

ACTS
OF THE
LEGISLATURE
OF
WEST VIRGINIA



Regular Session, 1998
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Second Extraordinary Session, 1998

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CHAPTER 177

(S. B. 388—By Senators Tomblin, Mr. President, and Buckalew)
[By Request of the Executive]

[Passed March 12, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact article seventeen, chapter twenty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to prohibiting housing discrimination against individuals with disabilities; amending definitions and defining group residential homes; eliminating special zoning requirements for group residential facilities and group residential homes; eliminating the complaint process for residents of a contiguous area of a zoning district in which a group residential facility is located; and providing that group residential homes are not subject to licensure.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 17. GROUP RESIDENTIAL FACILITIES.

§27-17-1. Definitions.

§27-17-2. Permitted use of group residential facilities; restrictions.

§27-17-3. License from director of health; application; regulations; revocation.

§27-17-4. Exclusion by private agreement void.

§27-17-1. Definitions.

- 1 (a) "Developmental disability" means a chronic
- 2 disability of a person which: (1) is attributable to a mental
- 3 or physical impairment or combination of mental and
- 4 physical impairments; (2) is likely to continue
- 5 indefinitely; (3) results in substantial functional limitations
- 6 in self-direction, capacity for independent living or
- 7 economic self-sufficiency; and (4) reflects the person's
- 8 need for a combination and sequence of special,
- 9 interdisciplinary or generic care, treatment or other

10 services which are of lifelong or extended duration and
11 are individually planned and coordinated.

12 (b) "Behavioral disability" means a disability of a
13 person which: (1) Is attributable to severe or persistent
14 mental illness, emotional disorder or chemical
15 dependency; and (2) results in substantial functional
16 limitations in self-direction, capacity for independent
17 living or economic self-sufficiency.

18 (c) "Group residential facility" means a facility which
19 is owned or leased by a behavioral health service provider
20 and which: (1) Provides residential services and
21 supervision for individuals who are developmentally
22 disabled or behaviorally disabled; (2) is occupied as a
23 residence by not more than eight individuals who are
24 developmentally disabled and not more than three
25 supervisors, or is occupied as a residence by not more than
26 twelve individuals who are behaviorally disabled and not
27 more than three supervisors; (3) is licensed by the
28 department of health or the division of human services;
29 and (4) complies with the state fire commission for
30 residential facilities.

31 (d) "Group residential home" means a building owned
32 or leased by developmentally disabled or behaviorally
33 disabled persons for purposes of establishing a personal
34 residence. A behavioral health service provider may
35 lease a building to such persons if the provider is
36 providing services to the persons without a license
37 provided for in this article.

**§27-17-2. Permitted use of group residential facilities;
restrictions.**

1 Both a group residential facility and a group
2 residential home shall be a permitted residential use of
3 property for the purposes of zoning and shall be a
4 permitted use in all zones or districts. No county
5 commission, governing board of a municipality or
6 planning commission shall require a group residential
7 facility, its owner or operator, to obtain a conditional use
8 permit, special use permit, special exception or variance
9 for location of such facility in any zone or district.

**§27-17-3. License from director of health; application;
regulations; revocation.**

- 1 (a) No group residential facility shall be established,
2 maintained or operated unless a license therefor shall be
3 first obtained from the director of health, except that a
4 group residential facility for behaviorally disabled
5 juveniles shall be deemed to satisfy all requirements of this
6 section by obtaining a license from the commissioner of
7 human services. The application for such license shall
8 contain such data and facts as the director may require.
9 The director may promulgate reasonable regulations for
10 the conduct of such facilities, including, but not limited to,
11 a statement of the rights of patients in group residential
12 facilities for the mentally and physically impaired to
13 ensure the adequate care and supervision of such patients,
14 and shall have the authority to investigate and inspect any
15 such facility, and may revoke the license of any such
16 facility for good cause after notice and hearing.
- 17 (b) A group residential home is not required to obtain
18 a license from the director of health.

§27-17-4. Exclusion by private agreement void.

- 1 Any restriction, reservation, condition, exception
2 or covenant in any subdivision plan, deed, or other
3 instrument of or pertaining to the transfer, sale, lease or
4 use of property which would permit residential use of
5 property but prohibit the use of such property as a group
6 residential facility or group residential home shall, to the
7 extent of such prohibition, be void as against the public
8 policy of this state and shall be given no legal or equitable
9 force or effect.

CHAPTER 178

(H. B. 4545—By Delegates Amores, Rowe, Fleischauer, Trump,
Johnson, Faircloth and Mahan)

[Passed March 14, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, three, four, five, six, eight, nine, thirteen and sixteen, article eleven, chapter five of the code of West Virginia, one thousand nine hundred thirty-

one, as amended; and to further amend said article by adding thereto a new section, designated section twenty, all relating to the West Virginia human rights act; establishing public policy; defining terms; continuing the human rights commission; providing for appointment and composition of members; providing for organization and administration of commission; describing commission's authority and responsibilities; defining unlawful discriminatory practices; establishing exclusiveness of remedies and exceptions; issuance of notice of a right to sue; injunctions of discriminatory practices; exemption of certain records; establishing a civil action by attorney general; and providing for civil and criminal penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 11. HUMAN RIGHTS COMMISSION.

- §5-11-2. Declaration of policy.
- §5-11-3. Definitions.
- §5-11-4. Human rights commission continued; status, powers and objects.
- §5-11-5. Composition; appointment, terms and oath of members; compensation and expenses.
- §5-11-6. Commission organization and personnel; executive director; offices; meetings; quorum; expenses of personnel.
- §5-11-8. Commission powers; functions; services.
- §5-11-9. Unlawful discriminatory practices.
- §5-11-13. Exclusiveness of remedy; exceptions.
- §5-11-16. Certain records exempt.
- §5-11-20. Violations of human rights; civil action by attorney general.

§5-11-2. Declaration of policy.

1 It is the public policy of the state of West Virginia to
 2 provide all of its citizens equal opportunity for
 3 employment, equal access to places of public
 4 accommodations, and equal opportunity in the sale,
 5 purchase, lease, rental and financing of housing

6 accommodations or real property. Equal opportunity in
7 the areas of employment and public accommodations is
8 hereby declared to be a human right or civil right of all
9 persons without regard to race, religion, color, national
10 origin, ancestry, sex, age, blindness or disability. Equal
11 opportunity in housing accommodations or real property
12 is hereby declared to be a human right or civil right of all
13 persons without regard to race, religion, color, national
14 origin, ancestry, sex, blindness, disability or familial status.

15 The denial of these rights to properly qualified
16 persons by reason of race, religion, color, national origin,
17 ancestry, sex, age, blindness, disability or familial status is
18 contrary to the principles of freedom and equality of
19 opportunity and is destructive to a free and democratic
20 society.

§5-11-3. Definitions.

1 When used in this article:

2 (a) The term "person" means one or more
3 individuals, partnerships, associations, organizations,
4 corporations, labor organizations, cooperatives, legal
5 representatives, trustees, trustees in bankruptcy, receivers
6 and other organized groups of persons;

7 (b) The term "commission" means the West Virginia
8 human rights commission;

9 (c) The term "director" means the executive director
10 of the commission;

11 (d) The term "employer" means the state, or any
12 political subdivision thereof, and any person employing
13 twelve or more persons within the state for twenty or more
14 calendar weeks in the calendar year in which the act of
15 discrimination allegedly took place or the preceding
16 calendar year: *Provided*, That such terms shall not be
17 taken, understood or construed to include a private club;

18 (e) The term "employee" shall not include any
19 individual employed by his or her parents, spouse or
20 child;

21 (f) The term "labor organization" includes any
22 organization which exists for the purpose, in whole or in
23 part, of collective bargaining or of dealing with employers
24 concerning grievances, terms or conditions of
25 employment or for other mutual aid or protection in
26 relation to employment;

27 (g) The term "employment agency" includes any
28 person undertaking, with or without compensation, to
29 procure, recruit, refer or place employees. A newspaper
30 engaged in the activity of advertising in the normal course
31 of its business shall not be deemed to be an employment
32 agency;

33 (h) The term "discriminate" or "discrimination"
34 means to exclude from, or fail or refuse to extend to, a
35 person equal opportunities because of race, religion, color,
36 national origin, ancestry, sex, age, blindness, disability or
37 familial status and includes to separate or segregate;

38 (i) The term "unlawful discriminatory practices"
39 includes only those practices specified in section nine of
40 this article;

41 (j) The term "place of public accommodations"
42 means any establishment or person, as defined herein,
43 including the state, or any political or civil subdivision
44 thereof, which offers its services, goods, facilities or
45 accommodations to the general public, but shall not
46 include any accommodations which are in their nature
47 private. To the extent that any penitentiary, correctional
48 facility, detention center, regional jail or county jail is a
49 place of public accommodation, the rights, remedies and
50 requirements provided by this article for any violation of
51 subdivision (6), section nine of this article shall not apply
52 to any person other than: (1) Any person employed at a
53 penitentiary, correctional facility, detention center,
54 regional jail or county jail; (2) any person employed by a
55 law-enforcement agency; or (3) any person visiting any
56 such employee or visiting any person detained in custody
57 at such facility;

58 (k) The term "age" means the age of forty or above;

59 (l) For the purpose of this article, a person shall be
60 considered to be blind only if his central visual acuity
61 does not exceed twenty/two hundred in the better eye with
62 correcting lenses, or if his visual acuity is greater than
63 twenty/two hundred but is occasioned by a limitation in
64 the fields of vision such that the widest diameter of the
65 visual field subtends an angle no greater than twenty
66 degrees; and

67 (m) The term "disability" means:

68 (1) A mental or physical impairment which
69 substantially limits one or more of such person's major
70 life activities. The term "major life activities" includes
71 functions such as caring for one's self, performing
72 manual tasks, walking, seeing, hearing, speaking,
73 breathing, learning and working;

74 (2) A record of such impairment; or

75 (3) Being regarded as having such an impairment.

76 For the purposes of this article, this term does not
77 include persons whose current use of or addiction to
78 alcohol or drugs prevents such persons from performing
79 the duties of the job in question or whose employment, by
80 reason of such current alcohol or drug abuse, would
81 constitute a direct threat to property or the safety of
82 others.

***§5-11-4. Human rights commission continued; status, powers
and objects.**

1 The West Virginia human rights commission,
2 heretofore created, is hereby continued. The commission
3 shall have the power and authority and shall perform the
4 functions and services as in this article prescribed and as
5 otherwise provided by law. The commission shall
6 encourage and endeavor to bring about mutual
7 understanding and respect among all racial, religious and
8 ethnic groups within the state and shall strive to eliminate
9 all discrimination in employment and places of public

*Clerk's Note: This section was also amended by SB 537 (Chapter 261), which passed prior to this act.

10 accommodations by virtue of race, religion, color, national
11 origin, ancestry, sex, age, blindness or disability and shall
12 strive to eliminate all discrimination in the sale, purchase,
13 lease, rental or financing of housing and other real
14 property by virtue of race, religion, color, national origin,
15 ancestry, sex, blindness, disability or familial status.

16 Pursuant to the provisions of article ten, chapter four
17 of this code, the West Virginia human rights commission
18 shall continue to exist until the first day of July, two
19 thousand.

**§5-11-5. Composition; appointment, terms and oath of
members; compensation and expenses.**

1 The commission shall be composed of nine members,
2 all residents and citizens of the state of West Virginia and
3 broadly representative of the several racial, religious and
4 ethnic groups residing within the state, to be appointed by
5 the governor, by and with the advice and consent of the
6 Senate. Not more than five members of the commission
7 shall be members of the same political party and at least
8 one member, but not more than three members, shall be
9 from any one congressional district.

10 Members of the commission shall be appointed for
11 terms of three years commencing on the first day of July
12 of the year of their appointments, except that the nine
13 members first appointed hereunder shall be appointed for
14 terms of from one to three years, respectively, so that the
15 terms of three members of the commission will expire on
16 the thirtieth day of June of each succeeding year
17 thereafter. Upon the expiration of the initial terms, all
18 subsequent appointments shall be for terms of three years
19 each, except that appointments to fill vacancies shall be for
20 the unexpired term thereof. Members shall be eligible for
21 reappointment. Before assuming and performing any
22 duties as a member of the commission, each commission
23 member shall take and subscribe to the official oath
24 prescribed by section 5, article IV of the constitution of
25 West Virginia, which executed oath shall be filed in the
26 office of the secretary of state.

27 The members of the commission shall not receive a
28 salary, but each appointed member shall be paid fifty
29 dollars per diem for actual time spent in the performance

30 of duties under this article and shall be reimbursed for
31 actual and necessary expenses incident to the performance
32 of their duties, upon presentation of an itemized and
33 sworn statement thereof. The foregoing per diem and
34 reimbursement for actual and necessary expenses shall be
35 paid from appropriations made by the Legislature to the
36 commission.

§5-11-6. Commission organization and personnel; executive director; offices; meetings; quorum; expenses of personnel.

1 As soon as practical after the first day of July of each
2 year, the governor shall call a meeting of the commission
3 to be convened at the state capitol. The commission shall
4 at such meeting organize by electing one of its members
5 as chairperson of the commission and one as vice
6 chairperson thereof for a term of one year or until their
7 successors are elected and qualified. At such meeting the
8 commission shall also elect from its membership such
9 other officers as may be found necessary and proper for
10 its effective organization.

11 The governor shall, by and with the advice and consent
12 of the Senate, appoint an executive director to serve at his
13 or her will and pleasure. The executive director shall serve
14 as secretary of the commission. The executive director
15 shall have a college degree. He or she shall be selected
16 with particular reference to his or her training, experience
17 and qualifications for the position and shall be paid an
18 annual salary, payable in monthly installments, from any
19 appropriations made therefor. The commission, upon
20 recommendation of the executive director and in
21 accordance with the requirements of the civil service law,
22 may employ such personnel as may be necessary for the
23 effective and orderly performance of the functions and
24 services of the commission. The commission shall employ
25 an administrative law judge who shall be an attorney, duly
26 licensed to practice law in the state of West Virginia, for
27 the conduct of the public hearings authorized in
28 subdivision (3), subsection (d), section eight of this article.

29 The commission shall equip and maintain its offices at
30 the state capitol and shall hold its annual organizational
31 meeting there. The commission may hold other meetings

32 during the year at such times and places within the state as
33 may be found necessary and may maintain one branch
34 office within the state as determined by the commission to
35 be necessary for the effective and orderly performance of
36 the functions and services of the commission. Any five
37 members of the commission shall constitute a quorum for
38 the transaction of business. Minutes of its meetings shall
39 be kept by its secretary.

40 The executive director and other commission
41 personnel shall be reimbursed for necessary and
42 reasonable travel and subsistence expenses actually
43 incurred in the performance of commission services upon
44 presentation of properly verified expense accounts as
45 prescribed by law.

§5-11-8. Commission powers; functions; services.

1 The commission is hereby authorized and empowered:

2 (a) To cooperate and work with federal, state and local
3 government officers, units, activities and agencies in the
4 promotion and attainment of more harmonious
5 understanding and greater equality of rights between and
6 among all racial, religious and ethnic groups in this state;

7 (b) To enlist the cooperation of racial, religious and
8 ethnic units, community and civic organizations, industrial
9 and labor organizations and other identifiable groups of
10 the state in programs and campaigns devoted to the
11 advancement of tolerance, understanding and the equal
12 protection of the laws of all groups and peoples;

13 (c) To receive, investigate and pass upon complaints
14 alleging discrimination in employment or places of public
15 accommodations, because of race, religion, color, national
16 origin, ancestry, sex, age, blindness or disability, and
17 complaints alleging discrimination in the sale, purchase,
18 lease, rental and financing of housing accommodations or
19 real property because of race, religion, color, national
20 origin, ancestry, sex, blindness, disability or familial status,
21 and to initiate its own consideration of any situations,
22 circumstances or problems, including therein any racial,
23 religious or ethnic group tensions, prejudice, disorder or
24 discrimination reported or existing within the state relating

25 to employment, places of public accommodations,
26 housing accommodations and real property;

27 (d) To hold and conduct public and private hearings,
28 in the county where the respondent resides or transacts
29 business or where agreed to by the parties or where the
30 acts complained of occurred, on complaints, matters and
31 questions before the commission and, in connection
32 therewith, relating to discrimination in employment or
33 places of public accommodations, housing
34 accommodations or real property and during the
35 investigation of any formal complaint before the
36 commission relating to employment, places of public
37 accommodations, housing accommodations or real
38 property to:

39 (1) Issue subpoenas and subpoenas duces tecum upon
40 the approval of the executive director or the chairperson
41 of the commission; administer oaths; take the testimony of
42 any person under oath; and make reimbursement for
43 travel and other reasonable and necessary expenses in
44 connection with such attendance;

45 (2) Furnish copies of public hearing records to parties
46 involved therein upon their payment of the reasonable
47 costs thereof to the commission;

48 (3) Delegate to an administrative law judge who shall
49 be an attorney, duly licensed to practice law in West
50 Virginia, the power and authority to hold and conduct
51 hearings, as herein provided, to determine all questions of
52 fact and law presented during the hearing and to render a
53 final decision on the merits of the complaint, subject to the
54 review of the commission as hereinafter set forth.

55 Any respondent or complainant who shall feel
56 aggrieved at any final action of an administrative law
57 judge shall file a written notice of appeal with the
58 commission by serving such notice on the executive
59 director and upon all other parties within thirty days after
60 receipt of the administrative law judge's decision. The
61 commission shall limit its review upon such appeals to
62 whether the administrative law judge's decision is:

63 (A) In conformity with the constitution and the laws of
64 the state and the United States;

65 (B) Within the commission's statutory jurisdiction or
66 authority;

67 (C) Made in accordance with procedures required by
68 law or established by appropriate rules of the commission;

69 (D) Supported by substantial evidence on the whole
70 record; or

71 (E) Not arbitrary, capricious or characterized by abuse
72 of discretion or clearly unwarranted exercise of discretion.

73 (4) To enter into conciliation agreements and consent
74 orders.

75 Each conciliation agreement shall include provisions
76 requiring the respondent to refrain from the commission
77 of unlawful discriminatory practices in the future and shall
78 contain such further provisions as may be agreed upon by
79 the commission and the respondent.

80 If the respondent and the commission agree upon
81 conciliation terms, the commission shall serve upon the
82 complainant a copy of the proposed conciliation
83 agreement. If the complainant agrees to the terms of the
84 agreement or fails to object to such terms within fifteen
85 days after its service upon him or her, the commission
86 shall issue an order embodying such conciliation
87 agreement. If the complainant objects to the agreement,
88 he or she shall serve a specification of his or her
89 objections upon the commission within such period.
90 Unless such objections are met or withdrawn within ten
91 days after service thereof, the commission shall notice the
92 complaint for hearing.

93 Notwithstanding any other provisions of this section,
94 the commission may, where it finds the terms of the
95 conciliation agreement to be in the public interest, execute
96 such agreement, and limit the hearing to the objections of
97 the complainant.

98 If a conciliation agreement is entered into, the
99 commission shall serve a copy of the order embodying
100 such agreement upon all parties to the proceeding.

101 Not later than one year from the date of a conciliation
102 agreement, the commission shall investigate whether the

103 respondent is complying with the terms of such
104 agreement. Upon a finding of noncompliance, the
105 commission shall take appropriate action to assure
106 compliance;

107 (5) To apply to the circuit court of the county where
108 the respondent resides or transacts business for
109 enforcement of any conciliation agreement or consent
110 order by seeking specific performance of such agreement
111 or consent order;

112 (6) To issue cease and desist orders against any person
113 found, after a public hearing, to have violated the
114 provisions of this article or the rules of the commission;

115 (7) To apply to the circuit court of the county where
116 the respondent resides or transacts business for an order
117 enforcing any lawful cease and desist order issued by the
118 commission;

119 (e) To recommend to the governor and Legislature
120 policies, procedures, practices and legislation in matters
121 and questions affecting human rights;

122 (f) To delegate to its executive director such powers,
123 duties and functions as may be necessary and expedient in
124 carrying out the objectives and purposes of this article;

125 (g) To prepare a written report on its work, functions
126 and services for each year ending on the thirtieth day of
127 June and to deliver copies thereof to the governor on or
128 before the first day of December next thereafter;

129 (h) To do all other acts and deeds necessary and
130 proper to carry out and accomplish effectively the objects,
131 functions and services contemplated by the provisions of
132 this article, including the promulgation of legislative rules
133 in accordance with the provisions of article three, chapter
134 twenty-nine-a of this code, implementing the powers and
135 authority hereby vested in the commission;

136 (i) To create such advisory agencies and conciliation
137 councils, local, regional or statewide, as in its judgment will
138 aid in effectuating the purposes of this article, to study the
139 problems of discrimination in all or specific fields or
140 instances of discrimination because of race, religion, color,
141 national origin, ancestry, sex, age, blindness, disability or

142 familial status; to foster, through community effort or
143 otherwise, goodwill, cooperation and conciliation among
144 the groups and elements of the population of this state,
145 and to make recommendations to the commission for the
146 development of policies and procedures, and for programs
147 of formal and informal education, which the commission
148 may recommend to the appropriate state agency. Such
149 advisory agencies and conciliation councils shall be
150 composed of representative citizens serving without pay.
151 The commission may itself make the studies and perform
152 the acts authorized by this subdivision. It may, by
153 voluntary conferences with parties in interest, endeavor by
154 conciliation and persuasion to eliminate discrimination in
155 all the stated fields and to foster goodwill and cooperation
156 among all elements of the population of the state;

157 (j) To accept contributions from any person to assist in
158 the effectuation of the purposes of this section and to seek
159 and enlist the cooperation of private, charitable, religious,
160 labor, civic and benevolent organizations for the purposes
161 of this section;

162 (k) To issue such publications and such results of
163 investigation and research as in its judgment will tend to
164 promote goodwill and minimize or eliminate
165 discrimination: *Provided*, That the identity of the parties
166 involved shall not be disclosed.

§5-11-9. Unlawful discriminatory practices.

1 It shall be an unlawful discriminatory practice, unless
2 based upon a bona fide occupational qualification, or
3 except where based upon applicable security regulations
4 established by the United States or the state of West
5 Virginia or its agencies or political subdivisions:

6 (1) For any employer to discriminate against an
7 individual with respect to compensation, hire, tenure,
8 terms, conditions or privileges of employment if the
9 individual is able and competent to perform the services
10 required even if such individual is blind or disabled:
11 *Provided*, That it shall not be an unlawful discriminatory
12 practice for an employer to observe the provisions of any
13 bona fide pension, retirement, group or employee
14 insurance or welfare benefit plan or system not adopted as
15 a subterfuge to evade the provisions of this subdivision;

16 (2) For any employer, employment agency or labor
17 organization, prior to the employment or admission to
18 membership, to: (A) Elicit any information or make or
19 keep a record of or use any form of application or
20 application blank containing questions or entries
21 concerning the race, religion, color, national origin,
22 ancestry, sex or age of any applicant for employment or
23 membership; (B) print or publish or cause to be printed or
24 published any notice or advertisement relating to
25 employment or membership indicating any preference,
26 limitation, specifications or discrimination based upon
27 race, religion, color, national origin, ancestry, sex,
28 disability or age; or (C) deny or limit, through a quota
29 system, employment or membership because of race,
30 religion, color, national origin, ancestry, sex, age, blindness
31 or disability;

32 (3) For any labor organization because of race,
33 religion, color, national origin, ancestry, sex, age, blindness
34 or disability of any individual to deny full and equal
35 membership rights to any individual or otherwise to
36 discriminate against such individual with respect to hire,
37 tenure, terms, conditions or privileges of employment or
38 any other matter, directly or indirectly, related to
39 employment;

40 (4) For an employer, labor organization, employment
41 agency or any joint labor-management committee
42 controlling apprentice training programs to:

43 (A) Select individuals for an apprentice training
44 program registered with the state of West Virginia on any
45 basis other than their qualifications as determined by
46 objective criteria which permit review;

47 (B) Discriminate against any individual with respect to
48 his or her right to be admitted to or participate in a
49 guidance program, an apprenticeship training program,
50 on-the-job training program or other occupational
51 training or retraining program;

52 (C) Discriminate against any individual in his or her
53 pursuit of such programs or to discriminate against such a
54 person in the terms, conditions or privileges of such
55 programs;

56 (D) Print or circulate or cause to be printed or
57 circulated any statement, advertisement or publication, or
58 to use any form of application for these programs or to
59 make any inquiry in connection with a program which
60 expresses, directly or indirectly, discrimination or any
61 intent to discriminate unless based upon a bona fide
62 occupational qualification;

63 (5) For any employment agency to fail or refuse to
64 classify properly, refer for employment or otherwise to
65 discriminate against any individual because of his or her
66 race, religion, color, national origin, ancestry, sex, age,
67 blindness or disability;

68 (6) For any person being the owner, lessee, proprietor,
69 manager, superintendent, agent or employee of any place
70 of public accommodations to:

71 (A) Refuse, withhold from or deny to any individual
72 because of his or her race, religion, color, national origin,
73 ancestry, sex, age, blindness or disability, either directly or
74 indirectly, any of the accommodations, advantages,
75 facilities, privileges or services of the place of public
76 accommodations;

77 (B) Publish, circulate, issue, display, post or mail, either
78 directly or indirectly, any written or printed
79 communication, notice or advertisement to the effect that
80 any of the accommodations, advantages, facilities,
81 privileges or services of any such place shall be refused,
82 withheld from or denied to any individual on account of
83 race, religion, color, national origin, ancestry, sex, age,
84 blindness or disability, or that the patronage or custom
85 thereat of any individual, belonging to or purporting to be
86 of any particular race, religion, color, national origin,
87 ancestry, sex or age, or who is blind or disabled, is
88 unwelcome, objectionable, not acceptable, undesired or
89 not solicited; or

90 (7) For any person, employer, employment agency,
91 labor organization, owner, real estate broker, real estate
92 salesman or financial institution to:

93 (A) Engage in any form of threats or reprisal, or to
94 engage in, or hire, or conspire with others to commit acts
95 or activities of any nature, the purpose of which is to

96 harass, degrade, embarrass or cause physical harm or
97 economic loss or to aid, abet, incite, compel or coerce any
98 person to engage in any of the unlawful discriminatory
99 practices defined in this section;

100 (B) Willfully obstruct or prevent any person from
101 complying with the provisions of this article, or to resist,
102 prevent, impede or interfere with the commission or any
103 of its members or representatives in the performance of a
104 duty under this article; or

105 (C) Engage in any form of reprisal or otherwise
106 discriminate against any person because he or she has
107 opposed any practices or acts forbidden under this article
108 or because he or she has filed a complaint, testified or
109 assisted in any proceeding under this article.

