixteen-a
53 (group health insurance conversion); article sixteen-d (market-
54 ing and rate practices for small employers); article twenty-five-
55 c (health maintenance organization patient bill of rights); article
56 twenty-seven (insurance holding company systems); article
57 thirty-four-a (standards and commissioner's authority for
58 companies considered to be in hazardous financial condition);
59 article thirty-five (criminal sanctions for failure to report
60 impairment); article thirty-seven (managing general agents);
61 article thirty-nine (disclosure of material transactions); article
62 forty-one (privileges and immunity); and article forty-two
63 (women's access to health care) shall be applicable to any
64 health maintenance organization granted a certificate of
65 authority under this article. In circumstances where the code
66 provisions made applicable to health maintenance organizations
67 by this section refer to the "insurer", the "corporation" or words
68 of similar import, the language shall be construed to include
69 health maintenance organizations.

70 (e) Any long-term care insurance policy delivered or issued
71 for delivery in this state by a health maintenance organization
72 shall comply with the provisions of article fifteen-a of this
73 chapter.

74 (f) A health maintenance organization granted a certificate
75 of authority under this article shall be exempt from paying
76 municipal business and occupation taxes on gross income it
77 receives from its enrollees, or from their employers or others on
78 their behalf, for health care items or services provided directly
79 or indirectly by the health maintenance organization. This
80 exemption applies to all taxable years through the thirty-first
81 day of December, one thousand nine hundred ninety-six. The
82 commissioner and the tax department shall conduct a study of
83 the appropriations of imposition of the municipal business and
84 occupation tax or other tax on health maintenance organiza-

85 tions, and shall report to the regular session of the Legislature,
86 one thousand nine hundred ninety-seven, on their findings,
87 conclusions and recommendations, together with drafts of any
88 legislation necessary to effectuate their recommendations.

CHAPTER 164

(H. B. 2389 — By Delegates Leach, Hatfield, Smirl and Fleischauer)

[Passed April 14, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article twenty-five-a, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to health maintenance organizations (HMOs); definitions; and providing that certain advanced nurse practitioners may serve in lieu of an HMO subscriber's primary care physician.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.

***§33-25A-2. Definitions.**

- 1 (1) "Basic health care services" means physician, hospital,
- 2 out-of-area, podiatric, chiropractic, laboratory, X ray, emer-
- 3 gency, short-term mental health services not exceeding twenty
- 4 outpatient visits in any twelve-month period, and cost-effective

***Clerk's Note:** This section was also amended by H. B. 3253 (Chapter 165), which passed prior to this act.

5 preventive services including immunizations, well-child care,
6 periodic health evaluations for adults, voluntary family plan-
7 ning services, infertility services and children's eye and ear
8 examinations conducted to determine the need for vision and
9 hearing corrections, which services need not necessarily include
10 all procedures or services offered by a service provider.

11 (2) "Capitation" means the fixed amount paid by a health
12 maintenance organization to a health care provider under
13 contract with the health maintenance organization in exchange
14 for the rendering of health care services.

15 (3) "Commissioner" means the commissioner of insurance.

16 (4) "Consumer" means any person who is not a provider of
17 care or an employee, officer, director or stockholder of any
18 provider of care.

19 (5) "Copayment" means a specific dollar amount, or
20 percentage, except as otherwise provided for by statute, that the
21 subscriber must pay upon receipt of covered health care
22 services and which is set at an amount or percentage consistent
23 with allowing subscriber access to health care services.

24 (6) "Employee" means a person in some official employ-
25 ment or position working for a salary or wage continuously for
26 no less than one calendar quarter and who is in such a relation
27 to another person that the latter may control the work of the
28 former and direct the manner in which the work shall be done.

29 (7) "Employer" means any individual, corporation, partner-
30 ship, other private association, or state or local government that
31 employs the equivalent of at least two full-time employees
32 during any four consecutive calendar quarters.

33 (8) "Enrollee", "subscriber" or "member" means an
34 individual who has been voluntarily enrolled in a health

35 maintenance organization, including individuals on whose
36 behalf a contractual arrangement has been entered into with a
37 health maintenance organization to receive health care services.

38 (9) "Evidence of coverage" means any certificate, agree-
39 ment or contract issued to an enrollee setting out the coverage
40 and other rights to which the enrollee is entitled.

41 (10) "Health care services" means any services or goods
42 included in the furnishing to any individual of medical, mental
43 or dental care, or hospitalization or incident to the furnishing of
44 the care or hospitalization, osteopathic services, chiropractic
45 services, podiatric services, home health, health education, or
46 rehabilitation, as well as the furnishing to any person of any and
47 all other services or goods for the purpose of preventing,
48 alleviating, curing or healing human illness or injury.