§5-11-13. Exclusiveness of remedy; exceptions.

1 (a) Except as provided in subsection (b), nothing
2 contained in this article shall be deemed to repeal or
3 supersede any of the provisions of any existing or
4 hereafter adopted municipal ordinance, municipal charter
5 or of any law of this state relating to discrimination
6 because of race, religion, color, national origin, ancestry,
7 sex, age, blindness or disability, but as to acts declared
8 unlawful by section nine of this article the procedure
9 herein provided shall, when invoked, be exclusive and the
10 final determination therein shall exclude any other action,
11 civil or criminal, based on the same grievance of the
12 complainant concerned. If such complainant institutes
13 any action based on such grievance without resorting to
14 the procedure provided in this article, he or she may not
15 subsequently resort to the procedure herein. In the event
16 of a conflict between the interpretation of a provision of
17 this article and the interpretation of a similar provision
18 contained in any municipal ordinance authorized by
19 charter, the interpretation of the provision in this article
20 shall apply to such municipal ordinance.

21 (b) Notwithstanding the provisions of subsection (a) of
22 this section, a complainant may institute an action against
23 a respondent in the county wherein the respondent resides
24 or transacts business at any time within ninety days after
25 the complainant is given notice of a right to sue pursuant
26 to this subsection or, if the statute of limitations on the

27 claim has not expired at the end of such ninety-day
28 period, then at any time during which such statute of
29 limitations has not expired. If a suit is filed under this
30 section the proceedings pending before the commission
31 shall be deemed concluded.

32 The commission shall give a complainant who has filed
33 a complaint a notice of a right to sue upon: (1) The
34 dismissal of the complaint for any reason other than an
35 adjudication of the merits of the case; or (2) the request of
36 a complainant at any time after the timely filing of the
37 complaint in any case which has not been determined on
38 its merits or has not resulted in a conciliation agreement to
39 which the complainant is a party. Upon the issuance of a
40 right to sue letter pursuant to subdivision (1) or (2), the
41 commission may dismiss the complaint.

42 Notice of right to sue shall be given immediately upon
43 complainant being entitled thereto, by personal service or
44 certified mail, return receipt requested, which notice shall
45 inform the complainant in plain terms of his or her right
46 to institute a civil action as provided in this section within
47 ninety days of the giving of such notice. Service of the
48 notice shall be complete upon mailing.

49 (c) In any action filed under this section, if the court
50 finds that the respondent has engaged in or is engaging in
51 an unlawful discriminatory practice charged in the
52 complaint, the court shall enjoin the respondent from
53 engaging in such unlawful discriminatory practice and
54 order affirmative action which may include, but is not
55 limited to, reinstatement or hiring of employees, granting
56 of back pay or any other legal or equitable relief as the
57 court deems appropriate. In actions brought under this
58 section, the court in its discretion may award all or a
59 portion of the costs of litigation, including reasonable
60 attorney fees and witness fees, to the complainant.

61 (d) The provisions of this section shall be available to
62 all complainants whose active cases are pending before the
63 human rights commission as well as those complainants
64 who file after the effective date of this section.

§5-11-16. Certain records exempt.

1 Notwithstanding any other provisions of this article, it
2 shall not be an unlawful discriminatory practice for the
3 bureau of employment programs to ascertain and record
4 the age, sex, race, religion, color, national origin, ancestry,
5 blindness or disability of any individual for the purpose of
6 making such reports as may from time to time be required
7 by agencies of the federal government or be necessary to
8 show compliance with any rule or regulation issued by
9 any such agency. Said records may be made and kept in
10 the manner required by the federal government:
11 *Provided*, That such recording of the age, sex, race,
12 religion, color, national origin, ancestry, blindness or
13 disability of any individual shall not be used to
14 discriminate, within the meaning of this article, directly or
15 indirectly, against any such individual as prohibited by all
16 other sections of this article.

**§5-11-20. Violations of human rights; civil action by attorney
general.**

1 (a) A person has the right to engage in lawful activities
2 without being subject to actual or threatened:

3 (1) Physical force or violence against him or her or
4 any other person, or

5 (2) Damage to, destruction of or trespass on property,
6 any of which is motivated by race, color, religion, sex,
7 ancestry, national origin, political affiliation or disability.

8 (b) Whenever any person, whether or not acting under
9 the color of law, intentionally interferes or attempts to
10 interfere with another person's exercise or enjoyment of
11 rights secured by this article or article eleven-a of this
12 chapter, by actual or threatened physical force or violence
13 against that person or any other person, or by actual or
14 threatened damage to, destruction of or trespass on
15 property, the attorney general may bring a civil action:

16 (1) For injunctive or other appropriate equitable relief
17 in order to protect the peaceable exercise or enjoyment of
18 the rights secured, or

19 (2) For civil penalties as specified in subsection (c) of
20 this section, or

21 (3) For both equitable relief and civil penalties. This
22 action must be brought in the name of the state and
23 instituted in the circuit court for the county where the
24 alleged violator resides or has a principal place of business
25 or where the alleged violation occurred.

26 (c) A civil penalty of not more than five thousand
27 dollars per violation may be assessed against any person
28 violating this section.

29 (d) Each preliminary, temporary, or permanent
30 injunction issued under this section must include a
31 statement describing the penalties to be imposed for a
32 knowing violation of the order or injunction as provided
33 in subsection (e) of this section. The clerk of the circuit
34 court shall transmit one certified copy of each order or
35 injunction issued under this section to the appropriate law-
36 enforcement agency or agencies having authority over
37 locations where the defendant was alleged to have
38 committed the act giving rise to the action, and service of
39 the order or injunction must be accomplished pursuant to
40 the West Virginia rules of civil procedure.

41 (e) A person who knowingly violates a preliminary,
42 temporary or permanent injunction issued under this
43 section is guilty of a misdemeanor and, upon conviction
44 thereof, shall be fined not more than five thousand dollars,
45 or imprisoned in the county or regional jail not more than
46 one year, or both fined and imprisoned.

CHAPTER 179

(Com. Sub. for S. B. 624—By Senators Schoonover and Love)

[Passed March 14, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article one, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section three, article four of said chapter, all relating to the division of human services; providing a definition of state medicaid agency; continuing and defining the purpose and composition of the advisory council for the medicaid

services fund; and providing for the appointment of its members.

Be it enacted by the Legislature of West Virginia:

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

Article

1. Legislative Purpose and Definitions.

4. State Advisory Board; Medical Services Fund; Advisory Council; General Relief Fund.

ARTICLE 1. LEGISLATIVE PURPOSE AND DEFINITIONS.

§9-1-2. Definitions.

1 The following words and terms when used in this
2 chapter have the meanings indicated unless the context
3 clearly indicates a different meaning, and any amendment
4 of this section applies to any verdict, settlement,
5 compromise or judgment entered after the effective date
6 of the amendments to this section enacted during the
7 regular session of the Legislature, one thousand nine
8 hundred ninety-five.

9 (a) The term "department" means the state division of
10 human services.

11 (b) The term "commissioner" means the commissioner
12 of human services.

13 (c) The term "federal-state assistance" means and
14 includes: (1) All forms of aid, care, assistance and services
15 to or on behalf of persons, which are authorized by, and
16 who are authorized to receive the same under and by
17 virtue of, subchapters one, four, five, ten, fourteen, sixteen,
18 eighteen and nineteen, chapter seven, Title 42, United
19 States Code, as those subchapters have heretofore been
20 and may hereafter be amended, supplemented and revised
21 by acts of Congress, and as those subchapters so amended,
22 supplemented and revised have heretofore been and may
23 hereafter be supplemented by valid rules and regulations
24 promulgated by authorized federal agents and agencies,

25 and as those subchapters so amended, supplemented and
26 revised have heretofore been and may hereafter be
27 supplemented by rules promulgated by the state division
28 of human services, which division rules shall be consistent
29 with federal laws, rules and regulations, but not
30 inconsistent with state law; and (2) all forms of aid, care,
31 assistance and services to persons, which are authorized by,
32 and who are authorized to receive the same under and by
33 virtue of, any act of Congress, other than the federal social
34 security act, as amended, for distribution through the state
35 division of human services to recipients of any form of
36 aid, care, assistance and services to persons designated or
37 referred to in (1) of this definition and to recipients of
38 state assistance, including by way of illustration, surplus
39 food and food stamps, which Congress has authorized the
40 secretary of agriculture of the United States to distribute to
41 needy persons.

42 (d) The term "federal assistance" means and includes
43 all forms of aid, care, assistance and services to or on
44 behalf of persons, which are authorized by, and who are
45 authorized to receive the same under and by virtue of, any
46 act of Congress for distribution through the state division
47 of human services, the cost of which is paid entirely out of
48 federal appropriations.

49 (e) The term "state assistance" means and includes all
50 forms of aid, care, assistance, services and general relief
51 made possible solely out of state, county and private
52 appropriations to or on behalf of indigent persons, which
53 are authorized by, and who are authorized to receive the
54 same under and by virtue of, state division of human
55 services' rules.

56 (f) The term "welfare assistance" means the three
57 classes of assistance administered by the state division of
58 human services, namely: Federal-state assistance, federal
59 assistance and state assistance.

60 (g) The term "indigent person" means any person who
61 is domiciled in this state and who is actually in need as
62 defined by department rules and has not sufficient income
63 or other resources to provide for such need as determined
64 by the state division of human services.

65 (h) The term "domiciled in this state" means being
66 physically present in West Virginia accompanied by an
67 intention to remain in West Virginia for an indefinite
68 period of time, and to make West Virginia his or her
69 permanent home. The state division of human services
70 may by rules supplement the foregoing definition of the
71 term "domiciled in this state", but not in a manner as
72 would be inconsistent with federal laws, rules, and
73 regulations applicable to and governing federal-state
74 assistance.

75 (i) The term "medical services" means medical,
76 surgical, dental and nursing services, and other remedial
77 services recognized by law, in the home, office, hospital,
78 clinic and any other suitable place, provided or prescribed
79 by persons permitted or authorized by law to give such
80 services; the services to include drugs and medical
81 supplies, appliances, laboratory, diagnostic and therapeutic
82 services, nursing home and convalescent care and such
83 other medical services and supplies as may be prescribed
84 by the persons.

85 (j) The term "general relief" means cash or its
86 equivalent in services or commodities expended for care
87 and assistance to an indigent person other than for care in
88 a county infirmary, child shelter or similar institution.

89 (k) The term "secretary" means the secretary of the
90 department of health and human resources.

91 (l) The term "estate" means all real and personal
92 property and other assets included within the individual's
93 estate as defined in the state's probate law.

94 (m) The term "services" means nursing facility
95 services, home and community-based services, and related
96 hospital and prescription drug services for which an
97 individual received medicaid medical assistance.

98 (n) The term "state medicaid agency" means the
99 division of the department of health and human resources
100 that is the federally designated single state agency charged
101 with administration and supervision of the state medicaid
102 program.

ARTICLE 4. STATE ADVISORY BOARD; MEDICAL SERVICES FUND; ADVISORY COUNCIL; GENERAL RELIEF FUND.

§9-4-3. Advisory council.

1 The advisory council, created by chapter one hundred
2 forty-three, acts of the Legislature, regular session, one
3 thousand nine hundred fifty-three, as an advisory body to
4 the state medicaid agency with respect to the medical
5 services fund and disbursements therefrom and to advise
6 about health and medical services, is continued so long as
7 the medical services fund remains in existence, and
8 thereafter so long as the state medicaid agency considers
9 the advisory council to be necessary or desirable, and it is
10 organized as provided by this section and applicable
11 federal law and has those advisory powers and duties as
12 are granted and imposed by this section and elsewhere by
13 law: *Provided*, That the continuation of the advisory
14 council is subject to a preliminary performance review
15 pursuant to the provisions of article ten, chapter four of
16 this code, evaluating the effectiveness and efficiency of the
17 advisory council, to be conducted during the interim of
18 the Legislature in the year two thousand by the joint
19 committee on government operations.

20 The term of office of those members serving on the
21 advisory council, on the effective date of the amendments
22 made to this section by the Legislature during its regular
23 session in the year one thousand nine hundred ninety-
24 eight, shall continue until they are reappointed or replaced
25 in accordance with the provisions of this section.

26 The advisory council shall consist of not less than nine
27 members, nor more than thirteen members, all but two of
28 whom shall be appointed by the state medicaid agency
29 and serve until replaced or reappointed on a rotating basis.
30 The heads of the public health and public welfare agencies
31 are members *ex officio*. The remaining members
32 comprising the council consist of a person of recognized
33 ability in the field of medicine and surgery with respect to
34 whose appointment the state medical association shall be
35 afforded the opportunity of making nomination of three
36 qualified persons, one member shall be a person of

37 recognized ability in the field of dentistry with respect to
38 whose appointment the state dental association shall be
39 afforded the opportunity of nominating three qualified
40 persons, and the remaining members shall be chosen from
41 persons of recognized ability in the fields of hospital
42 administration, nursing and allied professions and from
43 consumers groups, including medicaid recipients,
44 members of the West Virginia directors of senior and
45 community services, labor unions, cooperatives and
46 consumer-sponsored prepaid group practices plans.

47 The council shall meet on call of the state medicaid
48 agency.

49 Each member of the advisory council shall receive
50 reimbursement for reasonable and necessary travel
51 expenses for each day actually served in attendance at
52 meetings of the council in accordance with the state's
53 travel regulations. Requisitions for the expenses shall be
54 accompanied by an itemized statement, which shall be
55 filed with the auditor and preserved as a public record.

56 The advisory council shall assist the state medicaid
57 agency in the establishment of rules, standards and bylaws
58 necessary to carry out the provisions of this section and
59 shall serve as consultants to the state medicaid agency in
60 carrying out the provisions of this section.

CHAPTER 180

(Com. Sub. for H. B. 4447—By Mr. Speaker, Mr. Kiss, and Delegates Martin,
Michael, Staton, Mezzatesta, Varner and Ashley)

[Passed March 14, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, eight, ten, eleven, thirteen and sixteen, article fifteen-a, chapter thirty-one 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 seventeen, eighteen, nineteen, twenty, twenty-one, twenty-two, twenty-three and twenty-four; and to amend and reenact section two, article fifteen-b of said chapter, all relating to infrastructure

development generally; defining infrastructure revenue bond and needs of the project sponsor; requiring application of mandatory minimum end user rate; establishing uniform statewide percentage of the median household income in a particular geographic area; consideration of surveys of income of households; division of funding assistance among regions; prohibiting water development board members and water development authority officers from receiving any benefit or distribution from West Virginia infrastructure revenue debt service fund; exceptions; increasing portion of dedicated tax to be deposited into infrastructure government obligation debt service fund; authorizing water development authority to issue infrastructure revenue bonds; restrictions; permitted uses of revenue bond proceeds; required documentation from infrastructure council; creation of West Virginia infrastructure revenue debt service fund; sources of funding of revenue debt service fund; purposes for which revenue debt service fund may be used; procedures for the issuance of revenue bonds; revenue bond requirements; authorized revenue bond provisions and agreements; procedures for certification of deficiency in reserves pledged for payment of revenue bonds; liability of water development board members and water development authority officers; trust agreements required to secure revenue bonds; required and authorized trust agreement provisions; requirements of depositories of funds; remedies of bondholders; legality of investments in revenue bonds; redemption and refunding of revenue bonds; providing that revenue bonds do not constitute debt or pledge of state; exemption from taxation; and increasing limitation on amount of outstanding government obligation bonds.

Be it enacted by the Legislature of West Virginia:

That sections two, eight, ten, eleven, thirteen and sixteen, article fifteen-a, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that said article be further amended by adding thereto eight new sections, designated sections seventeen, eighteen, nineteen, twenty, twenty-one, twenty-two, twenty-three and twenty-four; and that section two, article fifteen-b of said chapter be amended and reenacted, all to read as follows:

Article**15A. West Virginia Infrastructure and Jobs Development Council.****15B. Infrastructure Bonds.****ARTICLE 15A. WEST VIRGINIA INFRASTRUCTURE AND JOBS DEVELOPMENT COUNCIL.**

§31-15A-2. Definitions.

§31-15A-8. Exemption of certain emergency projects from certificate of public convenience and necessity requirements; review of certain emergency projects by public service commission; and exemption for North Fork Hughes River watershed project.

§31-15A-10. Recommendations by council for expenditures of funds by loan, grant or for engineering assistance.

§31-15A-11. Reservation of funds for projects and infrastructure projects.

§31-15A-13. Prohibition on funds inuring to the benefit of or being distributable to water development board; transactions between the water development board and officers having certain interests in such transactions.

§31-15A-16. Dedication of severance tax proceeds.

§31-15A-17. Water development authority empowered to issue infrastructure revenue bonds and refunding bonds; creation of infrastructure revenue debt service fund; funding of infrastructure revenue debt service fund; requirements and manner of such issuance.

§31-15A-18. Trustee for holders of infrastructure revenue bonds; contents of trust agreement.

§31-15A-19. Legal remedies of infrastructure revenue bondholders or noteholders and trustees.

§31-15A-20. Infrastructure revenue bonds lawful investments.

§31-15A-21. Purchase and cancellation of infrastructure revenue bonds.

§31-15A-22. Refunding revenue bonds.

§31-15A-23. Infrastructure revenue bonds not debt of state, county, municipality or any political subdivision.

§31-15A-24. Infrastructure revenue bonds exempt from taxation.

§31-15A-2. Definitions.

1 For purposes of this article:

2 (a) "Bond" or "infrastructure revenue bond" means
 3 a revenue bond, note, or other obligation issued by the
 4 water development authority pursuant to this article,
 5 including bonds to refund such bonds and notes to renew
 6 such notes, and notes in anticipation of and payable from
 7 the proceeds of such bonds.

8 (b) "Code" means the code of West Virginia, one
9 thousand nine hundred thirty-one, as amended;

10 (c) "Cost" means, as applied to any project to be
11 financed, in whole or in part, with infrastructure revenues
12 or funds otherwise provided pursuant to this article, the
13 cost of planning, acquisition, improvement and
14 construction of the project; the cost of preliminary design
15 and analysis, surveys, borings; the cost of environmental,
16 financial, market and engineering feasibility studies,
17 assessments, applications, approvals, submissions or
18 clearances; the cost of preparation of plans and
19 specifications and other engineering services; the cost of
20 acquisition of all land, rights-of-way, property rights,
21 easements, franchise rights and any other interests
22 required for the acquisition, repair, improvement or
23 construction of the project; the cost of demolishing or
24 removing any buildings or structures on land so acquired,
25 including the cost of acquiring any lands to which
26 buildings or structures may be moved; the cost of
27 excavation, grading, shaping or treatment of earth,
28 demolishing or removing any buildings or structures; the
29 cost of constructing any buildings or other improvements;
30 the cost of all pumps, tanks, vehicles, apparatus and other
31 machinery, furnishings and equipment; loan or
32 origination fees and all finance charges and interest
33 incurred prior to and during the construction and for no
34 more than six months after completion of construction;
35 the cost of all legal services and expenses; the cost of all
36 plans, specifications, surveys and estimates of cost; all
37 working capital and other expenses necessary or incident
38 to determining the feasibility or practicability of
39 acquiring, repairing, improving or constructing any
40 project; the cost of placing any project in operation; and
41 all other costs and expenses of any kind or nature
42 incurred or to be incurred by the project sponsor
43 developing the project that are reasonable and necessary
44 for carrying out all works and undertakings necessary or
45 incident to the accomplishment of any project: *Provided,*
46 That costs shall not include any amounts related to the
47 ongoing operations of the owner or operator, depreciation
48 thereof or any other cost which the council or the water

49 development authority has not determined to be consistent
50 with the purposes and objectives of this article;

51 (d) "Council" means the West Virginia infrastructure
52 and jobs development council created in section three of
53 this article;

54 (e) "Division of environmental protection" means the
55 division of environmental protection established under
56 article one, chapter twenty-two of this code, or any
57 successor to all or any substantial part of its powers and
58 duties;

59 (f) "Division of health" means the division of health
60 created in article one, chapter sixteen of this code, or any
61 successor to all or any substantial part of its powers and
62 duties;

63 (g) "Economic development authority" means the
64 economic development authority established under article
65 fifteen, chapter thirty-one of the code, or any successor to
66 all or any substantial part of its powers and duties;

67 (h) "Emergency project" means a project which the
68 council has determined: (1) Is essential to the immediate
69 economic development of an area of the state; and (2) will
70 not likely be developed in that area if construction of the
71 project is not commenced immediately;

72 (i) "Governmental agency" means any county;
73 municipality; watershed improvement district; assessment
74 district; soil conservation district; sanitary district; public
75 service district; drainage district; regional governmental
76 authority and any other state governmental agency, entity,
77 political subdivision or public corporation or agency
78 authorized to acquire, construct or operate water or
79 wastewater facilities or infrastructure projects;

80 (j) "Housing development fund" means the West
81 Virginia housing development fund established under
82 article eighteen of this chapter, or any successor to all or
83 any substantial part of its powers and duties;

84 (k) "Infrastructure fund" means the West Virginia
85 infrastructure fund created and established in section nine
86 of this article;

87 (l) "Infrastructure project" means a project in the state
88 which the council determines is likely to foster and
89 enhance economic growth and development in the area of
90 the state in which the project is developed, for commercial,
91 industrial, community improvement or preservation or
92 other proper purposes, including, without limitation,
93 tourism and recreational housing, land, air or water
94 transportation facilities and bridges, industrial or
95 commercial projects and facilities, mail order, warehouses,
96 wholesale and retail sales facilities and other real and
97 personal properties, including facilities owned or leased by
98 this state or any other project sponsor, and includes,
99 without limitation: (1) The process of acquiring, holding,
100 operating, planning, financing, demolition, construction,
101 improving, expanding, renovation, leasing or otherwise
102 disposing of the project or any part thereof or interest
103 therein; and (2) preparing land for construction and
104 making, installing or constructing improvements on the
105 land, including water or wastewater facilities or any part
106 thereof, steam, gas, telephone and telecommunications and
107 electric lines and installations, roads, bridges, railroad
108 spurs, buildings, docking and shipping facilities, curbs,
109 gutters, sidewalks, and drainage and flood control
110 facilities, whether on or off the site;

111 (m) "Infrastructure revenue" means all amounts
112 appropriated by the Legislature; all amounts deposited
113 into the infrastructure fund; any amounts received,
114 directly or indirectly, from any source for the use of all or
115 any part of any project completed pursuant to this article;
116 and any other amounts received by the state treasurer,
117 council or the water development authority for the
118 purposes of this article;

119 (n) "Need of the project sponsors" means there is a
120 public need for a project. The council shall construe a
121 population increase evidenced by the last two decennial
122 censuses in a county in which a project is proposed, as a

123 factor supporting the conclusion that a need exists for
124 projects in that county.

125 (o) "Project" means any wastewater facility, water
126 facility project or any combination thereof, constructed or
127 operated or to be constructed or operated by a project
128 sponsor;

129 (p) "Project sponsor" means any governmental agency
130 or person, or any combination thereof, including, but not
131 limited to, any public utility, which intends to plan,
132 acquire, construct, improve or otherwise develop a project;

133 (q) "Public service commission" means the public
134 service commission of West Virginia created and
135 established under section three, article one, chapter
136 twenty-four of this code, or any successor to all or any
137 substantial part of its powers and duties;

138 (r) "Person" means any individual, corporation,
139 partnership, association, limited liability company or any
140 other form of business organization;

141 (s) "Public utility" means any person or persons, or
142 association of persons, however associated, whether
143 incorporated or not, including, without limitation, any
144 governmental agency, operating a wastewater facility or
145 water facility as a public service, which is regulated by the
146 public service commission as a public utility under chapter
147 twenty-four of this code or which is required to file its
148 tariff with the public service commission;

149 (t) "State development office" means the West Virginia
150 development office established under article two, chapter
151 five-b of this code, or any successor to all or any
152 substantial part of its powers and duties;

153 (u) "State infrastructure agency" means the division of
154 health, division of environmental protection, housing
155 development fund, public service commission, state
156 development office, water development authority,
157 economic development authority and any other state
158 agency, division, body, authority, commission,
159 instrumentality or entity which now or in the future
160 receives applications for the funding of, and provides

161 funding or technical assistance to, the planning,
162 acquisition, construction or improvement of a project;

163 (v) "Waste water facility" means all facilities, land and
164 equipment used for or in connection with treating,
165 neutralizing, disposing of, stabilizing, cooling, segregating
166 or holding waste water, including, without limitation,
167 facilities for the treatment and disposal of sewage,
168 industrial wastes or other wastes, wastewater, and the
169 residue thereof; facilities for the temporary or permanent
170 impoundment of wastewater, both surface and
171 underground; and sanitary sewers or other collection
172 systems, whether on the surface or underground, designed
173 to transport wastewater together with the equipment and
174 furnishings therefor or thereof and their appurtenances
175 and systems, whether on the surface or underground
176 including force mains and pumping facilities therefor;

177 (w) "Water development authority" means the West
178 Virginia water development authority continued pursuant
179 to the provisions of article one, chapter twenty-two-c of
180 this code, or any successor to all or any substantial part of
181 its powers and duties; and

182 (x) "Water facility" means all facilities, land and
183 equipment used for or in connection with the collection
184 and/or storage of water, both surface and underground,
185 transportation of water, storage of water, treatment of water
186 and distribution of water all for the purpose of providing
187 potable, sanitary water suitable for human consumption
188 and use.

**§31-15A-8. Exemption of certain emergency projects from
certificate of public convenience and necessity
requirements; review of certain emergency
projects by public service commission; and
exemption for North Fork Hughes River
watershed project.**

1 (a) If the council determines a project to be an
2 emergency and the emergency project will be funded
3 solely with grant money for the extension of an existing
4 certificated water facility or wastewater facility, and if the
5 council finds in its recommendation that the construction

6 and acquisition of the emergency project will have no
7 effect on the public utility's customer rates and will have
8 no significant effect on its operational costs as a result of
9 the project cost, then the emergency project is exempt
10 from the requirement to obtain a certificate of public
11 convenience and necessity under section eleven, article
12 two, chapter twenty-four of this code. If the public utility
13 is a public service district, it is exempt from the approval
14 of the public service commission required under section
15 twenty-five, article thirteen-a, chapter sixteen of this code.

16 (b) Any public utility, and any other entity that will
17 operate as a public utility, must obtain a certificate of
18 public convenience and necessity pursuant to section
19 eleven, article two, chapter twenty-four of this code for
20 any emergency project that is not exempt under
21 subsection (a) of this section. The public service
22 commission shall render its final decision on any
23 application for a certificate within one hundred twenty
24 days of the filing of the application: *Provided*, That the
25 thirty-day prefiling requirement is not required. If the
26 project sponsor is a public service district, then the project
27 will be exempted from the approval requirements of
28 section twenty-five, article thirteen-a, chapter sixteen of
29 this code.

30 (c) Projects that are not emergency projects are subject
31 to the requirements of section eleven, article two, chapter
32 twenty-four of this code to the extent they would be
33 otherwise.

34 (d) The North Fork Hughes River watershed project,
35 proposed to enhance economic growth and development
36 through tourism as provided in subsection (l), section two
37 of this article and to include a water facility project as
38 defined in subsection (n), section two of this article, is
39 hereby specifically exempted from any requirement
40 imposed by this article, except that the provisions of
41 subsection (a) of this section are specifically made
42 applicable to the project. The project is hereby
43 specifically authorized and the public land corporation
44 shall have and may exercise the power of eminent domain
45 and all authority otherwise prescribed by law to acquire

46 necessary land and rights-of-way, to include
47 approximately four hundred seventy-eight acres, in
48 connection with the project. Funding for the project shall
49 be provided by the federal government from the
50 Appalachian regional commission through the United
51 States soil conservation service. Upon completion of the
52 project, the property acquired shall be transferred to the
53 state park system. The commissioner of the division of
54 tourism and parks or the successor to the commissioner's
55 powers and duties is directed to expand the boundaries of
56 North Bend state park to include the project area and to
57 operate the expanded park property, including improved
58 recreational facilities, from funds appropriated for that
59 purpose.

§31-15A-10. Recommendations by council for expenditures of funds by loan, grant or for engineering assistance.

1 (a) To further accomplish the purpose and intent of
2 this article, the water development authority shall use the
3 moneys in the infrastructure fund created pursuant to
4 section nine of this article, upon receipt of one or more
5 recommendations from the council pursuant to section
6 five of this article, to make loans, with or without interest,
7 loan guarantees or grants and to provide other assistance,
8 financial, technical or otherwise, to finance all or part of
9 the costs of infrastructure projects or projects to be
10 undertaken by a project sponsor: *Provided*, That any
11 moneys disbursed from the infrastructure fund in the
12 form of grants shall not exceed twenty percent of the total
13 funds available for the funding of projects. No loan, loan
14 guarantee, grant or other assistance shall be made or
15 provided except upon a determination by the council that
16 the loan, loan guarantee, grant or other assistance and the
17 manner in which it will be provided are necessary or
18 appropriate to accomplish the purposes and intent of this
19 article, based upon an application submitted to the
20 council: *Provided, however*, That no grant shall be made
21 to a project sponsor that is not a governmental agency or a
22 not for profit corporation under the provisions of section
23 501(c) of the Internal Revenue Code of 1986, as
24 amended. Applications for loans, loan guarantees, grants

25 or other assistance may be submitted by a project sponsor
26 for one or more infrastructure projects on preliminary
27 application forms prepared by the council pursuant to
28 section four of this article. Any recommendation of the
29 council approving a loan, loan guarantee, grant or other
30 assistance shall include a finding and determination by the
31 council that the requirements of this section have been
32 met. The council shall base any decisions to loan money
33 for projects to project sponsors pursuant to this article
34 solely on the need of the project sponsors.

35 (b) The council has the authority in its sole discretion
36 to make grants to project sponsors if it finds that: (1) The
37 level of rates for the users would otherwise be an
38 unreasonable burden given the users' likely ability to pay;
39 or (2) the absence of a sufficient number of users prevents
40 funding of the project except through grants: *Provided,*
41 That no project sponsor shall receive infrastructure grant
42 money in an amount in excess of fifty percent of the total
43 cost of the project. Therefore, the council may consider
44 the economic or financial conditions of the area to be
45 served. As a condition for receipt of a grant under this
46 subsection, the council may require, in addition to any
47 other conditions, that the applicant pursue other state or
48 federal grant or loan programs. Upon a recommendation
49 by the council, the water development authority shall
50 provide the grant in accordance with the recommendation.
51 The council shall develop criteria to be considered in
52 making grants to project sponsors which shall require
53 consideration of the economic or financial conditions of
54 the area to be served and the availability of other funding
55 sources. The council shall adopt procedural rules
56 regarding the manner in which grants will be awarded in
57 conformity with this section. The procedural rules shall
58 be adopted pursuant to article three, chapter twenty-nine-a
59 of this code.

60 (c) Notwithstanding any other provision of this article
61 to the contrary, the council shall apply a mandatory
62 minimum end user utility rate that must be met by the
63 project sponsor before funding assistance may be
64 awarded. The mandatory minimum end utility rate shall
65 be based upon a uniform statewide percentage of the

66 median household income in a particular geographic area
67 and said rate shall not exceed six tenths of one percent:
68 *Provided*, That funding assistance made from the
69 proceeds of any general obligation bonds and revenue
70 bonds issued after the fifteenth day of March, one
71 thousand nine hundred ninety-eight, after transfers
72 required to make the state match for the water and
73 wastewater revolving loan programs pursuant to article
74 two, chapter twenty-two-c and article thirteen-c, chapter
75 sixteen of this code, shall be provided by the council on a
76 pro rata basis divided equally among the congressional
77 districts of this state as delineated in accordance with
78 section three, article two, chapter one of this code:
79 *Provided, however*, That infrastructure projects as defined
80 in subsection (1), section two of this article shall not be
81 subject to pro rata distribution. When determining median
82 household income of a geographic area of the project to
83 be served, the council shall consider any surveys of the
84 income of the households that will be served by the
85 project.

86 (d) No loan or grant funds may be made available for
87 a project if the project to be funded will provide
88 subsidized services to certain users in the service area of
89 the project.

90 (e) Notwithstanding any other provision of this article
91 to the contrary, engineering studies and requirements
92 imposed by the council for preliminary applications shall
93 not exceed those engineering studies and requirements
94 which are necessary for the council to determine the
95 economic feasibility of the project. If the council
96 determines that the engineering studies and requirements
97 for the preapplication would impose an undue hardship
98 on any project sponsor, the council may provide funding
99 assistance to project sponsors to defray the expenses of the
100 preapplication process from moneys available in the
101 infrastructure fund for making loans: *Provided*, That the
102 council may only provide funding assistance in an amount
103 equal to five thousand dollars or fifty percent of the total
104 preapplication cost of the project, whichever amount is
105 greater. If the project is ultimately approved for a loan by
106 the council, the amount of funding assistance provided to

107 the project sponsor for the preapplication process shall be
108 included in the total amount of the loan to be repaid by
109 the project sponsor. If the project is not ultimately
110 approved by the council, then the amount of funding
111 assistance provided to the project sponsor will be
112 considered a grant by the council and the total amount of
113 the assistance shall be forgiven. In no event may the
114 amount of funding assistance provided to all project
115 sponsors exceed, in the aggregate, one hundred thousand
116 dollars annually.

117 (f) The council shall report to the governor, the
118 speaker of the House of Delegates and the president of the
119 Senate during each regular and interim session of the
120 Legislature, on its activities and decisions relating to
121 distribution or planned distribution of grants and loans
122 under the criteria to be developed pursuant to this article.

**§31-15A-11. Reservation of funds for projects and infrastruc-
ture projects.**

1 Eighty percent of the funds deposited in the West
2 Virginia infrastructure fund shall be dedicated for the
3 purpose of providing funding for the cost of projects as
4 defined in subsection (n), section two of this article.
5 Twenty percent of the funds deposited in the West
6 Virginia infrastructure fund shall be dedicated for the
7 purpose of providing funding for costs of infrastructure
8 projects as defined in subsection (l), section two of this
9 article. Project sponsors of infrastructure projects shall
10 follow the application process as established by this article:
11 *Provided*, That notwithstanding any provision of this
12 article to the contrary, all applications for any
13 infrastructure project shall be submitted to the council for
14 community and economic development, or its successor,
15 for review, recommendation and approval regarding
16 infrastructure project funding.

**§31-15A-13. Prohibition on funds inuring to the benefit of or
being distributable to water development
board; transactions between the water
development board and officers having certain
interests in such transactions.**

1 No part of the infrastructure fund or the West Virginia
2 infrastructure revenue debt service fund shall inure to the
3 benefit of or be distributable to the water development
4 board directors or officers of the water development
5 authority except that the water development authority is
6 authorized and empowered to pay reasonable
7 compensation, other than to members of the water
8 development board, including the chairman, vice
9 chairman, secretary-treasurer for services rendered and to
10 make loans and exercise its other powers as previously
11 specified in furtherance of its corporate purpose:
12 *Provided*, That no loans shall be made, and no property
13 shall be purchased or leased from, or sold, leased or
14 otherwise disposed of, to any water development board
15 member or officer of the water development authority.

§31-15A-16. Dedication of severance tax proceeds.

1 (a) There shall be dedicated an annual amount from
2 the collections of the tax collected pursuant to article
3 thirteen-a, chapter eleven of this code for the construction,
4 extension, expansion, rehabilitation, repair and
5 improvement of water supply and sewage treatment
6 systems and for the acquisition, preparation, construction
7 and improvement of sites for economic development in
8 this state as provided in this article.

9 (b) Notwithstanding any other provision of this code
10 to the contrary, beginning on the first day of July, one
11 thousand nine hundred ninety-five, the first sixteen
12 million dollars of the tax collected pursuant to article
13 thirteen-a, chapter eleven of this code shall be deposited to
14 the credit of the West Virginia infrastructure general
15 obligation debt service fund created pursuant to section
16 three, article fifteen-b of this chapter: *Provided*, That
17 beginning on the first day of July, one thousand nine
18 hundred ninety-eight, the first twenty-four million dollars
19 of the tax annually collected pursuant to article thirteen-a
20 of this code shall be deposited to the credit of the West
21 Virginia infrastructure general obligation debt service
22 fund created pursuant to section three, article fifteen-b of
23 this chapter.

24 (c) Notwithstanding any provision of subsection (b) of
25 this section to the contrary: (1) none of the collections
26 from the tax imposed pursuant to section six, article
27 thirteen-a, chapter eleven of this code shall be so dedicated
28 or deposited; and (2) the portion of the tax imposed by
29 article thirteen-a, chapter eleven and dedicated for
30 purposes of medicaid and the division of forestry pursuant
31 to section twenty-a of said article thirteen-a shall remain
32 dedicated for the purposes set forth in said section twenty-
33 a.

34 (d) On or before the first day of May of each year,
35 commencing the first day of May, one thousand nine
36 hundred ninety-five, the council, by resolution, shall
37 certify to the treasurer and the water development
38 authority the principal and interest coverage ratio and
39 amount for the following fiscal year on any infrastructure
40 general obligation bonds issued pursuant to the provisions
41 of article fifteen-b of this chapter.

**§31-15A-17. Water development authority empowered to
issue infrastructure revenue bonds and
refunding bonds; creation of infrastructure
revenue debt service fund; funding of
infrastructure revenue debt service fund;
requirements and manner of such issuance.**

1 (a) To accomplish the purpose and intent of this
2 article, the water development authority is hereby
3 empowered at the written request of the council to issue
4 from time to time infrastructure revenue bonds of the state
5 in such principal amounts as the council deems necessary
6 to make loans and loan guarantees and other forms of
7 financial assistance to project sponsors for one or more
8 projects or infrastructure projects: *Provided*, That the
9 water development authority may not issue any such
10 bonds, other than refunding bonds, unless the council by
11 resolution determines that the aggregate cost of the
12 projects or infrastructure projects expected to be
13 constructed during any annual period exceeds (1) the
14 projected annual infrastructure revenues for the same
15 period, and (2) the principal and interest payments not
16 otherwise pledged to the infrastructure revenue debt

17 service fund that are due the water development authority
18 on all outstanding loans previously made by the water
19 development authority pursuant to the provisions of this
20 article.

21 (b) The proceeds of infrastructure revenue bonds shall
22 be used solely for the purpose of making loans and loan
23 guarantees and other forms of financial assistance to
24 sponsors of one or more projects or infrastructure
25 projects, and shall be deposited in one or more special
26 accounts with the trustee under the trust agreement
27 securing such bonds and disbursed from time to time for
28 projects or infrastructure projects in accordance with this
29 article: *Provided*, That notwithstanding any provision of
30 this code to the contrary, twenty percent of the funds
31 deposited in the special account shall be dedicated for the
32 purpose of providing funding for costs of infrastructure
33 projects as defined in subsection (l), section two of this
34 article.

35 (c) The water development authority may not
36 authorize the disbursement of any proceeds of
37 infrastructure revenue bonds unless it has received
38 documentation from the council pursuant to the
39 provisions of section ten of this article.

40 (d) There is hereby created in the water development
41 authority a special fund which shall be designated and
42 known as the "West Virginia Infrastructure Revenue Debt
43 Service Fund," into which shall be transferred solely from
44 the loan repayments deposited in the infrastructure fund
45 the amounts certified by the director of the water
46 development authority as necessary to pay the principal,
47 premium, if any, and interest on infrastructure revenue
48 bonds and any reserve requirements, subject to the terms
49 of any agreement with the holders of the infrastructure
50 revenue bonds. All amounts deposited in the West
51 Virginia infrastructure revenue debt service fund shall be
52 pledged to the repayment of the principal, interest and
53 redemption premium, if any, on any infrastructure
54 revenue bonds authorized by this article: *Provided*, That
55 amounts on deposit in the fund may be used to establish
56 or maintain reserves created for the purposes of securing

57 such infrastructure revenue bonds. The pledge shall be
58 valid and binding from the time the pledge is made, and
59 the West Virginia infrastructure revenue debt service fund
60 so pledged shall immediately be subject to the lien of the
61 pledge without any physical delivery thereof or further
62 act, and the lien of any such pledge shall be valid and
63 binding as against all parties having claims of any kind in
64 tort, contract or otherwise against the water development
65 authority irrespective of whether the parties have notice
66 thereof.

67 (e) Except as may otherwise be expressly provided in
68 this article or by resolution of the water development
69 authority, every issue of infrastructure revenue bonds shall
70 be special obligations of the water development authority
71 payable solely from amounts in the West Virginia
72 infrastructure revenue debt service fund, and the reserves
73 created for this purpose by the water development
74 authority, without preference or priority among the bonds
75 regardless of when issued, subject only to any agreements
76 with the holders of any bonds to the contrary. All such
77 bonds are hereby declared to be negotiable instruments.

78 (f) Infrastructure revenue bonds shall be authorized
79 by resolution of the water development authority. These
80 bonds shall bear such dates and shall mature at such
81 times, in case of any note or renewal thereof not
82 exceeding five years from the date of issue of the original
83 note, and in the case of any bond not exceeding fifty
84 years from the date of issue, as the resolution may
85 provide. Infrastructure revenue bonds shall bear interest
86 at a rate or rates, including variable rates, shall be taxable
87 or tax-exempt, shall be in the denominations, shall be in
88 registered form, shall carry the registration privileges, shall
89 be payable in the medium and place of payment, and shall
90 be subject to the terms of redemption as the water
91 development authority may authorize. Infrastructure
92 revenue bonds may be sold by the water development
93 authority at public or private sale at the price the water
94 development authority determines in consultation with the
95 council. Infrastructure revenue bonds shall be executed
96 by the chairman and the vice chairman of the water
97 development authority, either or both of whom may use a

98 facsimile signature. The official seal of the water
99 development authority or a facsimile thereof shall be
100 affixed thereto or printed thereon and attested by manual
101 or facsimile signature by the secretary-treasurer of the
102 water development authority. If any officer whose
103 signature, or a facsimile of whose signature appears on
104 any infrastructure revenue bond ceases to be such officer
105 before delivery of such bond, such signature or facsimile
106 is nevertheless sufficient for all purposes to the same
107 extent as if he or she had remained in office until such
108 delivery, and if the seal of the water development authority
109 has been changed after a facsimile has been imprinted on
110 such bond, the facsimile will continue to be sufficient for
111 all purposes.

112 (g) Any resolution authorizing any infrastructure
113 revenue bonds may contain provisions, subject to any
114 agreement with bondholders or noteholders which may
115 then exist, which agreements shall be part of the contract
116 with the holder thereof, with respect to the pledge of or
117 other use and disposition of amounts in the infrastructure
118 revenue debt service fund; the setting aside of reserve
119 funds; the disposition of any assets of the water
120 development authority; limitations on the purpose to
121 which the proceeds of sale of bonds may be applied; the
122 authorization of notes issued in anticipation of the
123 issuance of bonds; an agreement of the water development
124 authority to do all things necessary for the authorization,
125 issuance and sale of such bonds in such amounts as may
126 be necessary for the timely retirement of such notes;
127 limitations on the issuance of additional bonds; the terms
128 upon which additional bonds may be issued and secured;
129 the refunding of outstanding bonds and the renewal of
130 outstanding notes; the procedures, if any, by which the
131 terms of any contract with bondholders or noteholders
132 may be amended or abrogated; the amount of bonds the
133 holders of which must consent thereto and the manner in
134 which such consent may be given; and any other matter
135 which in any way affects the security for or protection of
136 the bonds.

137 (h) In the event that the sum of all reserves pledged to
138 the payment of the bonds is less than the minimum reserve

139 requirements established in any resolution or resolutions
140 authorizing the issuance of the bonds, the chairman or the
141 director of the water development authority shall certify,
142 on or before the first day of December of each year, the
143 amount of such deficiency to the governor of the state for
144 inclusion, if the governor shall so elect, of the amount of
145 such deficiency in the budget to be submitted to the next
146 session of the Legislature for appropriation to the water
147 development authority to be pledged for payment of such
148 bonds: *Provided*, That the Legislature shall not be
149 required to make any appropriations so requested, and the
150 amount of such deficiencies shall not constitute a debt or
151 liability of the state.

152 (i) Neither the officers or board members of the water
153 development authority, nor any person executing the
154 infrastructure revenue bonds, shall be liable personally on
155 the bonds or be subject to any personal liability or
156 accountability by reason of the issuance thereof.

**§31-15A-18. Trustee for holders of infrastructure revenue
bonds; contents of trust agreement.**

1 (a) Any infrastructure revenue bonds issued by the
2 water development authority under this article shall be
3 secured by a trust agreement between the water
4 development authority and a corporate trustee, which
5 trustee may be any trust company or banking institution
6 having the powers of a trust company within this state.

7 (b) Any trust agreement may pledge or assign the
8 infrastructure revenue debt service fund. Any trust
9 agreement or any resolution providing for the issuance of
10 such bonds may contain such provisions for protecting
11 and enforcing the rights and remedies of the bondholders
12 or noteholders as are reasonable and proper and not in
13 violation of law, including the provisions contained in
14 section seventeen of this article, and covenants setting
15 forth the duties of the water development authority in
16 respect to the payment of the principal of and interest,
17 charges and fees on loans made to, or bond purchases
18 from, governmental agencies from the proceeds of the
19 bonds, and the custody, safeguarding and application of
20 all moneys. Any banking institution or trust company

21 incorporated under the laws of this state which may act as
22 depository of the proceeds of bonds or of the
23 infrastructure debt service fund shall furnish such
24 indemnifying bonds or pledge securities as are required
25 by the water development authority. The trust agreement
26 may set forth the rights and remedies of the bondholders
27 and noteholders and of the trustee and may restrict
28 individual rights of action by bondholders and
29 noteholders as customarily provided in trust agreements or
30 trust indentures securing similar bonds and notes. The
31 trust agreement may contain such other provisions as the
32 water development authority deems reasonable and proper
33 for the security of the bondholders or noteholders. All
34 expenses incurred in carrying out the provisions of any
35 such trust agreement may be treated as part of the cost of
36 the construction, renovation, repair, improvement or
37 acquisition of a project or infrastructure project.

**§31-15A-19. Legal remedies of infrastructure revenue
bondholders or noteholders and trustees.**

1 Any holder of infrastructure revenue bonds issued
2 pursuant to this article and the trustee under any trust
3 agreement, except to the extent the rights given by this
4 article may be restricted by the applicable resolution or
5 trust agreement, may by civil action, mandamus or other
6 proceedings protect and enforce any rights granted under
7 the laws of this state or granted under this article, by the
8 trust agreement or by the resolution in the issuance of the
9 bonds, and may enforce and compel the performance of
10 all duties required by this article, pursuant to the trust
11 agreement or resolution, to be performed by the water
12 development authority or any officer thereof.

§31-15A-20. Infrastructure revenue bonds lawful investments.

1 All infrastructure revenue bonds issued pursuant to
2 this article shall be lawful investments for banking
3 institutions, societies for savings, building and loan
4 associations, savings and loan associations, deposit
5 guarantee associations, trust companies, and insurance
6 companies, including domestic for life and domestic not
7 for life insurance companies.

§31-15A-21. Purchase and cancellation of infrastructure revenue bonds.

1 (a) The water development authority, subject to such
2 agreements with noteholders or bondholders as may then
3 exist, shall have the power, from any funds available
4 therefor, to purchase or redeem infrastructure revenue
5 bonds of the water development authority.

6 (b) If the infrastructure revenue bonds are then
7 redeemable, the price of the purchase shall not exceed the
8 redemption price then applicable, plus accrued interest to
9 the next interest payment date thereon. If the
10 infrastructure revenue bonds are not then redeemable, the
11 price of the purchase shall not exceed the redemption
12 price applicable on the first date after the purchase upon
13 which the bonds become subject to redemption, plus
14 accrued interest to such date. Upon purchase or
15 redemption, the bonds shall be canceled.

§31-15A-22. Refunding revenue bonds.

1 Any infrastructure revenue bonds issued pursuant to
2 the provisions of this article and at any time outstanding
3 may at any time and from time to time be refunded by the
4 water development authority by the issuance of its
5 refunding revenue bonds in an amount it deems necessary
6 to refund the principal of the bonds to be refunded,
7 together with any unpaid interest thereon, to provide
8 additional funds for the water development authority to
9 accomplish the purpose of this article, and to pay any
10 premiums and commissions necessary to be paid in
11 connection therewith. Any refunding may be effected
12 whether the infrastructure revenue bonds to be refunded
13 shall have then matured or shall thereafter mature:
14 *Provided*, That the holders of any infrastructure revenue
15 bonds so to be refunded shall not be compelled without
16 their consent to surrender their infrastructure revenue
17 bonds for payment or exchange prior to the date on which
18 they are payable or, if they are called for redemption,
19 prior to the date on which they are by their terms subject
20 to redemption. Any refunding revenue bonds issued
21 pursuant to this article shall be payable from the West
22 Virginia infrastructure revenue debt service fund, and shall

23 be subject to the provisions contained in section seventeen
24 of this article, and shall be secured in accordance with the
25 provisions of sections seventeen and eighteen of this
26 article.

**§31-15A-23. Infrastructure revenue bonds not debt of state,
county, municipality or any political
subdivision.**

1 Infrastructure revenue bonds issued pursuant to the
2 provisions of this article shall not constitute a debt or a
3 pledge of the faith and credit or taxing power of this state
4 or of any county, municipality or any other political
5 subdivision of this state. The holders or owners thereof
6 shall have no right to have taxes levied by the Legislature
7 or the taxing authority of any county, municipality or any
8 other political subdivision of this state for the payment of
9 the principal thereof or interest thereon. The bonds shall
10 be payable solely from the revenues and funds pledged
11 for their payment as authorized by this article. All such
12 bonds shall contain on the face thereof a statement to the
13 effect that the bonds, as to both principal and interest, are
14 not debts of the state or any county, municipality or
15 political subdivision thereof, but are payable solely from
16 revenues and funds pledged for their payment.

**§31-15A-24. Infrastructure revenue bonds exempt from
taxation.**

1 The exercise of the powers granted to the water
2 development authority by this article will be in all respects
3 for the benefit of the people of the state, for the
4 improvement of their health, safety, convenience and
5 welfare and for the enhancement of their residential,
6 agricultural, recreational, economic, commercial and
7 industrial opportunities and is for a public purpose. As
8 the construction, acquisition, repair or renovation of
9 projects or infrastructure projects will constitute the
10 performance of essential governmental functions, the
11 water development authority shall not be required to pay
12 any taxes or assessments upon any project or upon any
13 property acquired or used by the water development
14 authority or upon the income therefrom. The
15 infrastructure revenue bonds and all interest and income

16 thereon shall be exempt from all taxation by this state, or
17 any county, municipality, political subdivision or agency
18 thereof, except estate taxes.

ARTICLE 15B. INFRASTRUCTURE BONDS.

§31-15B-2. Infrastructure general obligation bonds; amount; when may issue.

1 Bonds of the state of West Virginia, under authority of
2 the infrastructure improvement amendment of 1994, of
3 the par value not to exceed in the aggregate three hundred
4 million dollars, are hereby authorized to be issued and
5 sold solely for the construction, extension, expansion,
6 rehabilitation, repair and improvement of water supply
7 and sewage treatment systems and for the acquisition,
8 preparation, construction and improvement of sites for
9 economic development as provided for by the constitution
10 and the provisions of this article.

11 These bonds may be issued by the governor upon
12 resolution by the infrastructure council and certification to
13 the governor. The bonds shall bear such date and mature
14 at such time, bear interest at such rate not to exceed eight
15 percent per annum, be in such amounts, be in such
16 denominations, be in such registered form, carry such
17 registration privileges, be due and payable at such time
18 and place and in such amounts, and subject to such terms
19 of redemption as such resolution may provide: *Provided,*
20 That in no event may the amount of bonds outstanding
21 exceed an amount for which twenty-four million dollars
22 would not be sufficient to provide annual service on the
23 total amount of debt outstanding.

24 Both the principal and interest of the bonds shall be
25 payable in the lawful money of the United States of
26 America and the bonds and the interest thereon shall be
27 exempt from taxation by the state of West Virginia, or by
28 any county, district or municipality thereof, which fact
29 shall appear on the face of the bonds as part of the
30 contract with the holder of the bond.

31 The bonds shall be executed on behalf of the state of
32 West Virginia, by the manual or facsimile signature of the
33 treasurer thereof, under the great seal of the state or a
34 facsimile thereof, and countersigned by the manual or
35 facsimile signature of the auditor of the state.

CHAPTER 181

(S. B. 772—By Senators Plymale, Walker, Craigo, Fanning,
Jackson, Helmick and Minear)

[Passed March 13, 1998; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections three and five, article sixteen, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to employment of a deputy director; and the submission of the financial statements and financial plans.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

§5-16-3. Public employees insurance agency continued; appointment, qualification, compensation and duties of director of agency; employees; civil service coverage; director vested after specified date with powers of public employees insurance board; expiration of agency.