49 (11) "Health maintenance organization" or "HMO" means
50 a public or private organization which provides, or otherwise
51 makes available to enrollees, health care services, including at
52 a minimum basic health care services and which:

53 (a) Receives premiums for the provision of basic health
54 care services to enrollees on a prepaid per capita or prepaid
55 aggregate fixed sum basis, excluding copayments;

56 (b) Provides physicians' services primarily: (i) Directly
57 through physicians who are either employees or partners of the
58 organization; or (ii) through arrangements with individual
59 physicians or one or more groups of physicians organized on a
60 group practice or individual practice arrangement; or (iii)
61 through some combination of paragraphs (i) and (ii) of this
62 subdivision;

63 (c) Assures the availability, accessibility and quality,
64 including effective utilization, of the health care services which

65 it provides or makes available through clearly identifiable focal
66 points of legal and administrative responsibility; and

67 (d) Offers services through an organized delivery system in
68 which a primary care physician or primary care provider is
69 designated for each subscriber upon enrollment. The primary
70 care physician or primary care provider is responsible for
71 coordinating the health care of the subscriber and is responsible
72 for referring the subscriber to other providers when necessary:
73 *Provided*, That when dental care is provided by the health
74 maintenance organization the dentist selected by the subscriber
75 from the list provided by the health maintenance organization
76 shall coordinate the covered dental care of the subscriber, as
77 approved by the primary care physician or the health mainte-
78 nance organization.

79 (12) “Impaired” means a financial situation in which, based
80 upon the financial information which would be required by this
81 chapter for the preparation of the health maintenance organiza-
82 tion’s annual statement, the assets of the health maintenance
83 organization are less than the sum of all of its liabilities and
84 required reserves including any minimum capital and surplus
85 required of the health maintenance organization by this chapter
86 so as to maintain its authority to transact the kinds of business
87 or insurance it is authorized to transact.

88 (13) “Individual practice arrangement” means any agree-
89 ment or arrangement to provide medical services on behalf of
90 a health maintenance organization among or between physi-
91 cians or between a health maintenance organization and
92 individual physicians or groups of physicians, where the
93 physicians are not employees or partners of the health mainte-
94 nance organization and are not members of or affiliated with a
95 medical group.

96 (14) “Insolvent” or “insolvency” means a financial situation
97 in which, based upon the financial information that would be
98 required by this chapter for the preparation of the health

99 maintenance organization's annual statement, the assets of the
100 health maintenance organization are less than the sum of all of
101 its liabilities and required reserves.

102 (15) "Medical group" or "group practice" means a profes-
103 sional corporation, partnership, association or other organiza-
104 tion composed solely of health professionals licensed to
105 practice medicine or osteopathy and of other licensed health
106 professionals, including podiatrists, dentists and optometrists,
107 as are necessary for the provision of health services for which
108 the group is responsible: (a) A majority of the members of
109 which are licensed to practice medicine or osteopathy; (b) who
110 as their principal professional activity engage in the coordinated
111 practice of their profession; (c) who pool their income for
112 practice as members of the group and distribute it among
113 themselves according to a prearranged salary, drawing account
114 or other plan; and (d) who share medical and other records and
115 substantial portions of major equipment and professional,
116 technical and administrative staff.

117 (16) "Premium" means a prepaid per capita or prepaid
118 aggregate fixed sum unrelated to the actual or potential utiliza-
119 tion of services of any particular person which is charged by the
120 health maintenance organization for health services provided to
121 an enrollee.

122 (17) "Primary care physician" means the general practitio-
123 ner, family practitioner, obstetrician/gynecologist, pediatrician
124 or specialist in general internal medicine who is chosen or
125 designated for each subscriber who will be responsible for
126 coordinating the health care of the subscriber, including
127 necessary referrals to other providers.

128 (18) "Primary care provider" means a person who may be
129 chosen or designated in lieu of a primary care physician for
130 each subscriber, who will be responsible for coordinating the
131 health care of the subscriber, including necessary referrals to
132 other providers, and includes:

133 (a) An advanced nurse practitioner practicing in compliance
134 with article seven, chapter thirty of this code and other applica-
135 ble state and federal laws, who develops a mutually agreed
136 upon association in writing with a primary care physician on the
137 panel of and credentialed by the health maintenance organiza-
138 tion; and

139 (b) A certified nurse-midwife, but only if chosen or
140 designated in lieu of a subscriber's primary care physician or
141 other primary care provider during the subscriber's pregnancy
142 and for a period extending through the end of the month in
143 which the sixty-day period following termination of pregnancy
144 ends.

145 (c) Nothing in this subsection may be construed to expand
146 the scope of practice for advanced nurse practitioners as
147 governed by article seven, chapter thirty of this code or any
148 legislative rule, or for certified nurse-midwives, as defined in
149 article fifteen, chapter thirty of this code.

150 (19) "Provider" means any physician, hospital or other
151 person or organization which is licensed or otherwise autho-
152 rized in this state to furnish health care services.

153 (20) "Uncovered expenses" means the cost of health care
154 services that are covered by a health maintenance organization,
155 for which a subscriber would also be liable in the event of the
156 insolvency of the organization.

157 (21) "Service area" means the county or counties approved
158 by the commissioner within which the health maintenance
159 organization may provide or arrange for health care services to
160 be available to its subscribers.

161 (22) "Statutory surplus" means the minimum amount of
162 unencumbered surplus which a corporation must maintain
163 pursuant to the requirements of this article.

164 (23) "Surplus" means the amount by which a corporation's
165 assets exceeds its liabilities and required reserves based upon
166 the financial information which would be required by this

167 chapter for the preparation of the corporation's annual state-
168 ment except that assets pledged to secure debts not reflected on
169 the books of the health maintenance organization shall not be
170 included in surplus.

171 (24) "Surplus notes" means debt which has been subordi-
172 nated to all claims of subscribers and general creditors of the
173 organization.

174 (25) "Qualified independent actuary" means an actuary who
175 is a member of the American academy of actuaries or the
176 society of actuaries and has experience in establishing rates for
177 health maintenance organizations and who has no financial or
178 employment interest in the health maintenance organization.

179 (26) "Quality assurance" means an ongoing program
180 designed to objectively and systematically monitor and evaluate
181 the quality and appropriateness of the enrollee's care, pursue
182 opportunities to improve the enrollee's care and to resolve
183 identified problems at the prevailing professional standard of
184 care.

185 (27) "Utilization management" means a system for the
186 evaluation of the necessity, appropriateness and efficiency of
187 the use of health care services, procedures and facilities.

CHAPTER 165

**(H. B. 3253 — By Delegates Leach, Frederick, Keener,
R. M. Thompson, Fletcher, Ashley and Hall)**

[Passed April 13, 2001; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article twenty-five-a,
chapter thirty-three of the code of West Virginia, one thousand

nine hundred thirty-one, as amended, relating to insurance; health maintenance organization act; definitions; and redefining copayment to include percentage payments made by a subscriber.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.

***§33-25A-2. Definitions.**

1 (1) “Basic health care services” means physician, hospital,
2 out-of-area, podiatric, chiropractic, laboratory, X ray, emer-
3 gency, short-term mental health services not exceeding twenty
4 outpatient visits in any twelve-month period, and cost-effective
5 preventive services including immunizations, well-child care,
6 periodic health evaluations for adults, voluntary family plan-
7 ning services, infertility services, and children’s eye and ear
8 examinations conducted to determine the need for vision and
9 hearing corrections, which services need not necessarily include
10 all procedures or services offered by a service provider.

11 (2) “Capitation” means the fixed amount paid by a health
12 maintenance organization to a health care provider under
13 contract with the health maintenance organization in exchange
14 for the rendering of health care services.

15 (3) “Commissioner” means the commissioner of insurance.

16 (4) “Consumer” means any person who is not a provider of
17 care or an employee, officer, director or stockholder of any
18 provider of care.

***Clerk’s Note:** This section was also amended by H. B. 2389 (Chapter 164), which passed subsequent to this act.

19 (5) “Copayment” means a specific dollar amount or
20 percentage, except as otherwise provided for by statute, that the
21 subscriber must pay upon receipt of covered health care
22 services and which is set at an amount or percentage consistent
23 with allowing subscriber access to health care services.

24 (6) “Employee” means a person in some official employ-
25 ment or position working for a salary or wage continuously for
26 no less than one calendar quarter and who is in such a relation
27 to another person that the latter may control the work of the
28 former and direct the manner in which the work shall be done.

29 (7) “Employer” means any individual, corporation, partner-
30 ship, other private association, or state or local government that
31 employs the equivalent of at least two full-time employees
32 during any four consecutive calendar quarters.

33 (8) “Enrollee”, “subscriber” or “member” means an
34 individual who has been voluntarily enrolled in a health
35 maintenance organization, including individuals on whose
36 behalf a contractual arrangement has been entered into with a
37 health maintenance organization to receive health care services.

38 (9) “Evidence of coverage” means any certificate, agree-
39 ment or contract issued to an enrollee setting out the coverage
40 and other rights to which the enrollee is entitled.