§5-16-5. Purpose, powers and duties of the finance board; initial financial plan; financial plan for following year; and annual financial plans.

§5-16-3. Public employees insurance agency continued; appointment, qualification, compensation and duties of director of agency; employees; civil service coverage; director vested after specified date with powers of public employees insurance board; expiration of agency.

1 (a) The public employees insurance agency is
2 continued, and consists of the director, the finance board,
3 the advisory board and any employees who may be
4 authorized by law. The director shall be appointed by the
5 governor, with the advice and consent of the Senate. He

6 or she shall serve at the will and pleasure of the governor,
7 unless earlier removed from office for cause as provided
8 by law. The director shall have at least three years
9 experience in health insurance administration prior to
10 appointment as director. The director shall receive an
11 annual salary established by the governor not to exceed
12 sixty-five thousand dollars and actual expenses incurred in
13 the performance of official business. The director shall
14 employ such administrative, technical and clerical
15 employees as are required for the proper administration of
16 the insurance programs provided for in this article. The
17 director shall perform such duties as are required of him
18 or her under the provisions of this article and is the chief
19 administrative officer of the public employees insurance
20 agency. The director may employ a deputy director:
21 *Provided*, That the director shall report each year to the
22 joint committee on government and finance on the
23 agency's total contract costs for consultant contracts and
24 the costs of the deputy director's position for the fiscal
25 years one thousand nine hundred ninety-eight through
26 two thousand.

27 (b) All positions in the agency, except for the director,
28 his or her personal secretary, the deputy director and the
29 chief financial officer shall be included in the classified
30 service of the civil service system pursuant to article six,
31 chapter twenty-nine of this code. Any person required to
32 be included in the classified service by the provisions of
33 this subsection who was employed in any of the positions
34 included in this subsection on or after the effective date of
35 this article shall not be required to take and pass
36 qualifying or competitive examinations upon or as a
37 condition to being added to the classified service:
38 *Provided*, That no person required to be included in the
39 classified service by the provisions of this subsection who
40 was employed in any of the positions included in this
41 subsection as of the effective date of this section shall be
42 thereafter severed, removed or terminated in his or her
43 employment prior to his or her entry into the classified
44 service except for cause as if the person had been in the
45 classified service when severed, removed or terminated.

47 (c) The director is responsible for the administration
48 and management of the public employees insurance
49 agency as provided for in this article and in connection
50 with his or her responsibility shall have the power and
51 authority to make all rules necessary to effectuate the
52 provisions of this article. Nothing in section four or five
53 of this article shall limit the director's ability to manage on
54 a day-to-day basis the group insurance plans required or
55 authorized by this article, including, but not limited to,
56 administrative contracting, studies, analyses and audits,
57 eligibility determinations, utilization management
58 provisions and incentives, provider negotiations, provider
59 contracting and payment, designation of covered and
60 noncovered services, offering of additional coverage
61 options or cost containment incentives, pursuit of
62 coordination of benefits and subrogation, or any other
63 actions which would serve to implement the plan or plans
64 designed by the finance board.

65 (d) The public employees insurance agency shall
66 terminate in the manner provided in article ten, chapter
67 four of this code, on the first day of July, two thousand
68 one, unless extended by legislation enacted before the
69 termination date: *Provided*, That the public employees
70 insurance agency advisory board, created in section six of
71 this article, shall terminate in the manner provided in
72 article ten, chapter four of this code on the first day of
73 July, one thousand nine hundred ninety-six.

**§5-16-5. Purpose, powers and duties of the finance board;
initial financial plan; financial plan for following
year; and annual financial plans.**

1 (a) The purpose of the finance board created by this
2 article is to bring fiscal stability to the public employees
3 insurance agency through development of an annual
4 financial plan designed to meet the agency's estimated
5 total financial requirements, taking into account all
6 revenues projected to be made available to the agency, and
7 apportioning necessary costs equitably among
8 participating employers, employees and retired employees
9 and providers of health care services.

10 (b) The finance board shall retain the services of an
11 impartial, professional actuary, with demonstrated
12 experience in analysis of large group health insurance
13 plans, to estimate the total financial requirements of the
14 public employees insurance agency for each fiscal year
15 and to review and render written professional opinions as
16 to financial plans proposed by the finance board. The
17 finance board shall also employ the actuary to develop
18 alternative financing options and to perform such other
19 services as may be requested by the finance board. All
20 reasonable fees and expenses for actuarial services shall be
21 paid by the public employees insurance agency. Any
22 financial plan or modifications to a financial plan
23 approved or proposed by the finance board pursuant to
24 this section shall be submitted to and reviewed by the
25 actuary, and may not be finally approved and submitted to
26 the governor and to the Legislature without the actuary's
27 written professional opinion that the plan may be
28 reasonably expected to generate sufficient revenues to
29 meet all estimated program and administrative costs of the
30 agency, excluding incurred but unreported claims, for the
31 fiscal year for which the plan is proposed. The actuary's
32 opinion on the initial plan required by subsection (d) of
33 this section shall allow for a target of forty-five days of
34 accounts payable to be carried over into the next fiscal
35 year. The actuary's opinion on the financial plan for
36 fiscal year one thousand nine hundred ninety-two shall
37 allow for between thirty and forty-five days of accounts
38 payable to be carried over into the next fiscal year. The
39 actuary's opinion on the financial plan for any succeeding
40 fiscal year shall allow for no more than thirty days of
41 accounts payable to be carried over into the next fiscal
42 year. The actuary's opinion for any fiscal year shall not
43 include a requirement for establishment of a reserve fund.

44 (c) All financial plans required by this section shall
45 include the design of a benefit plan or plans. All financial
46 plans shall establish:

47 (1) Maximum levels of reimbursement which the
48 public employees insurance agency makes to categories of
49 health care providers;

50 (2) Any necessary cost containment measures for
51 implementation by the director;

52 (3) The levels of premium costs to participating
53 employers; and

54 (4) The types and levels of cost to participating
55 employees and retired employees.

56 The financial plans may provide for different levels of
57 costs based on the insureds' ability to pay. The finance
58 board may establish different levels of costs to retired
59 employees based upon length of employment with a
60 participating employer, ability to pay, or other relevant
61 factors. The financial plans may also include optional
62 alternative benefit plans with alternative types and levels of
63 cost. The finance board may develop policies which
64 encourage the use of West Virginia health care providers.

65 In addition, the finance board may allocate a portion
66 of the premium costs charged to participating employers
67 to subsidize the cost of coverage for participating retired
68 employees, on such terms as the finance board determines
69 are equitable and financially responsible.

70 (d) *Initial plan.* — The director shall convene the first
71 meeting of the finance board no later than the fifteenth
72 day of September, one thousand nine hundred ninety.
73 For presentation by the director at the first meeting, the
74 governor shall prepare an estimate of the total amount of
75 general and special revenues which the state has or will
76 have available to fund the public employees insurance
77 agency and its programs for the fiscal year ending on the
78 thirtieth day of June, one thousand nine hundred
79 ninety-one.

80 Notwithstanding any provision of this article to the
81 contrary, during any meeting authorized by subsection (h)
82 of this section to review implementation of the initial
83 financial plan in light of actual experience, the finance
84 board, in its discretion, may elect to redesign the initial
85 financial plan so that revenues generated will meet all
86 incurred and projected program and administrative costs
87 of the public employees insurance agency by the end of

88 the fiscal year ending on the thirtieth day of June, one
89 thousand nine hundred ninety-two, rather than by the
90 thirtieth day of June, one thousand nine hundred
91 ninety-one. Before implementing any such modifications,
92 the finance board shall obtain a written professional
93 opinion from its actuary stating that the modified plan
94 may be reasonably expected to generate sufficient
95 revenues to meet all estimated program and administrative
96 costs of the public employees insurance agency for the
97 remainder of fiscal year one thousand nine hundred
98 ninety-one and for fiscal year one thousand nine hundred
99 ninety-two, allowing for between thirty and forty-five days
100 of accounts payable to be carried over into fiscal year one
101 thousand nine hundred ninety-three. The finance board
102 shall also afford interested and affected persons an
103 opportunity to offer comment on the modified plan at a
104 public meeting of the finance board. Regardless of
105 whether or not the finance board modifies the initial
106 financial plan as authorized by this subsection, the finance
107 board shall prepare a financial plan for fiscal year one
108 thousand nine hundred ninety-two in accordance with
109 subsection (e) of this section.

110 The finance board shall prepare, no later than the
111 tenth day of November, one thousand nine hundred
112 ninety, a proposed financial plan designed to generate
113 revenues sufficient to meet all program and administrative
114 costs of the public employees insurance agency which
115 have already been incurred but are unpaid, or which the
116 actuary estimates will be incurred and paid during the
117 remainder of fiscal year one thousand nine hundred
118 ninety-one, excluding incurred but unreported claims.
119 The finance board shall establish in the proposed financial
120 plan a target of forty-five days of accounts payable which
121 may be carried over into the next fiscal year.

122 The finance board shall request its actuary to review
123 the proposed financial plan and to render a written
124 professional opinion stating whether the plan may be
125 reasonably expected to generate sufficient revenues to
126 meet all estimated program and administrative costs of the
127 public employees insurance agency for the fiscal year.
128 The actuary's report shall explain the basis of his or her

129 opinion. If the actuary concludes that the proposed
130 financial plan will not generate sufficient revenues to meet
131 all anticipated costs, then the finance board shall make
132 necessary modifications to the proposed plan to ensure
133 that all actuarially-determined financial requirements of
134 the agency will be met.

135 Upon obtaining the actuary's opinion and making all
136 necessary modifications to the proposed plan, the finance
137 board shall conduct two or more public hearings to
138 receive public comment on the proposed financial plan,
139 shall review such comments, and shall finalize and approve
140 the financial plan no later than the twentieth day of
141 November, one thousand nine hundred ninety.
142 Employees shall be notified of any changes in the types
143 and levels of employee costs or benefits contained in the
144 financial plan at least thirty days prior to the date of
145 implementation of the financial plan.

146 The finance board shall submit to the governor and to
147 the Legislature the final, approved financial plan no later
148 than the first day of December, one thousand nine
149 hundred ninety. The financial plan shall become effective
150 and shall be implemented by the director on the first day
151 of January, one thousand nine hundred ninety-one.

152 (e) *Plan for fiscal year one thousand nine hundred*
153 *ninety-two.* — No later than the first day of December,
154 one thousand nine hundred ninety, the governor shall
155 prepare and provide to the finance board an estimate of
156 the total amount of general and special revenues which the
157 state will have available to fund the public employees
158 insurance agency and its programs for the fiscal year
159 beginning the first day of July, one thousand nine
160 hundred ninety-one. The finance board shall request its
161 actuary to estimate the total financial requirements of the
162 public employees insurance agency for the fiscal year.

163 The finance board shall prepare a proposed financial
164 plan designed to generate revenues sufficient to meet all
165 estimated program and administrative costs of the public
166 employees insurance agency for the fiscal year. The
167 proposed financial plan shall allow for between thirty and
168 forty-five days of accounts payable to be carried over into

169 the next fiscal year. Before final adoption of the
170 proposed financial plan, the finance board shall request its
171 actuary to review the plan and to render a written
172 professional opinion stating whether the plan will generate
173 sufficient revenues to meet all estimated program and
174 administrative costs of the public employees insurance
175 agency for the fiscal year. The actuary's report shall
176 explain the basis of its opinion. If the actuary concludes
177 that the proposed financial plan will not generate
178 sufficient revenues to meet all anticipated costs, then the
179 finance board shall make necessary modifications to the
180 proposed plan to ensure that all actuarially-determined
181 financial requirements of the agency will be met.

182 Upon obtaining the actuary's opinion, the finance
183 board shall conduct one or more public hearings in each
184 congressional district to receive public comment on the
185 proposed financial plan, shall review such comments, and
186 shall finalize and approve the financial plan.

187 The finance board shall submit to the governor and to
188 the Legislature its final, approved financial plan for fiscal
189 year one thousand nine hundred ninety-two, together with
190 the actuary's final written opinion, no later than the first
191 day of May, one thousand nine hundred ninety-one. The
192 financial plan shall become effective and shall be
193 implemented by the director on the first day of July, one
194 thousand nine hundred ninety-one.

195 (f) *Annual plans.* — The finance board shall prepare,
196 in the manner provided in subsection (e) of this section, an
197 annual financial plan for fiscal year one thousand nine
198 hundred ninety-three and each fiscal year thereafter
199 during which the finance board remains in existence. Any
200 such financial plan shall be designed to allow thirty days
201 or less of accounts payable to be carried over into the next
202 fiscal year. For each such fiscal year, the governor shall
203 provide his or her estimate of total revenues to the finance
204 board no later than the first day of July of the preceding
205 fiscal year. The finance board shall submit its final,
206 approved financial plan, after obtaining the necessary
207 actuary's opinion and conducting one or more public
208 hearings in each congressional district, to the governor

209 and to the Legislature no later than the first day of
210 January preceding the fiscal year. The financial plan for a
211 fiscal year shall become effective and shall be
212 implemented by the director on the first day of July of
213 such fiscal year. In addition to each final, approved
214 financial plan required under this section, the finance
215 board shall also simultaneously submit financial
216 statements based on generally accepted accounting
217 practices (GAAP) and the final, approved plan restated on
218 an accrual basis of accounting, which shall include
219 allowances for incurred but not reported claims:
220 *Provided*, That the financial statements and the accrual-
221 based financial plan restatement shall not affect the
222 approved financial plan.

223 (g) The provisions of chapter twenty-nine-a of this
224 code shall not apply to the preparation, approval and
225 implementation of the financial plans required by this
226 section.

227 (h) The finance board shall meet on at least a
228 quarterly basis to review implementation of its current
229 financial plan in light of the actual experience of the
230 public employees insurance agency. The board shall
231 review actual costs incurred, any revised cost estimates
232 provided by the actuary, expenditures, and any other
233 factors affecting the fiscal stability of the plan, and may
234 make any additional modifications to the plan necessary
235 to ensure that the total financial requirements of the
236 agency for the current fiscal year are met. The financial
237 board may not increase the types and levels of cost to
238 employees during its quarterly review except in the event
239 of a true emergency.

240 (i) For any fiscal year in which legislative
241 appropriations differ from the governor's estimate of
242 general and special revenues available to the agency, the
243 finance board shall, within thirty days after passage of the
244 budget bill, make any modifications to the plan necessary
245 to ensure that the total financial requirements of the
246 agency for the current fiscal year are met.

247 (j) The types and levels of costs to employers,
248 employees and retired employees participating in public

249 employees insurance agency group insurance plans which
250 are currently in effect on the effective date of this article
251 are hereby authorized. The types and levels of costs to
252 employees participating in public employees insurance
253 agency group insurance plans which are currently in
254 effect on the effective date of this article shall remain in
255 effect unless and until changed or authorized to be
256 changed by the finance board in a financial plan prepared
257 and approved in accordance with this section.

CHAPTER 182

(H. B. 4694—By Delegates Michael, Doyle, Campbell,
Border, Leach, Kelley and Laird)

[Passed March 14, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eighteen, article sixteen, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to public employees insurance program funds and authorizing receipt and retainment of interest on those funds.

Be it enacted by the Legislature of West Virginia:

That section eighteen, 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.

§5-16-18. Payment of costs by employer; schedule of insurance; special funds created; duties of treasurer with respect thereto.

1 (a) All employers operating from state general
2 revenue or special revenue funds or federal funds or any
3 combination of those funds shall budget the cost of
4 insurance coverage provided by the public employees
5 insurance agency to current and retired employees of the

6 employer as a separate line item, titled "PEIA", in its
7 respective annual budget and are responsible for the
8 transfer of funds to the director for the cost of insurance
9 for employees covered by the plan. Each spending unit
10 shall pay to the director its proportionate share from each
11 source of funds. Any agency wishing to charge general
12 revenue funds for insurance benefits for retirees under
13 section thirteen of this article shall provide documentation
14 to the director that the benefits cannot be paid for by any
15 special revenue account or that the retiring employee has
16 been paid solely with general revenue funds for twelve
17 months prior to retirement.

18 (b) If the general revenue appropriation for any
19 employer, excluding county boards of education, is
20 insufficient to cover the cost of insurance coverage for the
21 employer's participating employees, retired employees
22 and surviving dependents, the employer shall pay the
23 remainder of the cost from its "personal services" or
24 "unclassified" line items. The amount of the payments
25 for county boards of education shall be determined by the
26 method set forth in section twenty-four, article nine-a,
27 chapter eighteen of this code: *Provided*, That local excess
28 levy funds shall be used only for the purposes for which
29 they were raised: *Provided, however*, That after approval
30 of its annual financial plan, but in no event later than the
31 thirty-first day of December of each year, the finance
32 board shall notify the Legislature and county boards of
33 education of the maximum amount of employer
34 premiums that the county boards of education shall pay
35 for covered employees during the following fiscal year.

36 (c) All other employers not operating from the state
37 general revenue fund shall pay to the director their share
38 of premium costs from their respective budgets. The
39 finance board shall establish the employers' share of
40 premium costs to reflect and pay the actual costs of the
41 coverage including incurred but not reported claims.

42 (d) The contribution of the other employers (namely:
43 A county, city or town) in the state; any separate
44 corporation or instrumentality established by one or more

45 counties, cities or towns, as permitted by law; any
46 corporation or instrumentality supported in most part by
47 counties, cities or towns; any public corporation charged
48 by law with the performance of a governmental function
49 and whose jurisdiction is coextensive with one or more
50 counties, cities or towns; any comprehensive community
51 mental health center or comprehensive mental retardation
52 facility established, operated or licensed by the secretary
53 of health and human resources pursuant to section one,
54 article two-a, chapter twenty-seven of this code, and which
55 is supported in part by state, county or municipal funds;
56 and a combined city-county health department created
57 pursuant to article two, chapter sixteen of this code for
58 their employees shall be the percentage of the cost of the
59 employees' insurance package as the employers
60 determine reasonable and proper under their own
61 particular circumstances.

62 (e) The employee's proportionate share of the
63 premium or cost shall be withheld or deducted by the
64 employer from the employee's salary or wages as and
65 when paid and the sums shall be forwarded to the director
66 with any supporting data as the director may require.

67 (f) All moneys received by the public employees
68 insurance agency shall be deposited in a special fund or
69 funds as are necessary in the state treasury and the
70 treasurer of the state is custodian of the fund or funds and
71 shall administer the fund or funds in accordance with the
72 provisions of this article or as the director may from time
73 to time direct. The treasurer shall pay all warrants issued
74 by the state auditor against the fund or funds as the
75 director may direct in accordance with the provisions of
76 this article. All funds received by the agency, including,
77 but not limited to, basic insurance premiums,
78 administrative expenses and optional life insurance
79 premiums, shall be deposited in the West Virginia
80 consolidated investment pool with the West Virginia
81 investment management board, with the interest income a
82 proper credit to all such funds.

CHAPTER 183

(H. B. 4220—By Delegates Beane, Michael, Mezzatesta,
Ashley, L. White and Azinger)

[Passed March 14, 1998; 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-e; and to amend and reenact section one, article six-a of said chapter, all relating to automobile liability insurance; establishing a procedure for written notification of an offer to settle for policy limits to an underinsured motorist coverage carrier; setting forth notice requirements; establishing requirements for preservation of subrogation rights by underinsured motorist coverage carrier; eliminating requirement that notice of cancellation of coverage be given by registered or certified mail; and making certain technical revisions.

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-e; and that section one, article six-a of said chapter be amended and reenacted, all to read as follows:

Article

6. The Insurance Policy.

6A. Cancellation or Nonrenewal of Automobile Liability Policies.

ARTICLE 6. THE INSURANCE POLICY.

§33-6-31e. Notice of proposed settlement for policy limits to underinsured motorist coverage carrier; waiver of subrogation; time limits.

- 1 (a) When an automobile liability insurer indemnifying
- 2 a tortfeasor offers to pay its full policy limits of coverage
- 3 for bodily injury or death to a claimant in a claim

4 involving a motor vehicle accident, conditioned upon an
5 underinsured motorist coverage carrier waiving its rights
6 of subrogation against the tortfeasor, then the claimant or
7 the liability insurer indemnifying the tortfeasor may give
8 to the underinsured motorist coverage carrier notice in
9 writing that an offer to settle for policy limits has been
10 made by the liability insurer indemnifying the tortfeasor.

11 (b) The notice shall be in writing and sent by certified
12 mail, return receipt requested, to the underinsured motorist
13 coverage carrier, and it shall state plainly the following
14 information:

15 (1) The name and address of the underinsured
16 motorist coverage claimant;

17 (2) The name and address of the person in whose
18 name the underinsured motorist coverage is written;

19 (3) The policy number of the policy under which the
20 underinsured motorist coverage is written;

21 (4) The name of the tortfeasor;

22 (5) The name of the insurance company and the
23 policy number for the insurance policy indemnifying the
24 tortfeasor under which an offer to settle for policy limits
25 has been made;

26 (6) A statement that the company indemnifying the
27 tortfeasor has offered to settle with the claimant for policy
28 limits, conditioned upon the waiver by the underinsured
29 motorist coverage carrier of its subrogation rights against
30 the tortfeasor; and

31 (7) A statement that under the law the underinsured
32 motorist coverage carrier has sixty days to preserve its
33 subrogation rights against the tortfeasor by providing
34 written notice of its intention to do so and by paying to
35 the claimant an amount equal to the policy limits that have
36 been offered to the claimant by the liability insurance
37 company indemnifying the tortfeasor.

38 (c) The underinsured motorist coverage carrier is
39 considered to have fully waived its rights of subrogation
40 against the tortfeasor, unless within sixty days from receipt

41 of the notice described in subsection (b) above, the
42 underinsured motorist coverage carrier sends in writing by
43 certified mail, return receipt requested, to the claimant and
44 to the liability insurer indemnifying the tortfeasor written
45 notice that it does not waive its rights of subrogation
46 against the tortfeasor. This notice is not effective unless
47 the notice to the claimant is accompanied by payment to
48 the claimant of an amount equal to the policy limits which
49 had been offered by the liability insurance company
50 indemnifying the tortfeasor. If the underinsured motorist
51 carrier fails to send the notice provided for in this
52 subsection or fails to pay the sum required by this
53 subsection within the time specified, then the underinsured
54 motorist coverage carrier is considered to have waived its
55 subrogation rights against the tortfeasor, and the claimant
56 may proceed to consummate the settlement about which
57 notice had been provided, as set forth in subsections (a)
58 and (b) of this section.

59 (d) If the underinsured motorist carrier gives notice
60 and tenders the payment, as required in subsection (c) of
61 this section, then the underinsured motorist carrier is and
62 remains subrogated to the rights of the claimant as to the
63 tortfeasor to the extent of any and all sums paid by the
64 underinsured motorist carrier to the claimant, as provided
65 under current law. The payment by the underinsured
66 motorist coverage carrier of the amount equal to the
67 policy limits offered by the liability insurer indemnifying
68 the tortfeasor, as provided for in this section, shall not
69 serve in any way to waive, change or increase the amount
70 of the applicable underinsured motorist coverage beyond
71 the underlying underinsured motorist coverage policy
72 limits.

73 (e) The provisions of this section shall apply only to
74 written notices sent to underinsured motorist coverage
75 carriers on or after the effective date of this section.

**ARTICLE 6A. CANCELLATION OR NONRENEWAL OF AUTOMO-
BILE LIABILITY POLICIES.**

**§33-6A-1. Cancellation prohibited except for specified
reasons; notice.**

1 No insurer once having issued or delivered a policy
2 providing automobile liability insurance in this state
3 insuring a private passenger automobile may, after the
4 policy has been in effect for sixty days, or in case of
5 renewal effective immediately, issue or cause to issue a
6 notice of cancellation during the term of the policy except
7 for one or more of the reasons specified in this section:

8 (a) The named insured fails to discharge when due
9 any of his or her obligations in connection with the
10 payment of premium for the policy or any installment of
11 the premium;

12 (b) The policy was obtained through material
13 misrepresentation;

14 (c) The insured violates any of the material terms and
15 conditions of the policy;

16 (d) The named insured or any other operator, either
17 resident in the same household or who customarily
18 operates an automobile insured under the policy:

19 (1) Has had his or her operator's license suspended or
20 revoked during the policy period including suspension or
21 revocation for failure to comply with the provisions of
22 article five-a, chapter seventeen-c of this code, regarding
23 consent for a chemical test for intoxication: *Provided,*
24 That when a license is suspended for sixty days by the
25 commissioner of motor vehicles because a person did
26 drive a motor vehicle while under the age of twenty-one
27 years with an alcohol concentration in his or her blood of
28 two hundredths of one percent or more, by weight, but less
29 than ten hundredths of one percent, by weight, pursuant to
30 subsection (l), section two, article five-a, chapter
31 seventeen-c of this code, the suspension shall not be
32 grounds for cancellation; or

33 (2) Is or becomes subject to epilepsy or heart attacks,
34 and the individual cannot produce a certificate from a
35 physician testifying to his or her ability to operate a motor
36 vehicle.

37 (e) The named insured or any other operator, either
38 resident in the same household or who customarily
39 operates an automobile insured under such policy is
40 convicted of or forfeits bail during the policy period for
41 any of the following:

42 (1) Any felony or assault involving the use of a motor
43 vehicle;

44 (2) Negligent homicide arising out of the operation of
45 a motor vehicle;

46 (3) Operating a motor vehicle while under the
47 influence of alcohol or of any controlled substance or
48 while having an alcohol concentration in his or her blood
49 of ten hundredths of one percent or more, by weight;

50 (4) Leaving the scene of a motor vehicle accident in
51 which the insured is involved without reporting as required
52 by law;

53 (5) Theft of a motor vehicle or the unlawful taking of
54 a motor vehicle;

55 (6) Making false statements in an application for a
56 motor vehicle operator's license;

57 (7) A third violation, committed within a period of
58 twelve months, of any moving traffic violation which
59 constitutes a misdemeanor, whether or not the violations
60 were repetitious of the same offense or were different
61 offenses. Notwithstanding any of the provisions of this
62 section to the contrary, no insurance company may cancel
63 a policy of automobile liability insurance without first
64 giving the insured thirty days' notice of its intention to
65 cancel: *Provided*, That cancellation of the insurance
66 policy by the insurance carrier for failure of consideration
67 to be paid by the insured upon initial issuance of the
68 insurance policy is effective upon the expiration of ten
69 days' notice of cancellation to the insured.

CHAPTER 184

(H. B. 2550—By Delegates Jenkins, L. White, Thompson and Beane)

[Passed March 14, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article six-a, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to cancellation or nonrenewal of automobile liability insurance policies; providing that such cancellation notices may include the amount of premium due.

Be it enacted by the Legislature of West Virginia:

That section three, article six-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 6A. CANCELLATION OR NONRENEWAL OF AUTOMOBILE LIABILITY POLICIES.

§33-6A-3. Insurer to specify reasons for cancellation; immunity from liability or suit.

1 In every instance in which a policy or contract of
2 automobile liability insurance which has been in effect
3 sixty days or which has been renewed is canceled by the
4 insurer, the insurer or its duly authorized agent shall, in
5 the notice of cancellation or at the written request of the
6 named insured, specify the reason or reasons relied upon
7 by the insurer for the cancellation. These reasons shall be
8 stated in a written notice and shall, if not provided in the
9 notice of cancellation, be made within thirty days after the
10 request: *Provided*, That there shall be no liability on the
11 part of, and no cause of action shall arise against, any
12 insurer or its agents or its authorized investigative sources
13 for any statements made with probable cause by the
14 insurer, agent or investigative source in a written notice
15 required to be given pursuant to this section. A notice of
16 cancellation for nonpayment of premium is not void on
17 the grounds that the notice includes the amount of
18 premium due or the date by which payment was to be
19 paid.

CHAPTER 185

(H. B. 4283—By Delegates Thompson, Beane,
L. White, Kominar and Johnson)

[Passed March 14, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article seven, 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 nine-a, relating to annuity valuation mortality tables; commissioner to propose rules adopting national association of insurance commissioners' model proposal.

Be it enacted by the Legislature of West Virginia:

That article seven, 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 nine-a, to read as follows:

ARTICLE 7. ASSETS AND LIABILITIES.

§33-7-9a. Annuity mortality tables.

1 The commissioner shall propose rules, on or before the
2 first day of July, one thousand nine hundred ninety-eight,
3 adopting the national association of insurance
4 commissioners' model proposal "Recognizing Annuity
5 Mortality Tables For Use In Determining Reserve
6 Liabilities," which incorporates the "Annuity 2000
7 Mortality Table" and the "1994 Group Annuity Reserving
8 Table."

CHAPTER 186

(H. B. 4259—By Mr. Speaker, Mr. Kiss, and Delegates
Beane, L. White, Thompson, Faircloth and Johnson)

[Passed March 14, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact article sixteen-e, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating generally to the regulation of limited benefits insurance policies; providing definitions; providing limitations on premium rate increases; providing for premium corrections; providing for the amount and timing of premium corrections; requiring reports to the commissioner; providing for civil penalties; requiring notice of cancellation or nonrenewal; providing requirements for limited benefits policy provisions; allowing the insurance commissioner to prevent an insurer from avoiding premium correction requirements by offering a new form of policy or certificate; and requiring a report to the Legislature by the commissioner.

Be it enacted by the Legislature of West Virginia:

That article sixteen-e, 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 16E. LIMITED BENEFITS ACCIDENT AND SICKNESS
INSURANCE POLICIES AND CERTIFICATES.**

- §33-16E-1. Scope of article.
- §33-16E-2. Definitions.
- §33-16E-3. Identification of level premium limited benefits forms.
- §33-16E-4. Premium rate increases.
- §33-16E-5. Premium corrections required.
- §33-16E-6. Amount and timing of premium corrections.
- §33-16E-7. Report to be filed with commissioner; form; examinations.
- §33-16E-8. Penalties.
- §33-16E-9. Notice of cancellation or nonrenewal.

§33-16E-10. Prohibition against preexisting conditions, waiting periods, elimination periods and probationary periods in replacement policies.

§33-16E-11. Applicability of other provisions.

§33-16E-12. Commissioner to promulgate rules.

§33-16E-13. Commissioner's authority to reject new policy or certificate forms.

§33-16E-14. Commissioner's report to the Legislature.

§33-16E-1. Scope of article.

1 The provisions of this article apply to all limited
2 benefits policies and certificates delivered or issued for
3 delivery in this state after the ninth day of July, one
4 thousand nine hundred ninety-three.

§33-16E-2. Definitions.

1 For purposes of this article:

2 (a) "Limited benefits policy" means any individual
3 or group accident and sickness insurance policy, including
4 all riders thereto (and certificates in the case of a group
5 policy), that covers one or more residents of this state and
6 that is not required to offer or provide all benefits
7 mandated by any other applicable provision of this
8 chapter. Such policies include, but are not limited to,
9 accident only, sickness only disability, sickness only,
10 accident only disability, hospital indemnity, specified
11 disease and travel accident insurance policies: *Provided,*
12 That the following types of policies and certificates are
13 excluded from the definition of "limited benefits policy":

14 (1) Credit accident and sickness insurance;

15 (2) Long-term care insurance;

16 (3) Medicare supplement insurance;

17 (4) Minimum benefits accident and sickness insurance
18 issued pursuant to section fifteen, article fifteen of this
19 chapter or article sixteen-c of this chapter;

20 (5) Accident and sickness policies which provide
21 benefits for loss of income due to disability;

22 (6) Major medical policies;

23 (7) Dental policies; and

24 (8) Vision policies.

25 (b) "Limited benefits form" means a compilation of
26 policy terms that has been approved by the commissioner
27 for use as a prototype for limited benefits policies, or a
28 compilation of policy terms that has been used as the
29 prototype for one or more limited benefits policies,
30 regardless of whether that compilation has been approved
31 by the commissioner. The existence of a form may be
32 inferred from the existence of one or more policies that
33 do not conform to any form that has been approved by
34 the commissioner. Limited benefits forms that are used by
35 a particular insurer and that, in the opinion of the
36 commissioner, are substantially identical with respect to
37 the risks covered and benefits provided shall be regarded
38 as a single limited benefits form.

39 (c) "Insurer" means an insurer that offers or has in
40 force any limited benefits policies.

41 (d) "Correction date" means the thirty-first day of
42 December of the year one thousand nine hundred ninety-
43 nine and of every third year thereafter.

44 (e) "Incurred claims" for a particular limited benefits
45 form during a particular period of time means the
46 aggregate amount of all claims incurred during that
47 period on all limited benefits policies based on that form,
48 regardless of when individual claims are paid: *Provided*,
49 That if both West Virginia residents and residents of one
50 or more other states are covered under a group limited
51 benefits policy, only claims incurred on behalf of West
52 Virginia residents shall be taken into account in
53 determining the amount of claims incurred on the policy.

54 (f) "Earned premiums" for a particular limited benefits
55 form during a particular period of time means the
56 aggregate amount all premiums earned during that period
57 on all policies based on that form, regardless of when
58 specific premiums are paid: *Provided*, That if both West
59 Virginia residents and residents of one or more other
60 states are covered under group limited benefits policy,

61 only premiums earned for coverage extended to West
62 Virginia residents shall be taken into account in
63 determining the amount of premiums earned on the
64 policy.

65 (g) "Net level premium" for a particular limited
66 benefits form means a hypothetical premium per limited
67 benefits policy that is of such amount that, over the
68 lifetime of the limited benefits policy beginning at the
69 time of issue of the policy, the present value of the net
70 level premiums for the policy equals the present value of
71 the claims expected to be incurred on the policy. The net
72 level premium shall be determined using the same
73 assumptions as are used in pricing calculations, with
74 appropriate provision for adverse deviation.

75 (h) "Net level premium reserve" means a reserve
76 calculated so that at any point in time the reserve amount
77 is the present value of benefits expected to be incurred in
78 the future minus the present value of future net level
79 premiums.

80 (i) "Modified net level premium reserve" means net
81 level premium reserve reduced by the investment income
82 component of such reserve.

§33-16E-3. Identification of level premium limited benefits forms.

1 (a) A limited benefits form shall be regarded as a level
2 premium limited benefits form only if the form has been
3 identified as provided in this section.

4 (b) On or before the first day of December, one
5 thousand nine hundred ninety-eight, each insurer shall
6 identify, in writing to the commissioner, those limited
7 benefits forms approved by the commissioner (pursuant to
8 section eight, article six of this chapter) prior to the first
9 day of July, one thousand nine hundred ninety-eight, that
10 are level premium limited benefits forms.

11 (c) An insurer submitting a form to the commissioner
12 for approval (pursuant to section eight, article six of this
13 chapter) after the first day of July, one thousand nine
14 hundred ninety-eight, shall clearly indicate, in the written

15 documents filed with the commissioner to submit the
16 form, that the form is a level premium limited benefits
17 form.

18 (d) An insurer using a form that is not subject to prior
19 approval by the commissioner shall identify the form as a
20 level premium limited benefits form, in writing to the
21 commissioner:

22 (1) On or before the first day of December, one
23 thousand nine hundred ninety-eight, if at least one policy
24 based on the form was delivered or issued for delivery in
25 this state prior to the first day of July, one thousand nine
26 hundred ninety-eight; or

27 (2) Within six months of the first instance in which a
28 policy is delivered or issued for delivery in this state, if no
29 such policies were delivered or issued for delivery in West
30 Virginia prior to the first day of July, one thousand nine
31 hundred ninety-eight.

32 (e) A limited benefits form that is subject to prior
33 approval by the commissioner and that has not been so
34 approved shall not be regarded as a level premium limited
35 benefits form.

§33-16E-4. Premium rate increases.

1 (a) The commissioner may not approve a premium
2 rate increase for a limited benefits form unless the form is
3 expected, over its lifetime and given the rate increase, to
4 return at least seventy-five percent (in the case of a group
5 form) or sixty-five percent (in the case of an individual
6 form) of its earned premiums to policyholders and
7 certificate holders as incurred claims: *Provided*, That for
8 purposes of this requirement, any premium refunds that
9 have been paid for the form pursuant to this article shall
10 be regarded as incurred claims. At the request of an
11 insurer, the commissioner may apply a minimum
12 percentage that is less than the applicable percentage
13 otherwise provided in this subsection if the insurer
14 demonstrates to the satisfaction of the commissioner that
15 special circumstances justify the use of that lesser
16 percentage in order to allow the insurer a reasonable profit

17 on policies based on the form. Special circumstances
18 include, but are not limited to:

19 (1) The cost of developing the form is unusually high;
20 or

21 (2) The expenses of marketing or administering the
22 form are unusually high; or

23 (3) The form covers unusual risks or incorporates
24 unique features.

25 (b) For purposes of this article, the following shall be
26 treated as individual limited benefits forms:

27 (1) Forms used as a prototypes for limited benefits
28 policies (or certificates thereto in the case of group
29 policies) that are marketed to individuals through the mail
30 or mass media advertising, including both print and
31 broadcast advertising; and

32 (2) Forms used as a prototypes for limited benefits
33 policies (or certificates thereto in the case of group
34 policies), however marketed, that are sold so that the
35 individual insured makes the decision to purchase the
36 insurance and is responsible for paying all costs of the
37 insurance, including payment by salary reductions for
38 cafeteria plans under section one hundred twenty-five of
39 the Internal Revenue Code.

§33-16E-5. Premium corrections required.

1 (a) Except as otherwise provided in this section, an
2 insurer shall make a premium correction for a particular
3 limited benefits form and correction date if the
4 comparison percentage for that form and date is not at
5 least sixty-five percent (in the case of a group form) or
6 fifty-five percent (in the case of an individual form). At
7 the request of an insurer, the commissioner may apply a
8 minimum percentage that is less than the applicable
9 percentage otherwise provided in this subsection if the
10 insurer demonstrates to the satisfaction of the
11 commissioner that special circumstances justify the use of
12 that lesser percentage in order to allow the insurer a

13 reasonable profit on policies based on the form. Special
14 circumstances include, but are not limited to:

15 (1) The cost of developing the form was unusually
16 high; or

17 (2) The expenses of marketing or administering the
18 form are unusually high; or

19 (3) The form covers unusual risks or incorporates
20 unique features.

21 (b) The comparison percentage for a limited benefits
22 form that is not a level premium limited benefits form
23 shall be calculated by dividing the incurred claims for the
24 form during the three-year period ending on the
25 correction date by the earned premiums for the form
26 during the same period, and multiplying that quotient by
27 one hundred: *Provided*, That for correction dates after
28 the thirty-first day of December, two thousand two,
29 comparison percentages for level premium limited
30 benefits forms also shall be calculated in this fashion.

31 (c) The comparison percentage for a level premium
32 limited benefits form shall be calculated as follows:
33 *Provided*, That for correction dates after the thirty-first
34 day of December, two thousand two, the comparison
35 percentage for such forms instead shall be calculated as
36 described in subsection (b) of this section:

37 (1) Add the incurred claims for the form during the
38 period that begins on the ninth day of July, one thousand
39 nine hundred ninety-three, and ends on the correction
40 date, to the modified net level premium reserve for the
41 form as of the correction date: *Provided*, That any
42 premium refunds that have been paid for the form
43 pursuant to this article shall be added to the incurred
44 claims when performing this calculation;

45 (2) Divide the sum thus obtained by the earned
46 premiums for the form during the period that begins on
47 the ninth day of July, one thousand nine hundred ninety-
48 three, and ends on the correction date; and then

49 (3) Multiply the quotient thus obtained by one
50 hundred.

51 (d) If, in the opinion of the commissioner, a
52 comparison percentage that is calculated by the method
53 described in subsection (c) of this section would not
54 accurately predict the percentage of earned premiums
55 returned to policyholders and certificate holders over the
56 lifetime of a particular limited benefits form, the
57 commissioner may require that a different method be used
58 to calculate a comparison percentage for the form.

59 (e) Notwithstanding any other provision of this
60 section, an insurer may not be required to make a
61 premium correction for a particular limited benefits form
62 and correction date if the earned premiums for the form
63 during the period that begins on the ninth day of July, one
64 thousand nine hundred ninety-three, and ends on the
65 correction date is less than five hundred thousand dollars.

§33-16E-6. Amount and timing of premium corrections.

1 (a) A premium correction may be a refund of
2 premiums, a reduction in premiums, or an increase in
3 benefits. All premium corrections shall satisfy the
4 requirements of this section, and any refund or reduction
5 of premiums, or increase in benefits that does not satisfy
6 those requirements may not be regarded as a premium
7 correction for purposes of this article.

8 (b) The total amount of a premium refund for a
9 particular form shall equal the amount of additional
10 claims that, if incurred on the correction date, would cause
11 the comparison percentage for the form to equal the
12 minimum percentage for the form, with both percentages
13 being determined according to section five of this article.
14 The refund shall be allocated among those persons who
15 are policyholders as of the correction date for which the
16 refund is made. Individual refunds shall be in proportion
17 to the total amount of premiums earned for each
18 individual's policy over the entire period that the policy
19 has been in force. A premium refund that satisfies the
20 requirements of this section shall not be regarded as an
21 instance of unfair discrimination in rates or premiums for

22 purposes of subsection (7), section four, article eleven of
23 this chapter or as a rebate of premiums for purposes of
24 subsection (8), section four, article eleven of this chapter.

25 (c) A reduction of premiums or an increase in benefits
26 shall be such that the amount returned to policyholders or
27 certificate holders as incurred claims over the lifetime of
28 the form is at least equal to the minimum percentage for
29 the form determined according to section five of this
30 article: *Provided*, That for purposes of this requirement,
31 any premium refunds that have been paid for the form
32 pursuant to this article shall be regarded as incurred
33 claims. Once implemented, the reduction or increase shall
34 affect all policies, whether newly issued or renewed, that
35 are based on the form for which the correction is made.

36 (d) A reduction of premiums or increase in benefits
37 must be approved in advance by the commissioner. The
38 commissioner may approve a reduction or increase only if
39 the insurer establishes, to the satisfaction of the
40 commissioner, that the reduction or increase satisfies the
41 requirements of this section. Prior to approving or
42 disapproving a reduction or increase, the commissioner
43 may request, and the insurer shall provide, all information
44 that, in the opinion of the commissioner, is reasonably
45 related to the commissioner's decision. To evaluate a
46 reduction or increase, the commissioner may retain
47 professionals or specialists, including, but not limited to,
48 independent actuaries, to perform services that are
49 reasonably necessary to evaluate the reduction or increase.
50 The cost of those services shall be borne by the insurer
51 that has requested approval of the reduction or increase:
52 *Provided*, That the amount borne by an insurer in
53 connection with a single reduction or increase shall not
54 exceed two thousand five hundred dollars.

55 (e) Premium refunds shall be tendered to individual
56 policyholders, and reductions in premiums or increases in
57 benefits shall be implemented, on the later of the first day
58 of October of the year immediately following the
59 correction date for which the correction is made or the
60 date which is sixty days after the commissioner issues a
61 decision on a request for approval of a reduction in

62 premiums or an increase in benefits. Every individual
63 premium refund tendered later than the required tender
64 date shall include interest for the period beginning on the
65 required tender date and ending on the date on which the
66 refund is tendered, at the rate established by the tax
67 commissioner under section seventeen-a, article ten,
68 chapter eleven of this code as of the actual tender date.
69 The commissioner may withdraw approval of a premium
70 reduction or benefit increase that is not implemented by
71 the date required by this subsection unless the insurer
72 establishes to the satisfaction of the commissioner, that the
73 failure to implement the reduction or increase by that date
74 was neither willful nor a result of the insurer's negligence.
75 Insurers shall request approval of a premium reduction or
76 benefits increase no later than the first day of July of the
77 same year: *Provided*, That the commissioner may accept
78 a request for approval made after that date if, in the
79 opinion of the commissioner, the timing of the request will
80 not impair the commissioner's evaluation of the request
81 and will allow any such reduction or increase to be
82 implemented on or before the date required by this
83 subsection. If the requirements of any other state or
84 federal law restrict the implementation of any premium
85 reduction or benefit increase on the date otherwise
86 required by this subsection, such reduction or increase
87 shall be implemented on the earliest date allowed by such
88 other state or federal law.

89 (f) A premium refund that, once allocated, would
90 result in individual refunds of less than ten dollars per
91 policyholder may be retained by the insurer and placed in
92 a fund to be used to offset any future rate increases for the
93 form: *Provided*, That if the insurer subsequently pays
94 individual refunds for the same form, any amount earlier
95 placed into the fund for the same form shall be added to
96 the amount of the premium refund, and the total amount
97 allocated among individual policyholders as described in
98 subsection (b) of this section.

99 (g) Notwithstanding any other provision of this article,
100 if a particular limited benefits policy was issued for
101 delivery prior to the ninth day of July, one thousand nine

102 hundred ninety-three, an insurer shall not be required to
103 pay individual refunds to the holder of that policy.

§33-16E-7. Report to be filed with commissioner; form; examinations.

1 (a) Every insurer shall annually file with the
2 commissioner a report on the limited benefits forms used
3 or available for use by the insurer during the period.

4 (1) The report shall be filed no later than the first day
5 of June: *Provided*, That the commissioner for good cause
6 shown may extend the filing date for a particular report
7 for up to ninety days.

8 (2) The report shall be prepared on a form prescribed
9 by the commissioner, and shall contain all of the
10 information required by that form. The report shall
11 provide this information for every limited benefits form
12 actually used by the insurer during the preceding calendar
13 year, and for every form that as of the final day of the
14 reporting period was approved by the commissioner.

15 (3) The report shall be executed by the insurer in the
16 manner prescribed by the commissioner.

17 (b) The commissioner may examine the records and
18 files of any insurer to determine whether the insurer has
19 complied with the provisions of this article.

§33-16E-8. Penalties.

1 (a) Any insurer that fails to comply with the provisions
2 of this article is subject to the following civil penalties:

3 (1) An insurer that has failed to file a limited benefits
4 report by the applicable filing date (determined with
5 regard to any extensions of time granted by the
6 commissioner) is subject to a penalty of two thousand five
7 hundred dollars, and an additional penalty of two
8 thousand five hundred dollars for each month or fraction
9 thereof during which the failure continues;

10 (2) An insurer that has filed a report that is incomplete
11 or inaccurate in any material respect is subject to a penalty
12 of two thousand five hundred dollars, and an additional

13 penalty of two thousand five hundred dollars for every
14 month or fraction thereof during which the insurer fails to
15 correct all material defects in the report; and

16 (3) An insurer that has failed to make a premium
17 correction during the time prescribed by this article is
18 subject to a penalty of five thousand dollars, and an
19 additional penalty of five thousand dollars for each month
20 or fraction thereof during which the failure continues.

21 (b) Penalties established by this section may not be
22 imposed if the insurer establishes, to the satisfaction of the
23 commissioner, that the failure upon which the penalty is
24 based was neither willful nor a result of the insurer's
25 negligence.

26 (c) Penalties imposed under this section shall be paid
27 to the commissioner, who shall transfer amounts so
28 received to the general revenue fund of this state. A
29 penalty shall be due when the insurer receives written
30 notice from the commissioner stating the amount of the
31 penalty and describing the failure for which it is imposed.
32 Notice of a penalty does not preclude the imposition of
33 additional penalties for subsequent months or fractions
34 thereof during which the failure identified in the notice
35 continues, or the imposition of penalties for other failures.

36 (d) The imposition of penalties under this section are
37 in addition to, and not in lieu of, any other penalties,
38 charges, sanctions, or liabilities allowed by law.

§33-16E-9. Notice of cancellation or nonrenewal.

1 No insurer may cancel or nonrenew a limited benefits
2 policy, or a certificate thereto in the case of a group
3 policy, unless written notice of such cancellation or
4 nonrenewal is forwarded to the policyholder or certificate
5 holder not less than sixty days prior to the expiration date
6 of the policy or certificate.

§33-16E-10. Prohibition against preexisting conditions, waiting periods, elimination periods and probationary periods in replacement policies.

1 (a) If a limited benefits policy replaces another limited
2 benefits policy providing similar coverage, the insurer
3 issuing the replacement policy shall waive any time

4 periods applicable to preexisting conditions, waiting
5 periods, elimination periods and probationary periods in
6 the new limited benefits policy to the extent that such time
7 was spent under the original policy or certificate.

8 (b) If a limited benefits policy replaces another limited
9 benefits policy providing similar coverage that has been in
10 effect for at least six months, the replacement policy may
11 not provide any time periods applicable to preexisting
12 conditions, waiting periods, elimination periods and
13 probationary periods.

§33-16E-11. Applicability of other provisions.

1 Except as otherwise provided, all the provisions of
2 article fifteen of this chapter are applicable to individual
3 limited benefits policies and all provisions of article
4 sixteen of this chapter are applicable to group limited
5 benefits policies.

§33-16E-12. Commissioner to promulgate rules.

1 The commissioner may promulgate rules in
2 accordance with the provisions of chapter twenty-nine-a of
3 this code regarding the implementation, regulation and
4 enforcement of the provisions of this article.

§33-16E-13. Commissioner's authority to reject new policy or certificate forms.

1 The commissioner may disapprove any new limited
2 benefits form if the commissioner determines that the new
3 form likely will be used by the insurer in lieu of an
4 existing form so as to allow the insurer to avoid making
5 premium corrections on the existing form.

§33-16E-14. Commissioner's report to the Legislature.

1 The commissioner shall prepare a report to the
2 Legislature, to be delivered during the regular session of
3 the Legislature held in the year two thousand two. The
4 commissioner's report shall evaluate the provisions of this
5 article (including, but not limited to, the provisions that
6 establish a method for computed comparison percentages
7 for level premium limited benefits policies) and may
8 include proposed changes or alternatives to those
9 provisions.

CHAPTER 187

(Com. Sub. for S. B. 361—By Senators Hunter, White, Kessler and Ball)

[Passed March 14, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-four, article twenty-five-a, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said chapter by adding thereto two new articles, designated articles twenty-five-c and forty-two, all relating to managed care plans and their patients' rights; and providing for direct access to women's health care providers.

Be it enacted by the Legislature of West Virginia:

That section twenty-four, 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; and that said chapter be further amended by adding thereto two new articles, designated articles twenty-five-c and forty-two, all to read as follows:

Article

25A. Health Maintenance Organization Act.

25C. Health Maintenance Organization Patient Bill of Rights.

42. Women's Access to Health Care Act.

ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.

§33-25A-24. Statutory construction and relationship to other laws.

- 1 (a) Except as otherwise provided in this article,
- 2 provisions of the insurance laws and provisions of hospital
- 3 or medical service corporation laws are not applicable to
- 4 any health maintenance organization granted a certificate
- 5 of authority under this article. The provisions of this
- 6 article shall not apply to an insurer or hospital or medical
- 7 service corporation licensed and regulated pursuant to the
- 8 insurance laws or the hospital or medical service
- 9 corporation laws of this state except with respect to its

10 health maintenance corporation activities authorized and
11 regulated pursuant to this article. The provisions of this
12 article shall not apply to an entity properly licensed by a
13 reciprocal state to provide health care services to employer
14 groups, where residents of West Virginia are members of
15 an employer group, and the employer group contract is
16 entered into in the reciprocal state. For purposes of this
17 subsection, a "reciprocal state" means a state which
18 physically borders West Virginia and which has subscriber
19 or enrollee hold harmless requirements substantially
20 similar to those set out in section seven-a of this article.

21 (b) Factually accurate advertising or solicitation
22 regarding the range of services provided, the premiums
23 and copayments charged, the sites of services and hours of
24 operation, and any other quantifiable, nonprofessional
25 aspects of its operation by a health maintenance
26 organization granted a certificate of authority, or its
27 representative shall not be construed to violate any
28 provision of law relating to solicitation or advertising by
29 health professions: *Provided*, That nothing contained in
30 this subsection shall be construed as authorizing any
31 solicitation or advertising which identifies or refers to any
32 individual provider or makes any qualitative judgment
33 concerning any provider.

34 (c) Any health maintenance organization authorized
35 under this article shall not be considered to be practicing
36 medicine and is exempt from the provisions of chapter
37 thirty of this code, relating to the practice of medicine.

38 (d) The provisions of sections fifteen and twenty,
39 article four (general provisions); section seventeen, article
40 six (noncomplying forms); article six-c (guaranteed loss
41 ratio); article seven (assets and liabilities); article eight
42 (investments); article nine (administration of deposits);
43 article twelve (agents, brokers, solicitors and excess line);
44 section fourteen, article fifteen (individual accident and
45 sickness insurance); section sixteen, article fifteen
46 (coverage of children); section eighteen, article fifteen
47 (equal treatment of state agency); section nineteen, article
48 fifteen (coordination of benefits with medicaid); article
49 fifteen-b (uniform health care administration act); section
50 three, article sixteen (required policy provisions); section
51 three-f, article sixteen (treatment of temporomandibular

52 disorder and craniomandibular disorder); section eleven,
53 article sixteen (coverage of children); section thirteen,
54 article sixteen (equal treatment of state agency); section
55 fourteen, article sixteen (coordination of benefits with
56 medicaid); article sixteen-a (group health insurance
57 conversion); article sixteen-d (marketing and rate practices
58 for small employers); article twenty-five-c (health
59 maintenance organization patient bill of rights); article
60 twenty-seven (insurance holding company systems);
61 article thirty-four-a (standards and commissioner's
62 authority for companies deemed to be in hazardous
63 financial condition); article thirty-five (criminal sanctions
64 for failure to report impairment); article thirty-seven
65 (managing general agents); article thirty-nine (disclosure
66 of material transactions); article forty-one (privileges and
67 immunity); and article forty-two (women's access to health
68 care) shall be applicable to any health maintenance
69 organization granted a certificate of authority under this
70 article. In circumstances where the code provisions made
71 applicable to health maintenance organizations by this
72 section refer to the "insurer", the "corporation" or words of
73 similar import, the language shall be construed to include
74 health maintenance organizations.