41 (10) “Health care services” means any services or goods
42 included in the furnishing to any individual of medical, mental
43 or dental care, or hospitalization or incident to the furnishing of
44 the care or hospitalization, osteopathic services, chiropractic
45 services, podiatric services, home health, health education or
46 rehabilitation, as well as the furnishing to any person of any and
47 all other services or goods for the purpose of preventing,
48 alleviating, curing or healing human illness or injury.

49 (11) "Health maintenance organization" or "HMO" means
50 a public or private organization which provides, or otherwise
51 makes available to enrollees, health care services, including at
52 a minimum basic health care services, and which:

53 (a) Receives premiums for the provision of basic health
54 care services to enrollees on a prepaid per capita or prepaid
55 aggregate fixed sum basis, excluding copayments;

56 (b) Provides physicians' services primarily: (i) Directly
57 through physicians who are either employees or partners of the
58 organization; or (ii) through arrangements with individual
59 physicians or one or more groups of physicians organized on a
60 group practice or individual practice arrangement; or (iii)
61 through some combination of paragraphs (i) and (ii) of this
62 subdivision;

63 (c) Assures the availability, accessibility and quality,
64 including effective utilization, of the health care services which
65 it provides or makes available through clearly identifiable focal
66 points of legal and administrative responsibility; and

67 (d) Offers services through an organized delivery system in
68 which a primary care physician is designated for each sub-
69 scriber upon enrollment. The primary care physician is respon-
70 sible for coordinating the health care of the subscriber and is
71 responsible for referring the subscriber to other providers when
72 necessary: *Provided*, That when dental care is provided by the
73 health maintenance organization the dentist selected by the
74 subscriber from the list provided by the health maintenance
75 organization shall coordinate the covered dental care of the
76 subscriber, as approved by the primary care physician or the
77 health maintenance organization.

78 (12) "Impaired" means a financial situation in which, based
79 upon the financial information which would be required by this
80 chapter for the preparation of the health maintenance organiza-

81 tion's annual statement, the assets of the health maintenance
82 organization are less than the sum of all of its liabilities and
83 required reserves including any minimum capital and surplus
84 required of the health maintenance organization by this chapter
85 so as to maintain its authority to transact the kinds of business
86 or insurance it is authorized to transact.

87 (13) "Individual practice arrangement" means any agree-
88 ment or arrangement to provide medical services on behalf of
89 a health maintenance organization among or between physi-
90 cians or between a health maintenance organization and
91 individual physicians or groups of physicians, where the
92 physicians are not employees or partners of the health mainte-
93 nance organization and are not members of or affiliated with a
94 medical group.

95 (14) "Insolvent" or "insolvency" means a financial situation
96 in which, based upon the financial information that would be
97 required by this chapter for the preparation of the health
98 maintenance organization's annual statement, the assets of the
99 health maintenance organization are less than the sum of all of
100 its liabilities and required reserves.

101 (15) "Medical group" or "group practice" means a profes-
102 sional corporation, partnership, association or other organiza-
103 tion composed solely of health professionals licensed to
104 practice medicine or osteopathy and of other licensed health
105 professionals, including podiatrists, dentists and optometrists,
106 as are necessary for the provision of health services for which
107 the group is responsible: (a) A majority of the members of
108 which are licensed to practice medicine or osteopathy; (b) who
109 as their principal professional activity engage in the coordinated
110 practice of their profession; (c) who pool their income for
111 practice as members of the group and distribute it among
112 themselves according to a prearranged salary, drawing account
113 or other plan; and (d) who share medical and other records and

114 substantial portions of major equipment and professional,
115 technical and administrative staff.

116 (16) "Premium" means a prepaid per capita or prepaid
117 aggregate fixed sum unrelated to the actual or potential utiliza-
118 tion of services of any particular person which is charged by the
119 health maintenance organization for health services provided to
120 an enrollee.

121 (17) "Primary care physician" means the general practitio-
122 ner, family practitioner, obstetrician/gynecologist, pediatrician
123 or specialist in general internal medicine who is chosen or
124 designated for each subscriber who will be responsible for
125 coordinating the health care of the subscriber, including
126 necessary referrals to other providers: *Provided*, That a certified
127 nurse-midwife may be chosen or designated in lieu of as a
128 subscriber's primary care physician during the subscriber's
129 pregnancy and for a period extending through the end of the
130 month in which the sixty-day period following termination of
131 pregnancy ends: *Provided, however*, That nothing in this
132 subsection shall expand the scope of practice for certified
133 nurse-midwives as defined in article fifteen, chapter thirty of
134 this code.

135 (18) "Provider" means any physician, hospital or other
136 person or organization which is licensed or otherwise autho-
137 rized in this state to furnish health care services.

138 (19) "Uncovered expenses" means the cost of health care
139 services that are covered by a health maintenance organization,
140 for which a subscriber would also be liable in the event of the
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