75 (e) Any long-term care insurance policy delivered or
76 issued for delivery in this state by a health maintenance
77 organization shall comply with the provisions of article
78 fifteen-a of this chapter.

79 (f) A health maintenance organization granted a
80 certificate of authority under this article shall be exempt
81 from paying municipal business and occupation taxes on
82 gross income it receives from its enrollees, or from their
83 employers or others on their behalf, for health care items
84 or services provided directly or indirectly by the health
85 maintenance organization. This exemption applies to all
86 taxable years through the thirty-first day of December,
87 one thousand nine hundred ninety-six. The commissioner
88 and the tax department shall conduct a study of the
89 appropriations of imposition of the municipal business
90 and occupation tax or other tax on health maintenance
91 organizations, and shall report to the regular session of the
92 Legislature, one thousand nine hundred ninety-seven, on
93 their findings, conclusions and recommendations, together

94 with drafts of any legislation necessary to effectuate their
95 recommendations.

**ARTICLE 25C. HEALTH MAINTENANCE ORGANIZATION
PATIENT BILL OF RIGHTS.**

§33-25C-1. Short title.

§33-25C-2. Definitions.

§33-25C-3. Notice of certain subscriber rights.

§33-25C-1. Short title.

1 This article may be referred to as the "Patients' Bill of
2 Rights".

§33-25C-2. Definitions.

1 (a) "Commissioner" means the commissioner of
2 insurance.

3 (b) "Managed care plan" or "plan" means any health
4 maintenance organization or prepaid limited health care
5 organization.

6 (c) "Provider" means any physician, hospital or other
7 person or organization which is licensed or otherwise
8 authorized in this state to provide health care services or
9 supplies.

§33-25C-3. Notice of certain subscriber rights.

1 All managed care plans must provide to subscribers on
2 a form prescribed by the commissioner a notice of certain
3 subscriber rights. The notice shall address the following
4 areas:

5 (1) The ability of the subscriber to pursue grievance
6 and hearing procedures without reprisal from the
7 managed care plan;

8 (2) How the subscriber may choose providers within
9 the plan;

10 (3) The subscriber's right to privacy and
11 confidentiality;

12 (4) The subscriber's ability to examine and offer
13 corrections to their own medical records;

14 (5) The subscriber's right to be informed of plan
15 policies and any charges for which the subscriber will be
16 responsible;

17 (6) The subscriber's ability to obtain evidence of the
18 medical credentials of a plan provider such as diploma
19 and board certifications;

20 (7) The right of subscriber's to have coverage denials
21 reviewed by appropriate medical professionals consistent
22 with plan review procedures;

23 (8) Any other areas the commissioner may by rule
24 require.

ARTICLE 42. WOMEN'S ACCESS TO HEALTH CARE ACT.

§33-42-1. Short title.

§33-42-2. Legislative findings and purpose.

§33-42-3. Definitions.

§33-42-4. Limitations on conditions of coverage.

§33-42-5. Required disclosure.

§33-42-6. Certain cost-sharing prohibited.

§33-42-7. Limitation on number of women's health care providers.

§33-42-1. Short title.

1 This article shall be known and may be cited as the
2 "Women's Access To Health Care Act".

§33-42-2. Legislative findings and purpose.

1 The Legislature finds and declares that adequate
2 delivery of health care services to women requires direct
3 access to primary and preventative obstetrical and
4 gynecological services, which services may be provided as
5 "well woman examinations", and direct access without
6 prior authorization to prenatal and obstetrical services for
7 pregnant women.

§33-42-3. Definitions.

1 For purposes of this article:

2 (1) "Advanced nurse practitioner" means a certified
3 nurse-midwife, or an advanced nurse practitioner certified
4 to practice in family practice, women's health (ob/gyn), or
5 primary care adult, geriatric or pediatric practice,

6 practicing within the lawful scope of that provider's
7 practice.

8 (2) "Health benefit policy" means any individual or
9 group plan, policy or contract for health care services
10 issued, delivered, issued for delivery, or renewed in this
11 state by a health care corporation, health maintenance
12 organization, accident and sickness insurer, fraternal
13 benefit society, nonprofit hospital service corporation,
14 nonprofit medical service corporation or similar entity,
15 when the policy or plan covers hospital, medical or
16 surgical expenses.

17 (3) "Women's health care provider" means an
18 obstetrician/gynecologist, advanced nurse practitioner
19 certified to practice in women's health (ob/gyn), certified
20 nurse-midwife or physician assistant-midwife practicing
21 within the lawful scope of that provider's practice.

§33-42-4. Limitations on conditions of coverage.

1 No health benefits policy may require as a condition
2 to the coverage of basic primary and preventative
3 obstetrical and gynecological services that a woman first
4 obtain a referral from a primary care physician: *Provided*,
5 That for a health maintenance organization authorized
6 under article twenty-five-a of this chapter, direct access, at
7 least annually, to a women's health care provider for
8 purposes of a well woman examination shall satisfy the
9 foregoing requirement. No health benefits policy may
10 require as a condition to the coverage of prenatal or
11 obstetrical care that a woman first obtain a referral for
12 those services by a primary care physician.

§33-42-5. Required disclosure.

1 Every health benefits policy that is issued, delivered,
2 issued for delivery or renewed in this state on or after the
3 first day of July, one thousand nine hundred ninety-eight,
4 shall disclose in writing to enrollees, subscribers and
5 insureds, in clear and accurate language, the female
6 enrollee's right of direct access to a women's health care
7 provider of her choice. The information required to be
8 disclosed shall include, at a minimum, any specific

9 women's health care services that are excluded from
10 coverage and the health benefits policy's right to limit
11 coverage to medically necessary and appropriate women's
12 health care services.

§33-42-6. Certain cost-sharing prohibited.

1 No health benefits policy may impose additional
2 copayments or deductibles for female enrollees' direct
3 access to in-network, participating women's health care
4 providers unless the same additional cost-sharing is
5 imposed for other types of health care services not
6 delineated in this article.

§33-42-7. Limitation on number of women's health care providers.

1 A health benefits policy may limit the number of
2 women's health care providers in a network: *Provided*,
3 That a sufficient number of providers are available to
4 serve a defined population or geographic service area so
5 that female enrollees will have direct and timely access to
6 women's health care providers.

CHAPTER 188

(Com. Sub. for S. B. 725—By Senators Wooton, Craigo, Jackson, Walker,
White, Buckalew and Scott)

[Passed March 14, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section thirteen-c, article five, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections one, two, three, three-a, four, six, seven, eight, eight-a, nine, eleven, eleven-a, twelve, thirteen-a, thirteen-d, fifteen and sixteen-a of said article; and to further amend said article by adding thereto a new section, designated section two-a, all relating to making technical corrections and clarifications with regard to juvenile proceedings for status offenses and

delinquency; eliminating certain obsolete references and provisions; providing for attendance at juvenile proceedings by certain persons, in the discretion of the presiding judicial officer; providing authorization for informal resolution by prepetition diversion; clarifying that proceedings are formally instituted by the filing with the court of a juvenile petition; authorizing the court to require participation in noncustodial counseling a juvenile's parent, guardian or custodian; providing that certain examinations are discretionary with the court; clarifying who may demand a jury trial in a juvenile proceeding; eliminating certain referrals to or instances of custody by juvenile probation officers; eliminating certain obsolete provisions relating to taking juveniles into custody by way of warrant, *capias* or attachment; requiring a showing of probable cause in certain instances; requiring certain procedures and notifications when a juvenile is taken into custody; requiring the department of health and human resources to make certain reports to the court; providing for further disposition of adjudicated status offenders beyond the initial mandatory referral to the department of health and human resources; providing for appeal of such orders of further disposition; expanding and extending the teen court program as an alternative to juvenile adjudication and/or disposition for certain juveniles; clarifying restrictions on the appointment of juvenile probation officers; and requiring that the director of the division of juvenile services propose certain legislative rules for promulgation.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. JUVENILE PROCEEDINGS.

§49-5-1. Definitions.

- §49-5-2. Juvenile jurisdiction of circuit courts, magistrate courts and municipal courts; constitutional guarantees; hearings; evidence and transcripts.
- §49-5-2a. Prepetition diversion to informal resolution.
- §49-5-3. Noncustodial counseling of a juvenile.
- §49-5-3a. Informal adjustment counseling by probation officer.
- §49-5-4. Wards of the court.
- §49-5-6. Jury trial under article.
- §49-5-7. Institution of proceedings by petition; notice to juvenile and parents; subpoena.
- §49-5-8. Taking a juvenile into custody.
- §49-5-8a. Detention hearing; counsel.
- §49-5-9. Preliminary hearing; counsel; improvement period.
- §49-5-11. Adjudication for alleged status offenders and delinquents; mandatory initial disposition of status offenders.
- §49-5-11a. Status offenders: Intervention and services by state department pursuant to initial disposition; enforcement; further disposition; detention; out-of-home placement; state department custody; least restrictive alternative; appeal.
- §49-5-12. Prosecuting attorney to represent petitioner.
- §49-5-13a. Examination, diagnosis and classification; period of custody.
- §49-5-13d. Teen court program.
- §49-5-15. Juvenile probation officers; appointment; salary; facilities; expenses; duties; powers.
- §49-5-16a. Rules governing juvenile facilities.

§49-5-1. Definitions.

- 1 As used in this article:
- 2 (a) "Adult" means a person who is at least eighteen
- 3 years of age.
- 4 (b) "Child" means a person who has not attained the
- 5 age of eighteen years, or a person who is otherwise subject
- 6 to the juvenile jurisdiction of a court pursuant to this
- 7 article.
- 8 (c) "Extrajudicial statement" means any utterance,
- 9 written or oral, which was made outside of court.
- 10 (d) "Juvenile" has the same meaning as the term
- 11 "child".
- 12 (e) "Res gestae" means a spontaneous declaration
- 13 made by a person immediately after an event and before
- 14 the person has had an opportunity to conjure a falsehood.

15 (f) "Violation of a traffic law of West Virginia" means
16 a violation of any provision of chapter seventeen-a,
17 seventeen-b, seventeen-c or seventeen-d of this code
18 except a violation of section one or two, article four,
19 chapter seventeen-c of this code (hit and run) or of section
20 one, article five of said chapter (negligent homicide),
21 section two of said article (driving under the influence of
22 alcohol, controlled substances or drugs) or section three of
23 said article (reckless driving).

§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
2 proceedings 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
5 of nineteen years and was under the age of eighteen years
6 at the time of the alleged offense, the matter shall be
7 immediately certified to the juvenile jurisdiction of the
8 circuit court. The circuit court shall assume jurisdiction of
9 the case in the same manner as cases which are originally
10 instituted in the circuit court by petition.

11 (c) Notwithstanding any other provision of this article,
12 magistrate courts have concurrent juvenile jurisdiction
13 with the circuit court for a violation of a traffic law of West
14 Virginia or for any violation of chapter twenty of this
15 code. Juveniles are liable for punishment for violations of
16 these laws in the same manner as adults except that
17 magistrate courts have no jurisdiction to impose a sentence
18 of incarceration for the violation of these laws.

19 (d) Notwithstanding any other provision of this article,
20 municipal courts have concurrent juvenile jurisdiction with
21 the circuit court for a violation of any municipal
22 ordinance regulating traffic or for any municipal curfew
23 ordinance which is enforceable. Municipal courts may
24 impose the same punishment for these violations as a
25 circuit court exercising its juvenile jurisdiction could
26 properly impose, except that municipal courts have no

27 jurisdiction to impose a sentence of incarceration for the
28 violation of these laws.

29 (e) A juvenile may be brought before the circuit court
30 for proceedings under this article only by the following
31 means:

32 (1) By a juvenile petition requesting that the juvenile
33 be adjudicated as a status offender or a juvenile
34 delinquent; or

35 (2) By certification or transfer to the juvenile
36 jurisdiction of the circuit court from the criminal
37 jurisdiction of the circuit court, from any foreign court, or
38 from any magistrate court or municipal court in West
39 Virginia.

40 (f) If a juvenile commits an act which would be a
41 crime if committed by an adult, and the juvenile is
42 adjudicated delinquent for that act, the jurisdiction of the
43 court which adjudged the juvenile delinquent continues
44 until the juvenile becomes twenty-one years of age. The
45 court has the same power over that person that it had
46 before he or she became an adult, and has the further
47 power to sentence that person to a term of incarceration:
48 *Provided*, That any such term of incarceration may not
49 exceed six months. This authority does not preclude the
50 court from exercising criminal jurisdiction over that
51 person if he or she violates the law after becoming an
52 adult or if the proceedings have been transferred to the
53 court's criminal jurisdiction pursuant to section ten of this
54 article.

55 (g) A juvenile is entitled to be admitted to bail or
56 recognizance in the same manner as an adult and shall be
57 afforded the protection guaranteed by Article III of the
58 West Virginia constitution.

59 (h) A juvenile has the right to be effectively
60 represented by counsel at all stages of proceedings under
61 the provisions of this article. If the juvenile or the
62 juvenile's parent or custodian executes an affidavit
63 showing that the juvenile cannot afford an attorney, the
64 court shall appoint an attorney, who shall be paid in

65 accordance with article twenty-one, chapter twenty-nine of
66 this code.

67 (i) In all proceedings under this article, the juvenile
68 shall be afforded a meaningful opportunity to be heard.
69 This includes the opportunity to testify and to present and
70 cross-examine witnesses. The general public shall be
71 excluded from all proceedings under this article except
72 that persons whose presence is requested by the parties
73 and other persons whom the circuit court determines have
74 a legitimate interest in the proceedings may attend:
75 *Provided*, That in cases in which a juvenile is accused of
76 committing what would be a felony if the juvenile were an
77 adult, an alleged victim or his or her representative may
78 attend any related juvenile proceedings, at the discretion
79 of the presiding judicial officer: *Provided, however*, That
80 in any case in which the alleged victim is a juvenile, he or
81 she may be accompanied by his or her parents or
82 representative, at the discretion of the presiding judicial
83 officer.

84 (j) At all adjudicatory hearings held under this article,
85 all procedural rights afforded to adults in criminal
86 proceedings shall be afforded the juvenile unless
87 specifically provided otherwise in this chapter.

88 (k) At all adjudicatory hearings held under this article,
89 the rules of evidence applicable in criminal cases apply,
90 including the rule against written reports based upon
91 hearsay.

92 (l) Except for res gestae, extrajudicial statements made
93 by a juvenile who has not attained fourteen years of age to
94 law-enforcement officials or while in custody are not
95 admissible unless those statements were made in the
96 presence of the juvenile's counsel. Except for res gestae,
97 extrajudicial statements made by a juvenile who has not
98 attained sixteen years of age but who is at least thirteen
99 years of age to law-enforcement officers or while in
100 custody, are not admissible unless made in the presence of
101 the juvenile's counsel or made in the presence of, and with
102 the consent of, the juvenile's parent or custodian, and the
103 parent or custodian has been fully informed regarding the
104 juvenile's right to a prompt detention hearing, the

105 juvenile's right to counsel, including appointed counsel if
106 the juvenile cannot afford counsel, and the juvenile's
107 privilege against self-incrimination.

108 (m) A transcript or recording shall be made of all
109 transfer, adjudicatory and dispositional hearings. At the
110 conclusion of each of these hearings, the circuit court shall
111 make findings of fact and conclusions of law, both of
112 which shall appear on the record. The court reporter shall
113 furnish a transcript of the proceedings at no charge to any
114 indigent juvenile who seeks review of any proceeding
115 under this article if an affidavit is filed stating that neither
116 the juvenile nor the juvenile's parents or custodian have
117 the ability to pay for the transcript.

§49-5-2a. Prepetition diversion to informal resolution.

1 Before a juvenile petition is formally filed with the
2 court, the court may refer the matter to a state department
3 worker or probation officer for preliminary inquiry to
4 determine whether the matter can be resolved informally
5 without the formal filing of a petition with the court.

§49-5-3. Noncustodial counseling of a juvenile.

1 The court at any time, or the department or other
2 official upon a request from a parent, guardian or
3 custodian, may, before proceedings under this article are
4 formally instituted by the filing of a petition with the
5 court, refer a juvenile alleged to be delinquent or a status
6 offender to a counselor at the department or a community
7 mental health center, or other professional counselor in
8 the community. In the event the juvenile refuses to
9 respond to this referral, the department may serve a notice
10 by first class mail or personal service of process upon the
11 juvenile, setting forth the facts and stating that a
12 noncustodial order will be sought from the court directing
13 the juvenile to submit to counseling. The notice shall set
14 forth the time and place for the hearing on the matter.
15 The court or referee after a hearing may direct the
16 juvenile to participate in a noncustodial period of
17 counseling that may not exceed six months. Upon
18 recommendation of the department or request by the
19 juvenile's parent, custodian or guardian, the court or

20 referee may allow or require the parent, custodian or
21 guardian to participate in this noncustodial counseling.
22 No information obtained as the result of this counseling is
23 admissible in a subsequent proceeding under this article.

§49-5-3a. Informal adjustment counseling by probation officer.

1 (a) Before a petition is formally filed with the court,
2 the probation officer or other officer of the court
3 designated by it, subject to its direction, may give counsel
4 and advice to the parties with a view to an informal
5 adjustment if it appears:

6 (1) The admitted facts bring the case within the
7 jurisdiction of the court;

8 (2) Counsel and advice without an adjudication would
9 be in the best interest of the public and the juvenile; and

10 (3) The juvenile and his parents, guardian or other
11 custodian consent thereto with knowledge that consent is
12 not obligatory.

13 (b) The giving of counsel and advice pursuant to this
14 section may not continue longer than six months from the
15 day it is commenced unless extended by the court for an
16 additional period not to exceed six months.

§49-5-4. Wards of the court.

1 A person under the age of eighteen years who appears
2 before the circuit court in proceedings under this article
3 shall be considered a ward of the court and protected
4 accordingly. The court or judge thereof may request the
5 county health officer in any county employing a full-time
6 health officer to make a physical and mental examination
7 of the wards of the court as defined in this section. The
8 health officer shall, as promptly as may be, furnish to the
9 court or judge a written report of these examinations on
10 forms to be furnished to the health officer by the court.
11 In those counties not employing a full-time health officer,
12 the court or judge may designate a reputable physician of
13 the county to make mental and physical examinations
14 pursuant to this section and render written reports to the

15 court. When any such mental and physical examination is
16 made and any such report rendered, the state shall pay to
17 the examining physician a sum not to exceed ten dollars
18 for each such mental and physical examination, upon
19 certification of the fact of such examination by the court
20 or the judge thereof.

§49-5-6. Jury trial under article.

1 In a proceeding under this article, the juvenile, the
2 juvenile's counsel or the juvenile's parent or guardian, or
3 any one of them may demand, or the judge of his or her
4 own motion, may order a jury of twelve persons to try any
5 question of fact.

§49-5-7. Institution of proceedings by petition; notice to juvenile and parents; subpoena.

1 (a) (1) A petition alleging that a juvenile is a status
2 offender or a juvenile delinquent may be filed by a person
3 who has knowledge of or information concerning the facts
4 alleged. The petition shall be verified by the petitioner,
5 shall set forth the name and address of the juvenile's
6 parents, guardians or custodians, if known to the
7 petitioner, and shall be filed in the circuit court in the
8 county where the alleged status offense or act of
9 delinquency occurred: *Provided*, That any proceeding
10 under this chapter may be removed, for good cause
11 shown, in accordance with the provisions of section one,
12 article nine, chapter fifty-six of this code. The petition
13 shall contain specific allegations of the conduct and facts
14 upon which the petition is based, including the
15 approximate time and place of the alleged conduct; a
16 statement of the right to have counsel appointed and
17 consult with counsel at every stage of the proceedings; and
18 the relief sought.

19 (2) Upon the filing of the petition, the court shall set a
20 time and place for a preliminary hearing as provided in
21 section nine of this article and may appoint counsel. A
22 copy of the petition and summons may be served upon
23 the respondent juvenile by first class mail or personal
24 service of process. If a juvenile does not appear in
25 response to a summons served by mail, no further

26 proceeding may be held until the juvenile is served a copy
27 of the petition and summons by personal service of
28 process. If a juvenile fails to appear in response to a
29 summons served in person upon him or her, an order of
30 arrest may be issued by the court for that reason alone.

31 (b) The parents, guardians or custodians shall be
32 named in the petition as respondents, and shall be served
33 with notice of the proceedings in the same manner as
34 provided in subsection (a) of this section for service upon
35 the juvenile and required to appear with the juvenile at the
36 time and place set for the proceedings unless such
37 respondent cannot be found after diligent search. If any
38 such respondent cannot be found after diligent search, the
39 court may proceed without further requirement of notice:
40 *Provided*, That the court may order service by first class
41 mail to the last known address of such respondent. The
42 respondent shall be afforded fifteen days after the date of
43 mailing to appear or answer.

44 (c) The court or referee may order the issuance of a
45 subpoena against the person having custody and control
46 of the juvenile ordering him or her to bring the juvenile
47 before the court or referee.

48 (d) When any case of a juvenile charged with the
49 commission of a crime is certified or transferred to the
50 circuit court, the court or referee shall forthwith cause the
51 juvenile and his or her parents, guardians or custodians to
52 be served with a petition, as provided in subsections (a)
53 and (b) of this section. In the event the juvenile is in
54 custody, the petition shall be served upon the juvenile
55 within ninety-six hours of the time custody began, and if
56 the petition is not served within that time, the juvenile shall
57 be released forthwith.

58 (e) The clerk of the court shall promptly notify the
59 department of health and human resources of all
60 proceedings under this article.

§49-5-8. Taking a juvenile into custody.

1 (a) In proceedings formally instituted by the filing of
a petition, the circuit court, a juvenile referee or a

3 magistrate may issue an order directing that a juvenile be
4 taken into custody before adjudication only upon a
5 showing of probable cause to believe that one of the
6 following conditions exists: (1) The petition shows that
7 grounds exist for the arrest of an adult in identical
8 circumstances; (2) the health, safety and welfare of the
9 juvenile demand such custody; (3) the juvenile is a
10 fugitive from a lawful custody or commitment order of a
11 juvenile court; or (4) the juvenile is alleged to be a
12 juvenile delinquent with a record of willful failure to
13 appear at juvenile proceedings and custody is necessary to
14 assure his or her presence before the court. A detention
15 hearing pursuant to section eight-a of this article shall be
16 held by the judge, juvenile referee or magistrate
17 authorized to conduct such hearings without unnecessary
18 delay and in no event may any delay exceed the next day.

19 (b) Absent a court order, a juvenile may be taken into
20 custody by a law-enforcement official only if one of the
21 following conditions exists: (1) Grounds exist for the
22 arrest of an adult in identical circumstances; (2)
23 emergency conditions exist which, in the judgment of the
24 officer, pose imminent danger to the health, safety and
25 welfare of the juvenile; (3) the official has reasonable
26 grounds to believe that the juvenile has left the care of his
27 or her parents, guardian or custodian without the consent
28 of such person, and the health, safety and welfare of the
29 juvenile is endangered; (4) the juvenile is a fugitive from a
30 lawful custody or commitment order of a juvenile court;
31 or (5) the official has reasonable grounds to believe the
32 juvenile to have been driving a motor vehicle with any
33 amount of alcohol in his or her blood.

34 (c) Upon taking a juvenile into custody, with or
35 without a court order, the official shall:

36 (1) Immediately notify the juvenile's parent, guardian,
37 custodian or, if the parent, guardian or custodian cannot
38 be located, a close relative;

39 (2) Release the juvenile into the custody of his or her
40 parent, guardian or custodian unless:

41 (A) Circumstances present an immediate threat of
42 serious bodily harm to the juvenile if released;

43 (B) No responsible adult can be found into whose
44 custody the juvenile can be delivered: *Provided*, That
45 each day the juvenile is detained, a written record must be
46 made of all attempts to locate such a responsible adult; or

47 (C) The juvenile has been taken into custody for an
48 alleged act of delinquency for which secure detention is
49 permissible.

50 (3) If the juvenile is an alleged status offender,
51 immediately notify the department of health and human
52 resources, and, if the circumstances of either paragraph
53 (A) or (B), subdivision (2) of this subsection exist and the
54 requirements therein are met, the official may detain the
55 juvenile, but only in a nonsecure or staff-secure facility;

56 (4) Take the juvenile without unnecessary delay
57 before a juvenile referee or judge of the circuit court for a
58 detention hearing pursuant to section eight-a of this
59 article: *Provided*, That if no judge or juvenile referee is
60 then available in the county, the official shall take the
61 juvenile without unnecessary delay before any magistrate
62 then available in the county for the sole purpose of
63 conducting such a detention hearing. In no event may
64 any delay in presenting the juvenile for a detention
65 hearing exceed the next day after he or she is taken into
66 custody.

67 (d) In the event that a juvenile is delivered into the
68 custody of a sheriff or director of a detention facility, the
69 sheriff or director shall immediately notify the court or
70 juvenile referee. The sheriff or director shall immediately
71 provide to every juvenile who is delivered into his or her
72 custody a written statement explaining the juvenile's right
73 to a prompt detention hearing, his or her right to counsel,
74 including appointed counsel if he or she cannot afford
75 counsel, and his or her privilege against self-incrimination.
76 In all cases when a juvenile is delivered into a sheriff's or
77 detention center director's custody, that official shall
78 release the juvenile to his or her parent, guardian or
79 custodian by the end of the next day unless the juvenile

80 has been placed in detention after a hearing conducted
81 pursuant to section eight-a of this article.

§49-5-8a. Detention hearing; counsel.

1 (a) The judge, juvenile referee or magistrate shall
2 inform the juvenile of his or her right to remain silent, that
3 any statement may be used against him or her and of his
4 or her right to counsel, and no interrogation may be made
5 without the presence of a parent or counsel. If the
6 juvenile or his or her parent, guardian or custodian has not
7 retained counsel, counsel shall be appointed as soon as
8 practicable. The referee, judge or magistrate shall hear
9 testimony concerning the circumstances for taking the
10 juvenile into custody and the possible need for detention
11 in accordance with section two, article five-a of this
12 chapter. The sole mandatory issue at the detention
13 hearing is whether the juvenile should be detained
14 pending further court proceedings. The court shall, if the
15 health, safety and welfare of the juvenile will not be
16 endangered thereby, release the juvenile on recognizance
17 to his or her parents, custodians or an appropriate agency;
18 however, if warranted, the court may require bail, except
19 that bail may be denied in any case where bail could be
20 denied if the accused were an adult. The court shall:

21 (1) Immediately notify the juvenile's parent, guardian
22 or custodian or, if the parent, guardian or custodian
23 cannot be located, a close relative;

24 (2) Release the juvenile into the custody of his or her
25 parent, guardian or custodian unless:

26 (A) Circumstances present an immediate threat of
27 serious bodily harm to the juvenile if released;

28 (B) No responsible adult can be found into whose
29 custody the juvenile can be delivered: *Provided*, That
30 each day the juvenile is detained, a written record must be
31 made of all attempts to locate such a responsible adult; or

32 (C) The juvenile is charged with an act of delinquency
33 for which secure detention is permissible; and

34 (3) If the juvenile is an alleged status offender,
35 immediately notify the department of health and human
36 resources, and, if the circumstances of either paragraph
37 (A) or (B), subdivision (2) of this subsection exist and the
38 requirements therein are met, the court may order the
39 juvenile detained, but only in a nonsecure or staff-secure
40 facility. Any juvenile detained pursuant to this
41 subdivision shall be placed in the legal custody of the
42 department of health and human resources pending
43 further proceedings by the court.

44 (b) The judge of the circuit court or the juvenile
45 referee may, in conjunction with the detention hearing,
46 conduct a preliminary hearing pursuant to section nine of
47 this article: *Provided*, That all parties are prepared to
48 proceed and the juvenile has counsel during such hearing.

§49-5-9. Preliminary hearing; counsel; improvement period.

1 (a) Following the filing of a juvenile petition, unless a
2 preliminary hearing has previously been held in
3 conjunction with a detention hearing with respect to the
4 same charge contained in the petition, the circuit court or
5 referee shall hold a preliminary hearing. In the event that
6 the juvenile is being detained, the hearing shall be held
7 within ten days of the time the juvenile is placed in
8 detention unless good cause is shown for a continuance.
9 If no preliminary hearing is held within ten days of the
10 time the juvenile is placed in detention, the juvenile shall
11 be released on recognizance unless the hearing has been
12 continued for good cause. If the judge is in another
13 county in the circuit, the hearing may be conducted in that
14 other county. The preliminary hearing may be waived by
15 the juvenile, upon advice of counsel. At the hearing, the
16 court or referee shall:

17 (1) If the juvenile is not represented by counsel,
18 inform the juvenile and his or her parents, guardian or
19 custodian or any other person standing in loco parentis to
20 him or her of the juvenile's right to be represented at all
21 stages of proceedings under this article and the right to
22 have counsel appointed;

23 (2) Appoint counsel by order entered of record, if
24 counsel has not already been retained, appointed or
25 knowingly waived;

26 (3) Determine after hearing if there is probable cause
27 to believe that the juvenile is a status offender or a juvenile
28 delinquent. If probable cause is not found, the juvenile, if
29 in detention, shall be released and the proceedings
30 dismissed. If probable cause is found, the case shall
31 proceed to adjudication. At this hearing or as soon
32 thereafter as is practicable, the date for the adjudicatory
33 hearing shall be set to give the juvenile and the juvenile's
34 parents and attorney at least ten days' notice, unless notice
35 is waived by all parties;

36 (4) In lieu of placing the juvenile in a detention
37 facility, the court may place the juvenile in the temporary
38 legal and/or physical custody of the department. If the
39 juvenile is detained, the detention may not continue longer
40 than thirty days without commencement of the
41 adjudicatory hearing unless good cause for a continuance
42 is shown by either party or, if a jury trial is demanded, no
43 longer than the next regular term of the court: *Provided,*
44 That a juvenile who is alleged to be a status offender may
45 not be placed in a secure detention facility; and

46 (5) Inform the juvenile of the right to demand a jury
47 trial.

48 (b) The juvenile may move to be allowed an
49 improvement period for a period not to exceed one year.
50 If the court is satisfied that the best interest of the juvenile
51 is likely to be served by an improvement period, the court
52 may delay the adjudicatory hearing and allow a
53 noncustodial improvement period upon terms calculated
54 to serve the rehabilitative needs of the juvenile. At the
55 conclusion of the improvement period, the court shall
56 dismiss the proceeding if the terms have been fulfilled;
57 otherwise, the court shall proceed to the adjudicatory
58 stage. A motion for an improvement period may not be
59 construed as an admission or be used as evidence.

§49-5-11. Adjudication for alleged status offenders and delinquents; mandatory initial disposition of status offenders.

1 At the outset of an adjudicatory hearing, the court
2 shall inquire of the juvenile whether he or she wishes to
3 admit or deny the allegations in the petition. The juvenile
4 may elect to stand mute, in which event the court shall
5 enter a general denial of all allegations in the petition.

6 (a) If the respondent juvenile admits the allegations of
7 the petition, the court shall consider the admission to be
8 proof of the allegations if the court finds: (1) The
9 respondent fully understands all of his or her rights under
10 this article; (2) the respondent voluntarily, intelligently
11 and knowingly admits all facts requisite for an
12 adjudication; and (3) the respondent in his or her
13 admission has not set forth facts which constitute a defense
14 to the allegations.

15 (b) If the respondent juvenile denies the allegations,
16 the court shall dispose of all pretrial motions and the court
17 or jury shall proceed to hear evidence.

18 (c) If the allegations in a petition alleging that the
19 juvenile is delinquent are admitted or are sustained by
20 proof beyond a reasonable doubt, the court shall schedule
21 the matter for disposition pursuant to section thirteen of
22 this article.

23 (d) If the allegations in a petition alleging that the
24 juvenile is a status offender are admitted or sustained by
25 clear and convincing proof, the court shall refer the
26 juvenile to the department of health and human resources
27 for services, pursuant to section eleven-a of this article and
28 order the department to report back to the court with
29 regard to the juvenile's progress at least every ninety days
30 or until the court, upon motion or sua sponte, orders
31 further disposition under section eleven-a of this article or
32 dismisses the case from its docket.

33 (e) If the allegations in a petition are not sustained by
34 proof as provided in subsections (c) and (d) of this

35 section, the petition shall be dismissed and the juvenile
36 shall be discharged if he or she is in custody.

37 (f) Findings of fact and conclusions of law addressed
38 to all allegations in the petition shall be stated on the
39 record or reduced to writing and filed with the record or
40 incorporated into the order of the court.

**§49-5-11a. Status offenders: Intervention and services by state
department pursuant to initial disposition;
enforcement; further disposition; detention; out-
of-home placement; state department custody;
least restrictive alternative; appeal.**

1 (a) Services provided by the department for juveniles
2 adjudicated as status offenders shall be consistent with the
3 provisions of article five-b of this chapter and shall be
4 designed to develop skills and supports within families and
5 to resolve problems related to the juveniles or conflicts
6 within their families. Services may include, but are not
7 limited to, referral of juveniles and parents, guardians or
8 custodians and other family members to services for
9 psychiatric or other medical care, or psychological,
10 welfare, legal, educational or other social services, as
11 appropriate to the needs of the juvenile and his or her
12 family.

13 (b) If necessary, the department may petition the
14 circuit court:

15 (1) For a valid court order, as defined in section four,
16 article one of this chapter, to enforce compliance with a
17 service plan or to restrain actions that interfere with or
18 defeat a service plan; or

19 (2) For a valid court order to place a juvenile out of
20 home in a nonsecure or staff-secure setting, and/or to
21 place a juvenile in custody of the department.

22 (c) In ordering any further disposition under this
23 section, the court is not limited to the relief sought in the
24 department's petition and shall make every effort to place
25 juveniles in community-based facilities which are the least
26 restrictive alternatives appropriate to the needs of the
27 juvenile and the community.

28 (d) The disposition of the juvenile may not be affected
29 by the fact that the juvenile demanded a trial by jury or
30 made a plea of denial. Any order providing disposition
31 other than mandatory referral to the department for
32 services is subject to appeal to the supreme court of
33 appeals.

34 (e) Following any further disposition by the court, the
35 court shall inquire of the juvenile whether or not appeal is
36 desired and the response shall be transcribed; a negative
37 response may not be construed as a waiver. The evidence
38 shall be transcribed as soon as practicable and made
39 available to the juvenile or his or her counsel, if it is
40 requested for purposes of further proceedings. A judge
41 may grant a stay of execution pending further
42 proceedings.

§49-5-12. Prosecuting attorney to represent petitioner.

1 The prosecuting attorney shall represent the petitioner
2 in all proceedings under this article before the court,
3 referee or magistrate having juvenile jurisdiction.

§49-5-13a. Examination, diagnosis and classification; period of custody.

1 As a part of the dispositional proceeding for a juvenile
2 who has been adjudicated delinquent, the court may, upon
3 its own motion or upon request of counsel, order the
4 juvenile to be delivered into the custody of the director of
5 the division of juvenile services, who shall cause the
6 juvenile to be transferred to a juvenile diagnostic center
7 for a period not to exceed thirty days. During this period,
8 the juvenile shall undergo examination, diagnosis,
9 classification, and a complete medical examination and
10 shall at all times be kept apart from the general juvenile
11 inmate population in the director's custody. Not later
12 than thirty days after commitment pursuant to this section,
13 the juvenile shall be remanded and delivered to the
14 custody of the director, an appropriate agency or any
15 other person that the court by its order directs. Within ten
16 days after the end of the examination, diagnosis and
17 classification, the director of the division of juvenile
18 services shall make or cause to be made a report to the

19 court containing the results, findings, conclusions and
20 recommendations of the director with respect to that
21 juvenile.

§49-5-13d. Teen court program.

1 (a) Notwithstanding any provision of this article to the
2 contrary, any juvenile who is alleged to have committed a
3 status offense or an act of delinquency which would be a
4 misdemeanor if committed by an adult, and who is
5 otherwise subject to the provisions of this article may be
6 given the option of proceeding in a teen court program as
7 an alternative to the filing of a formal petition under
8 section seven of this article or proceeding to a disposition
9 as provided by section eleven-a or thirteen of this article,
10 as the case may be. The decision to enter the teen court
11 program as an alternative procedure shall be made by the
12 circuit court, juvenile probation officer, the department
13 and parent, guardian or custodian of the juvenile:
14 *Provided*, That before the option is extended, the circuit
15 court first finds that the offender is a suitable candidate
16 for the program. Any juvenile who does not successfully
17 cooperate in and complete the teen court program and
18 any disposition imposed therein shall be returned to the
19 circuit court for further disposition as provided by section
20 eleven-a or thirteen of this article, as the case may be.

21 (b) The teen court program shall be administered by
22 the governor's committee on crime, delinquency and
23 correction.

24 (c) The following provisions apply to all teen court
25 programs:

26 (1) The judge for each teen court proceeding shall be
27 an acting or retired circuit court judge or an active
28 member of the West Virginia state bar, who serves on a
29 voluntary basis. Bar members shall be offered continuing
30 legal education credit for this service.

31 (2) Any juvenile who selects the teen court program as
32 an alternative disposition shall agree to serve thereafter on
33 at least two occasions as a teen court juror.

34 (3) Volunteer students from grades seven through
35 twelve of the schools within the county shall be selected to
36 serve as defense attorney, prosecuting attorney, court clerk
37 and bailiff for each proceeding.

38 (4) Disposition in a teen court proceeding shall consist
39 of requiring the juvenile to perform sixteen to forty hours
40 of community service, the duration and type of which
41 shall be determined by the teen court jury from a standard
42 list of available community service programs provided by
43 the county juvenile probation system and a standard list of
44 alternative consequences which are consistent with the
45 purposes of this article. The performance of the juvenile
46 shall be monitored by the county juvenile probation
47 system. The juvenile shall also perform two sessions of
48 teen court jury service, and, if considered appropriate by
49 the judge, participate in an education program. Nothing
50 in this section may be construed so as to deny availability
51 of the services provided under section eleven-a of this
52 article to juveniles who are otherwise eligible therefor.

53 (d) The rules for administration, procedure and
54 admission of evidence shall be determined by the chief
55 circuit judge, but in no case may the court require a
56 juvenile to admit the allegation against him or her as a
57 prerequisite to participation in the teen court program. A
58 copy of these rules shall be provided to every teen court
59 participant.

60 (e) Teen court programs operated pursuant to this
61 section are pilot projects to be utilized from the effective
62 date of this section until the first day of July, one thousand
63 nine hundred ninety-nine, in the circuit courts in three of
64 the counties of this state. The supreme court of appeals is
65 to determine the counties in which the pilot projects will
66 be utilized based upon its determination of those counties
67 which have recently experienced the most significant
68 increases in the commission of criminal and status
69 offenses by juveniles.

§49-5-15. Juvenile probation officers; appointment; salary; facilities; expenses; duties; powers.

1 (a) (1) Each circuit court, subject to the approval of
2 the supreme court of appeals and in accordance with the
3 rules of the supreme court of appeals, shall appoint one or
4 more juvenile probation officers and clerical assistants for
5 the circuit. A probation officer or clerical assistant may
6 not be related by blood or marriage to the appointing
7 judge.

8 (2) The salary for juvenile probation officers and
9 clerical assistants shall be determined and fixed by the
10 supreme court of appeals. All expenses and costs incurred
11 by the juvenile probation officers and their staff shall be
12 paid by the supreme court of appeals in accordance with
13 its rules. The county commission of each county shall
14 provide adequate office facilities for juvenile probation
15 officers and their staff. All equipment and supplies
16 required by juvenile probation officers and their staff shall
17 be provided by the supreme court of appeals.

18 (3) A juvenile probation officer may not be
19 considered a law-enforcement official under any provision
20 of this chapter.

21 (b) The clerk of a court shall notify, if practicable, the
22 chief probation officer of the county, or his or her
23 designee, when a juvenile is brought before the court or
24 judge for proceedings under this article. When notified,
25 or if the probation officer otherwise obtains knowledge of
26 such fact, he or she or one of his or her assistants shall:

27 (1) Make investigation of the case; and

28 (2) Furnish information and assistance that the court
29 or judge may require.

§49-5-16a. Rules governing juvenile facilities.

1 The director of the division of juvenile services within
2 the department of military affairs and public safety shall
3 propose legislative rules for promulgation in accordance
4 with the provisions of article three, chapter twenty-nine-a
5 of this code, outlining policies and procedures governing
6 the operation of those correctional, detention,
7 predispositional detention centers and other facilities
8 wherein juveniles may be housed. These policies and

9 procedures shall include, but are not limited to, standards
10 of cleanliness, temperature and lighting; availability of
11 medical and dental care; provision of food, furnishings,
12 clothing and toilet articles; supervision; procedures for
13 enforcing rules of conduct consistent with due process of
14 law; and visitation privileges. A juvenile in custody or
15 detention has, at a minimum, the following rights, and the
16 policies prescribed shall ensure that:

17 (1) A juvenile may not be punished by physical force,
18 deprivation of nutritious meals, deprivation of family visits
19 or imposition of solitary confinement;

20 (2) A juvenile shall be afforded an opportunity to
21 participate in physical exercise each day;

22 (3) Except for sleeping hours, a juvenile in a state
23 facility may not be locked alone in a room unless that
24 juvenile is not amenable to reasonable direction and
25 control;

26 (4) A juvenile shall be provided with his or her own
27 clothing or individualized clothing which is clean and
28 supplied by the facility, and shall also be afforded daily
29 access to showers;

30 (5) A juvenile shall be afforded constant access to
31 writing materials and may send mail without limitation,
32 censorship or prior reading, and may receive mail without
33 prior reading, except that mail may be opened in the
34 juvenile's presence, without being read, to inspect for
35 contraband;

36 (6) A juvenile may make and receive regular local
37 phone calls without charge and long distance calls to his
38 or her family without charge at least once a week, and
39 receive visitors daily and on a regular basis;

40 (7) A juvenile shall be afforded immediate access to
41 medical care as needed;

42 (8) A juvenile in a juvenile detention facility or
43 juvenile corrections facility shall be provided access to
44 education, including teaching, educational materials and
45 books;

46 (9) A juvenile shall be afforded reasonable access to
47 an attorney upon request; and

48 (10) A juvenile shall be afforded a grievance
49 procedure, including an appeal mechanism.

50 Upon admission to a detention facility or juvenile
51 corrections facility, a juvenile shall be furnished with a
52 copy of the rights provided him or her by virtue of this
53 section and as further prescribed by rules proposed and
54 promulgated pursuant to this section.

CHAPTER 189

(S. B. 720—By Senators Wooton, Craigo, Jackson,
Walker, White, Buckalew and Scott)

[Passed March 10, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article five, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-one; and to amend and reenact sections one and three, article five-d of said chapter, all relating to providing for regular judicial review of certain juvenile proceedings.

Be it enacted by the Legislature of West Virginia:

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

Article

5. Juvenile Proceedings.

5D. Multidisciplinary Teams.

ARTICLE 5. JUVENILE PROCEEDINGS.

§49-5-21. Quarterly judicial review of juvenile proceedings.

1 For cases under this article in which the provisions of
2 section three, article five-d of this chapter apply, the court
3 wherein the juvenile proceeding is pending shall conduct
4 regular judicial review of the case with the
5 multidisciplinary treatment team and a juvenile probation
6 officer in attendance. Such judicial review may be
7 conducted as often as is considered necessary by the court,
8 but shall be conducted at least once every three calendar
9 months until the case is wholly resolved and finally
10 dismissed from the docket of the court.

11 In conducting the judicial review required by this
12 section, the court shall address the extent of progress in
13 the case, treatment and service needs, permanent
14 placement planning for the juvenile any uncontested
15 issues and any other matters that the court considers
16 pertinent. An order reflecting the matters considered, any
17 uncontested rulings and the scheduling of an evidentiary
18 hearing on any contested issue shall be issued by the court
19 within ten judicial days of the judicial review.

ARTICLE 5D. MULTIDISCIPLINARY TEAMS.

§49-5D-1. Purpose; additional cases and teams.

§49-5D-3. Multidisciplinary treatment planning process.

§49-5D-1. Purpose; additional cases and teams.

1 (a) The purpose of this article is to provide a system
2 for evaluation of and coordinated service delivery for
3 children who may be victims of abuse or neglect and
4 children undergoing certain status offense and
5 delinquency proceedings. It is the further purpose of this
6 article to establish, as a complement to other programs of
7 the department of health and human resources, a
8 multidisciplinary screening, advisory and planning system
9 to assist courts in facilitating permanency planning,
10 following the initiation of judicial proceedings, to
11 recommend alternatives and to coordinate evaluations and
12 in-community services. It is the further purpose of this
13 article to ensure that children are safe from abuse and
14 neglect and to coordinate investigation of alleged child
15 abuse offenses and competent criminal prosecution of
16 offenders to ensure that safety, as determined appropriate
17 by the prosecuting attorney.

18 (b) Nothing in this article precludes any
19 multidisciplinary team from considering any case upon
20 the consent of the members of the team.

§49-5D-3. Multidisciplinary treatment planning process.

1 (a) (1) On or before the first day of January, one
2 thousand nine hundred ninety-five, a multidisciplinary
3 treatment planning process shall be established within each
4 county of the state, either separately or in conjunction with
5 a contiguous county by the secretary of the department
6 with advice and assistance from the prosecutor's advisory
7 council as set forth in section four, article four, chapter
8 seven of this code.

9 (2) Treatment teams shall assess, plan and implement a
10 comprehensive, individualized service plan for children
11 who are victims of abuse or neglect and their families
12 when a judicial proceeding has been initiated involving the
13 child or children and for juveniles and their families
14 involved in status offense or delinquency proceedings
15 when, in a status offense proceeding, the court refers the
16 juvenile for services pursuant to sections eleven and
17 eleven-a, article five of this chapter, and when, in a
18 delinquency proceeding, the court is considering placing
19 the juvenile in the department's custody and/or placing
20 the juvenile out-of-home at the department's expense,
21 pursuant to section thirteen of said article.

22 (b) Each treatment team shall be convened and
23 directed by the child's or family's case manager. The
24 treatment team shall consist of the child's custodial
25 parent(s) or guardian(s), other immediate family members,
26 the attorney(s) representing the parent(s) of the child, if
27 assigned by a judge of the circuit court, the child, if the
28 child is over the age of twelve, and if the child's
29 participation is otherwise appropriate, the child, if under
30 the age of twelve when the team determines that the child's
31 participation is appropriate, the guardian ad litem, the
32 prosecuting attorney or his or her designee, and any other
33 agency, person or professional who may contribute to the
34 team's efforts to assist the child and family.

35 (c) The treatment team shall coordinate their activities
36 and membership with local family resource networks, and
37 coordinate with other local and regional child and family
38 service planning committees to assure the efficient
39 planning and delivery of child and family services on a
40 local and regional level.

41 (d) State, county and local agencies shall provide the
42 multidisciplinary treatment teams with any information
43 requested in writing by the team as allowable by law or
44 upon receipt of a certified copy of the circuit court's order
45 directing said agencies to release information in its
46 possession relating to the child. The team shall assure that
47 all information received and developed in connection with
48 the provisions of this article remain confidential. For
49 purposes of this section, the term "confidential" shall be
50 construed in accordance with the provisions of section
51 one, article seven of this chapter.

CHAPTER 190

(Com. Sub. for H. B. 2135—By Delegates Amores, Hunt, Thompson,
Seacrist, Tillis, Faircloth and Thomas)

[Passed March 14, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article seven, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to confidentiality of juvenile records.

Be it enacted by the Legislature of West Virginia:

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

§49-7-1. Confidentiality of records.

1 (a) Except as otherwise provided in this chapter, all
2 records and information concerning a child or juvenile

3 which are maintained by the state department, as defined
4 in section four, article one of this chapter, a child agency
5 or facility, court or law-enforcement agency shall be kept
6 confidential and shall not be released or disclosed to
7 anyone, including any federal or state agency.

8 (b) Notwithstanding the provisions of subsection (a) of
9 this section or any other provision of this code to the
10 contrary, records concerning a child or juvenile, except
11 adoption records, juvenile court records and records
12 disclosing the identity of a person making a complaint of
13 child abuse or neglect shall be made available:

14 (1) Where otherwise authorized by this chapter;

15 (2) To:

16 (A) The child;

17 (B) A parent whose parental rights have not been
18 terminated; or

19 (C) The attorney of the child or parent;

20 (3) With the written consent of the child or of
21 someone authorized to act on the child's behalf; or

22 (4) Pursuant to a subpoena or order of a court of
23 record; however, a subpoena for such records may be
24 quashed by a court for good cause.

25 (c) In addition to those persons or entities to whom
26 information may be disclosed under subsection (b) of this
27 section, information related to child abuse or neglect
28 proceedings, except information relating to the identity of
29 the person reporting or making a complaint of child abuse
30 or neglect, shall be made available, upon request, to:

31 (1) Federal, state or local government entities, or any
32 agent of such entities, including law-enforcement agencies
33 and prosecuting attorneys, having a need for such
34 information in order to carry out its responsibilities under
35 law to protect children from abuse and neglect;

36 (2) The child fatality review team;

37 (3) Child abuse citizen review panels;

38 (4) Multidisciplinary investigative and treatment
39 teams; or

40 (5) A grand jury, circuit court or family law master,
41 upon a finding that information in the records is necessary
42 for the determination of an issue before the grand jury,
43 circuit court or family law master.

44 (d) In the event of a child fatality or near fatality due
45 to child abuse and neglect, information relating to such
46 fatality or near fatality shall be made public by the
47 department of health and human resources and to the
48 entities described in subsection (c) of this section, all
49 under the circumstances described in that subsection:
50 *Provided*, That information released by the department of
51 health and human resources pursuant to this subsection
52 shall not include the identity of a person reporting or
53 making a complaint of child abuse or neglect. For
54 purposes of this subsection, "near fatality" means any
55 medical condition of the child which is certified by the
56 attending physician to be life-threatening.

57 (e) Except in juvenile proceedings which are
58 transferred to criminal proceedings, law-enforcement
59 records and files concerning a child or juvenile shall be
60 kept separate from the records and files of adults and
61 not included within the court files. Law-enforcement
62 records and files concerning a child or juvenile shall only
63 be open to inspection pursuant to the provisions of
64 sections seventeen and eighteen, article five of this chapter.

65 (f) Any person who willfully violates the provisions of
66 this section is guilty of a misdemeanor and, upon
67 conviction thereof, shall be fined not more than one
68 thousand dollars, or confined in the county or regional jail
69 for not more than six months, or be both fined and
70 confined. A person convicted of violating the provisions
71 of this section shall also be liable for damages in the
72 amount of three hundred dollars or actual damages,
73 whichever is greater.

74 (g) Notwithstanding the provisions of this section, or
75 any other provision of this code to the contrary, the name
76 and identity of any juvenile adjudicated or convicted of a
77 violent or felonious crime shall be made available to the
78 public.

CHAPTER 191

(Com. Sub. for S. B. 194—By Senators Wooton, Walker, White, Jackson, Buckalew, Anderson, Ball, Hunter, Schoonover, Macnaughtan, Bowman, Snyder, Love, Plymale and Ross)

[Passed March 14, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seventeen, article four, chapter eighteen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend article five-e, chapter forty-nine of said code by adding thereto a new section, designated section seven, all relating to the provision of education opportunities to juveniles in secure predispositional detention centers; providing that the state department of education is responsible for providing education opportunities to such juveniles; and providing seniority rights to certain education employees working at the secure predispositional detention centers.

Be it enacted by the Legislature of West Virginia:

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

Chapter

18A. School Personnel.

49. Child Welfare.

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

§18A-4-17. Health and other facility employee salaries.

- 1 (a) The minimum salary scale for professional
- 2 personnel and service personnel employed by the state
- 3 department of education to provide education and support
- 4 services to residents of state department of health and

5 human resources facilities, corrections facilities providing
6 services to juvenile and youthful offenders and in the West
7 Virginia schools for the deaf and the blind is the same as
8 set forth in sections two, three and eight-a of this article.
9 Additionally, those personnel shall receive the equivalent
10 of salary supplements paid to professional and service
11 personnel employed by the county board of education in
12 the county wherein each facility is located, as set forth in
13 sections five-a and five-b of this article. Professional
14 personnel and service personnel in these facilities who
15 earn advanced classification of training after the effective
16 date of this section shall be paid the advanced salary from
17 the date the classification of training is earned. The
18 professional personnel shall be certified, licensed or
19 trained, and shall meet other eligibility classifications as
20 may be required by the provisions of this chapter and by
21 state board regulations for comparable instructional
22 personnel who are employed by county boards of
23 education. The professional personnel shall be paid at the
24 equivalent rate of pay of teachers as set forth in section
25 two of this article, but outside the public support plan, plus
26 the equivalent of the salary supplement paid to teachers
27 employed by the county board of education in the county
28 in which each facility is located, as set forth in section
29 five-a of this article.

30 (b) Professional personnel employed by the
31 department to provide educational service to residents in
32 state department of health and human resources facilities,
33 corrections facilities providing services to juvenile and
34 youthful offenders or in the West Virginia schools for the
35 deaf and the blind shall be afforded all the rights,
36 privileges and benefits established for the professional
37 personnel under this article: *Provided*, That the benefits
38 shall apply only within the facility at which the
39 professional personnel are employed: *Provided, however*,
40 That benefits shall exclude salaries unless explicitly
41 provided for under this or other sections of this article:
42 *Provided further*, That seniority for the professional
43 personnel shall be determined on the basis of the length of
44 time that the employee has been professionally employed

45 at the facility, regardless of which state agency was the
46 actual employer.

47 (c) Nothing contained in this section shall be
48 construed to mean that professional personnel and service
49 personnel employed by the department of education to
50 provide educational and support services to residents in
51 state department of health and human resources facilities,
52 corrections facilities providing services to juvenile and
53 youthful offenders and the West Virginia schools for the
54 deaf and the blind are other than state employees.

55 (d) (1) Notwithstanding any other provision of this
56 section to the contrary, professional and service personnel
57 employed in an educational facility operated by the West
58 Virginia department of education shall accrue seniority at
59 that facility on the basis of the length of time the
60 employee has been employed at the facility. Any
61 professional or service personnel whose employment at
62 the facility was preceded immediately by employment
63 with the county board previously providing education
64 services at the facility or whose employment contract was
65 with the county board previously providing education
66 services at the facility: (A) Shall retain any seniority
67 accrued during employment by the county board; (B)
68 shall accrue seniority as a regular employee with the
69 county board during employment at the facility; (C) shall
70 attain continuing contract status in accordance with section
71 two, article two, chapter eighteen-a of this code with both
72 the county and the facility if the sum of the years
73 employed by the county and the facility equals the
74 statutory number required for continuing contract status;
75 and (D) shall retain and continue to accrue county and
76 facility seniority in the event of reemployment by the
77 county as a result of direct transfer from the facility or
78 recall from the preferred list.

79 (2) Reductions in work force in the facility or
80 employment by the facility or county board shall be made
81 in accordance with the provisions of sections seven-a and
82 eight-b, article four, chapter eighteen-a of this code:
83 *Provided*, That only years of employment within the
84 facility shall be considered for purposes of reduction in
85 force within the facility.

86 (3) The seniority conferred in this section applies
87 retroactively to all affected professional and service
88 personnel, but the rights incidental to the seniority shall
89 commence as of the effective date of this section.

CHAPTER 49. CHILD WELFARE.

ARTICLE 5E. DIVISION OF JUVENILE SERVICES.

§49-5E-7. Provision of educational services for juveniles placed in predispositional detention facilities.

1 (a) The state board of education is authorized to
2 provide for adequate and appropriate education
3 opportunities for juveniles placed in secure
4 predispositional detention centers operated by or under
5 contract with the division of juvenile services.

6 (b) Subject to appropriations by the Legislature, the
7 state board is authorized: (1) To provide education
8 programs and services for juveniles on the grounds of
9 secure predispositional detention centers; (2) to hire
10 classroom teachers and other school personnel necessary
11 to provide adequate and appropriate education
12 opportunities to these juveniles; and (3) to provide
13 education services for the detained juveniles on a twelve-
14 month basis.

15 (c) The division of juvenile services shall cooperate
16 with the state board and the state superintendent in the
17 establishment and maintenance of education programs
18 authorized under this section. Subject to appropriations
19 by the Legislature, the division of juvenile services shall
20 provide, or cause to be provided, adequate space and
21 facilities for the education programs. The state board may
22 not be required to construct, improve or maintain any
23 building, other improvement to real estate or fixtures
24 attached thereto at any secure predispositional detention
25 center for the purpose of establishing and maintaining an
26 education program.

27 (d) The state board may develop and approve rules in
28 accordance with article three-a, chapter twenty-nine-a of
29 this code for the education of juveniles in secure
30 predispositional detention centers.

CHAPTER 192

(H. B. 4558—By Delegates Givens, Douglas, Fleischauer,
Mezzatesta, Staton, Facemyer and Trump)

[Passed March 12, 1998; in effect July 1, 1998. Approved by the Governor.]

AN ACT to repeal chapter one hundred eighty-five of the Acts of the Legislature, one thousand nine hundred fifty-five; and to amend and reenact section four, article five-e, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the Kanawha home for children; transferring all responsibility for the home to the division of juvenile services within the department of military affairs and public safety; authorizing the division of juvenile services to enter into a lease agreement with the county commission of the county of Kanawha for the home; providing for the home to be operated, managed and maintained as a secure predispositional detention facility for certain juveniles under the control of the division of juvenile services; and providing for an effective date.

Be it enacted by the Legislature of West Virginia:

That chapter one hundred eighty-five of the Acts of the West Virginia Legislature, one thousand nine hundred fifty-five, be repealed; and that section four, article five-e, chapter forty-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 5E. DIVISION OF JUVENILE SERVICES.

§49-5E-4. Transfer of Kanawha home for children to the division of juvenile services.

- 1 (a) "Kanawha home for children" means the county
- 2 home for the detention of juvenile delinquents or children
- 3 charged with delinquency as established by the county
- 4 commission of Kanawha County pursuant to the
- 5 provisions of a local bill, House Bill No. 141, enacted by
- 6 the Legislature on the fourteenth day of February, one

7 thousand nine hundred fifty-five, as set forth in the Acts
 8 of the West Virginia Legislature, Regular Session, 1955,
 9 ch. 185.

10 (b) After the effective date of the amendment to this
 11 section, enacted during the regular session of the
 12 Legislature, one thousand nine hundred ninety-eight, the
 13 division of juvenile services shall assume all responsibility
 14 for funding, operating, maintaining, administering and
 15 managing the Kanawha home for children. To this end,
 16 the director of the division of juvenile services may enter
 17 into a lease agreement with the Kanawha county
 18 commission, for the premises and all improvements,
 19 appurtenances, equipment and furnishings on the premises
 20 constituting the Kanawha home for children, and may
 21 operate, manage and maintain the facility as one of the
 22 several centers under the supervision and control of the
 23 division which provide secure predispositional detention
 24 of juveniles, including juveniles who have been transferred
 25 to adult criminal jurisdiction under section ten, article five
 26 of this chapter and juveniles who are awaiting transfer to a
 27 juvenile corrections facility.

CHAPTER 193

(S. B. 722—By Senators Wooton, Craigo, Jackson,
 Walker, White, Buckalew and Scott)

[Passed March 10, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article five-e, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section six, relating to authorizing the director of the division of juvenile services, or his or her designee, to consent to medical treatment of any juvenile in the director's custody.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5E. DIVISION OF JUVENILE SERVICES.

§49-5E-6. Director authorized to consent to treatment of juveniles in custody of the division.

1 Notwithstanding any other provision of law to the
2 contrary, the director, or his or her designee, is hereby
3 authorized to consent to the medical treatment of any
4 juvenile in the legal or physical custody of the director or
5 the division.

CHAPTER 194

(Com. Sub. for S. B. 31—By Senators White, Hunter, Walker, Jackson, Deem,
Plymale and Wooton)

[Passed March 12, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article five-e, relating to requiring equal pay for equal work for state employees; setting forth legislative findings and purpose; defining terms; prohibiting the state from discriminating on the basis of gender in payment of wages for work of comparable character; creating right of action; establishing the equal pay commission; providing for the appointment of members and the expiration of commission; setting forth duties of the commission; authorizing commission to promulgate legislative rules; and establishing operative date.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5E. EQUAL PAY FOR EQUAL WORK FOR STATE EMPLOYEES.

§21-5E-1. Legislative findings and purpose.

§21-5E-2. Definitions.

§21-5E-3. Discrimination between sexes in payment of wages for work of comparable character prohibited.

§21-5E-4. Employee's right of action against employer.

§21-5E-5. Establishment of the equal pay commission; appointment of members; and expiration date.

§21-5E-6. Commission's duties; promulgation of rules.

§21-5E-1. Legislative findings and purpose.

1 (a) The Legislature hereby finds and declares that it is
2 the public policy of this state to provide all citizens equal
3 opportunity for employment without regard to gender and
4 that gender discrimination in hiring and promotion has
5 played a role in maintaining a segregated workforce in
6 this state.

7 (b) The Legislature hereby further finds and declares
8 that the existence of wage differentials between equivalent
9 jobs segregated by gender depresses wages and living
10 standards, prevents the maximum utilization of the
11 available labor resources and constitutes an unfair method
12 of competition.

13 (c) It is therefore the purpose of this article to provide
14 state employees equal pay for work of comparable
15 character, regardless of gender, to create a commission to
16 study both the methodology and funding for the
17 implementation of a gender discrimination prohibition
18 and to establish a procedure to remedy complaints of the
19 failure to provide equal pay for work of comparable
20 character to state employees.

§21-5E-2. Definitions.

1 For the purposes of this article:

2 (1) "Employer" means the state of West Virginia;

3 (2) "Employee" means any person hired for
4 permanent employment, either full or part-time, or hired
5 for temporary employment for more than six consecutive
6 months, by any department, agency, commission or board
7 of the state created by an act of the Legislature, except any

8 person employed by the university of West Virginia board
9 of trustees, the board of directors of the state college
10 system or by any state institution of higher education, or a
11 member of the state police, an employee of any
12 constitutional officer who is not classified under the
13 provisions of article six, chapter twenty-nine of this code
14 and any employee of the Legislature. The definition of
15 "employee" does not include any patient or inmate
16 employed in a state institution;

17 (3) "Wages" means all compensation for performance
18 of service by an employee for an employer, whether paid
19 by the employer or another person, including the cash
20 value of all compensation paid in any medium other than
21 cash;

22 (4) "Rate" with reference to wages means the basis of
23 compensation for services by an employee for an
24 employer and includes compensation based on the time
25 spent in the performance of those services, or on the
26 number of operations accomplished, or on the quantity
27 produced or handled;

28 (5) "Unpaid wages" means the difference between the
29 wages actually paid to an employee and the wages
30 required to be paid to an employee pursuant to section
31 three of this article;

32 (6) "Work of comparable character" means work that
33 may be dissimilar, but whose requirements are comparable
34 or equivalent when viewed as a composite of levels of skill,
35 effort, responsibility and working conditions; and

36 (7) "Wage gap" means the difference between the
37 median annual earnings of men and women.

**§21-5E-3. Discrimination between sexes in payment of wages
for work of comparable character prohibited.**

1 (a) No employer shall:

2 (1) In any manner discriminate between the sexes in
3 the payment of wages for work of comparable character,
4 the performance of which requires comparable skills; or

5 (2) Pay wages to any employee at a rate less than the

6 rate other employees of the opposite sex are paid for work
7 of comparable character, the performance of which
8 requires comparable skills.

9 (b) Nothing in subsection (a) of this section prohibits
10 the payment of different wages to employees where the
11 payment is made pursuant to:

12 (1) A bona fide seniority system;

13 (2) A merit system; or

14 (3) A system that measures earnings by quantity or
15 quality of production.

16 (c) No employee shall be reduced in wages in order to
17 eliminate an existing, past or future wage discrimination or
18 to effectuate wage equalization.

19 (d) No employer shall in any manner discriminate in
20 the payment of wages to any employee because the
21 employee has filed a complaint in a proceeding under this
22 article, or has testified, or is about to testify, or because the
23 employer believes that the employee may testify, in any
24 investigation or proceeding pursuant to this article.

25 (e) Except as otherwise provided in subsection (d),
26 section six of this article, the provisions of this section
27 shall not become effective until the Legislature approves
28 for promulgation the rules proposed by the equal pay
29 commission under the provisions of subsection (c) of said
30 section.

§21-5E-4. Employee's right of action against employer.

1 (a) Any employee whose compensation is at a rate that
2 is in violation of section three of this article has the right
3 to file a grievance pursuant to the provisions of article six-
4 a, chapter twenty-nine of this code.

5 (b) No agreement for compensation at a rate of less
6 than the rate to which the employee is entitled under this
7 article is a defense to any action under this article.

8 (c) The rights and procedures provided under this
9 section shall be subject to the provisions of the rules

10 promulgated by the equal pay commission in accordance
11 with section six of this article.

12 (d) Except as otherwise provided in subsection (d),
13 section six of this article, the provisions of this section
14 shall not become effective until the Legislature approves
15 for promulgation the rules proposed by the equal pay
16 commission under the provisions of subsection (c) of said
17 section.

**§21-5E-5. Establishment of the equal pay commission;
appointment of members; and expiration date.**

1 (a) The equal pay commission is hereby established.
2 The commission shall be composed of seven members, as
3 follows:

4 (1) Two members of the House of Delegates,
5 appointed by the speaker;

6 (2) Two members of the Senate, appointed by the
7 president; and

8 (3) Three state employee representatives, including
9 one labor union member representing state employees, as
10 agreed to by the speaker and president; the director of the
11 women's commission, or his or her designee; and the
12 director of the office of equal employment opportunity,
13 or his or her designee.

14 (b) The commission shall seek input from and invite
15 the commissioner of labor or his or her designee and the
16 director of the personnel division of the department of
17 administration or his or her designee to attend meetings of
18 the commission.

19 (c) One of the members of the Senate and one of the
20 members of the House of Delegates, as designated by the
21 president and the speaker respectively, shall serve as
22 cochair of the commission.

23 (d) The members of the House of Delegates, the
24 members of the Senate and the state employee
25 representative members initially appointed shall serve until
26 the thirty-first day of December, one thousand nine
27 hundred ninety-eight. Those members shall thereafter be

28 appointed to serve two-year terms beginning the first day
29 of January, one thousand nine hundred ninety-nine.

30 (e) Any member whose term has expired shall serve
31 until his or her successor has been duly appointed. Any
32 person appointed to fill a vacancy shall serve only for the
33 unexpired term. Any member shall be eligible for
34 reappointment.

35 (f) Any vacancies occurring in the membership of the
36 commission shall be filled in the same manner as the
37 original appointment for the position being vacated. The
38 vacancy shall not affect the power of the remaining
39 members to execute the duties of the commission.

40 (g) The commission expires on the first day of July,
41 two thousand three.

§21-5E-6. Commission's duties; promulgation of rules.

1 (a) The equal pay commission shall study both the
2 methodology and funding for the implementation of a
3 gender discrimination prohibition and shall prepare
4 reports for submission to the Legislature which include:

5 (1) An analysis of state job descriptions which
6 measures the inherent skill, effort, responsibility and
7 working conditions of various jobs and classifications; and

8 (2) A review of similar efforts to eliminate gender-
9 based wage differentials implemented by other
10 governmental entities in this and other states.

11 (b) The commission shall submit an initial report with
12 recommendations for implementation of a gender
13 discrimination prohibition to the joint committee on
14 government and finance not later than the first day of
15 July, two thousand, and shall submit status reports
16 annually thereafter.

17 (c) Based upon the findings and recommendations in
18 its report, the commission may propose legislative rules
19 for promulgation in accordance with article three, chapter
20 twenty-nine-a of this code to implement the provisions of
21 this article.

22 (d) Notwithstanding any other provision of this article,
23 if no legislative rules are approved for promulgation by
24 the Legislature pursuant to this article prior to the first day
25 of July, two thousand one, then the provisions of sections
26 three and four of this article shall become effective on
27 such date.

CHAPTER 195

(Com. Sub. for H. B. 4034—By Delegates Linch, Hunt, Mahan, Staton,
Tomblin, Riggs and Thomas)

[Passed March 14, 1998; 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-five, relating to the regulation of lead abatement, assessment, and inspection activities and establishing licensing requirements for lead inspectors, risk assessors, supervisors, designers, contractors and workers; establishing legislative findings, providing definitions; establishing the powers and duties of the director of the division of health; authorizing the establishment of fees; creating lead abatement, inspector and assessor license requirements; providing license application issuance, denial and revocation procedures; providing lead contractor's duties and responsibilities; providing exemptions from the notification and licensure requirements; providing for notification of elevated blood-lead levels; requiring reporting of lead abatement projects; establishing accreditation requirements for lead abatement instructors and training programs; providing for suspension or revocations of licenses and procedures therefore; establishing a special revenue account to administer the program; providing civil penalties and fees for violation of the certain provisions of this article; and creating a misdemeanor offense for violations of this article.

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-five, to read as follows:

ARTICLE 35. LEAD ABATEMENT.

- §16-35-1. Short title.
- §16-35-2. Legislative findings.
- §16-35-3. Definitions.
- §16-35-4. Powers and duties of the director.
- §16-35-5. Lead discipline license required.
- §16-35-6. Lead abatement contractor's duties.
- §16-35-7. Exemptions from notification and licensure.
- §16-35-8. Notification of elevated blood-lead levels required.
- §16-35-9. Notification of lead abatement projects required.
- §16-35-10. Accreditation of lead abatement training courses.
- §16-35-11. Suspension or revocation of license; violations; hearings.
- §16-35-12. Special revenue account.
- §16-35-13. Penalties and fines.

§16-35-1. Short title.

- 1 This article may be cited as the West Virginia "Lead
- 2 Abatement Act."

§16-35-2. Legislative findings.

- 1 (a) The Legislature hereby finds and declares that:
- 2 (1) Lead is a toxic substance and harmful to the
- 3 citizens of this state;
- 4 (2) Lead poisoning is a devastating health hazard,
- 5 particularly to young children, and results in serious long-
- 6 term health effects;
- 7 (3) Children exposed to even low levels of lead exhibit
- 8 learning disabilities, decreased growth, hyperactivity,
- 9 impaired hearing, and neurological damage;
- 10 (4) Workers and others who come into contact with
- 11 lead when removing or remediating lead based materials
- 12 are also at risk of lead poisoning;

13 (5) Exposure occurs from contact with materials
14 containing lead, including, but not limited to, lead-based
15 paint chips, lead dust, and lead-contaminated soil;

16 (6) The most significant source of exposure is lead-
17 based paint, particularly in houses built prior to one
18 thousand nine hundred seventy-eight;

19 (7) The danger posed by lead-based paint hazards can
20 be controlled by abatement or interim controls that limit
21 exposure to lead-based paint hazards; and

22 (8) The public health and safety of this state will be
23 better protected when all persons who handle lead-
24 contaminated substances are thoroughly trained and
25 knowledgeable regarding safe methods of handling and
26 disposing of such materials.

27 (b) Therefore, it is the purpose of this article to protect
28 the health of the children of the state and those who
29 undertake remediation of the lead health hazard by
30 establishing guidelines for the assessment and removal of
31 lead hazards from homes and other buildings where
32 children are frequently present and exposed to the danger
33 of lead poisoning.

§16-35-3. Definitions.

1 (a) "Abatement" means any measure or set of measures
2 designed to permanently eliminate lead-based paint
3 hazards. Abatement includes, but is not limited to:

4 (1) The removal of lead-based paint and lead-
5 contaminated dust, the permanent enclosure or
6 encapsulation of lead-based paint, the replacement of
7 lead-painted surfaces or fixtures, and the removal or
8 covering of lead-contaminated soil;

9 (2) All preparation, cleanup, disposal, and post-
10 abatement clearance testing activities associated with such
11 measures;

12 (3) Projects for which there is a written contract to
13 permanently eliminate lead-based paint hazards from a
14 dwelling unit or child-occupied building;

15 (4) Projects involving the permanent elimination of
16 lead-based paint or lead-contaminated soil; and

17 (5) Projects involving the permanent elimination of
18 lead-based paint hazards that are conducted in response to
19 federal, state or local abatement orders.

20 (b) "Child lead poisoning" means that the amount of
21 lead circulating in the blood stream of children is at or
22 exceeds the level defined by the United States center for
23 disease control.

24 (c) "Child-occupied building" means any of the
25 following structures built before one thousand nine
26 hundred seventy-eight: public or private buildings, or
27 portions thereof, or a room in a residential dwelling or
28 unit, any of which structures are currently visited, or
29 intended to be visited, three hours a day twice a week or
30 more often by a child age six or under, including, but not
31 limited to, day care centers, kindergarten classrooms,
32 schools, camps and recreational facilities.

33 (d) "Contained work area" means a designated room
34 or rooms, spaces, or other areas, including a
35 decontamination structure, where lead abatement activities
36 are performed, separated from the uncontaminated
37 environment in accordance with OSHA standards.

38 (e) "Discipline" means any one of the following: lead
39 abatement contractor, lead abatement supervisor, lead
40 inspector, lead risk assessor, lead abatement worker, or
41 lead abatement project designer.

42 (f) "Director" means the director of the West Virginia
43 division of health or his or her representative.

44 (g) "Elevated blood-lead level" means a concentration
45 of lead in the blood stream as defined by the United States
46 center for disease control.

47 (h) "Industrial facility" means any factory, mill, plant,
48 refinery, warehouse, building or complex of buildings or
49 other industrial structures including the land on which it is
50 located.

51 (i) "Inspection" means a surface-by-surface
52 investigation to determine the presence of lead-based paint
53 or lead hazards and the provision of a report explaining
54 the results of the investigation.

55 (j) "Interim controls" means a set of measures
56 designed to temporarily reduce human exposure or likely
57 exposure to lead-based paint hazards, including
58 specialized cleaning, repairs, maintenance, painting,
59 temporary containment, ongoing monitoring of lead-
60 based paint hazards or potential hazards, and the
61 establishment and operation of management and resident
62 education programs.

63 (k) "Lead" means elemental lead and all inorganic and
64 organic lead compounds.

65 (l) "Lead abatement contractor" means any person
66 who contracts to conduct any lead abatement activity.

67 (m) "Lead abatement designer" means an individual
68 who designs lead abatement projects.

69 (n) "Lead abatement project" means an activity in
70 target housing or child-occupied buildings intended to
71 permanently remove or encapsulate lead-based paint, lead-
72 containing dust, lead-containing soil or other lead-
73 containing materials and decontamination of an area, but
74 does not include interim controls which do not
75 permanently eliminate lead hazards.

76 (o) "Lead abatement worker" means an individual who
77 is employed by a lead abatement contractor for a lead
78 abatement project.

79 (p) "Lead-based paint" means paint or other surface
80 coatings that contains lead at a level defined by the
81 director by legislative rule as provided in section four of
82 this article.

83 (q) "Lead hazard" means any condition that may result
84 in exposure to lead including, but not limited to, lead-
85 contaminated dust, lead-contaminated soil, or lead-based
86 paint present on accessible surfaces, friction surfaces,

87 impact surfaces or other lead sources that could result in
88 adverse effects on human health.

89 (r) "Lead inspector" means an individual who conducts
90 inspections to determine and report the existence, nature,
91 severity and location of lead-based paint or lead hazards.

92 (s) "Lead risk assessment" means an investigation of
93 the potential risk to human health or the environment
94 posed by lead abatement projects or lead hazards,
95 including, but not limited to, considerations of toxicity,
96 concentration, form, mobility and potential of exposure.

97 (t) "Lead risk assessor" means an individual who is
98 responsible for or conducts lead risk assessments and
99 establishes priorities for a lead abatement project.

100 (u) "Lead supervisor" means a person employed by a
101 lead abatement contractor to supervise workers on a lead
102 abatement project.

103 (v) "OSHA" means the United States Occupational
104 Safety and Health Administration.

105 (w) "Owner-occupied housing" means a detached
106 single unit residence owned by the individual living within
107 the unit.

108 (x) "Person" means any individual, partnership, firm,
109 society, association, trust, corporation, other business entity
110 or any agency, unit, or instrumentality of federal, state or
111 local government.

112 (y) "Target housing" means residential structures built
113 prior to one thousand nine hundred seventy-eight that
114 could contain lead-based paint or residential structures
115 that are confirmed by inspection to contain lead-based
116 paint.

§16-35-4. Powers and duties of the director.

1 The director shall administer and enforce this article,
2 and has the following powers and duties:

3 (1) To propose rules for legislative approval in
4 accordance with the provisions of article three, chapter

5 twenty-nine-a of this code, necessary to carry out the
6 requirements of this article, including, but not limited to,
7 abatement personnel training guidelines, procedures for
8 the issuance and renewal of lead discipline licenses,
9 establishment of all fees necessary to pay for the
10 implementation and enforcement of this program, and the
11 regulation of lead abatement projects;

12 (2) To issue, suspend and revoke lead discipline
13 licenses, regulate lead abatement projects, and assess fees
14 and civil penalties pursuant to this article and the rules
15 promulgated hereunder;

16 (3) To promulgate any emergency rules necessary to
17 gain federal approval of the state lead abatement program
18 in accordance with section three, article fifteen, chapter
19 twenty-nine-a of this code;

20 (4) To accredit training providers, training courses,
21 examiners, examinations, and grading systems developed
22 for licensing disciplines pursuant to this article;

23 (5) To order reduction or abatement of identified lead
24 hazards when they may result in child lead poisoning; and

25 (6) To develop a public awareness campaign on the
26 dangers of lead poisoning and to promote public
27 education of the requirements of this article.

§16-35-5. Lead discipline license required.

1 (a) It is unlawful for any individual to carry out any
2 lead-risk assessment, inspection or abatement activity for
3 which he or she does not hold an appropriate lead
4 discipline license.

5 (b) To qualify for a lead discipline license an
6 applicant shall:

7 (1) Satisfactorily complete a state-accredited training
8 course for a lead discipline and receive a passing grade on
9 an examination administered by a state-accredited
10 examiner; and

11 (2) Meet the requirements set forth by the director in
12 legislative rule.

13 (c) Applicants for a lead discipline license shall submit
14 to the division an application and certificate that show
15 satisfactory completion of a training course for a lead
16 discipline and pay the applicable fee to the division.

17 (d) The director may deny a license if the applicant
18 fails to comply with the application procedures or to
19 satisfy the licensure criteria or to pay the fee. The director
20 shall provide written notice of such denial and an
21 opportunity for reapplication.

22 (e) The director may grant lead discipline licenses to
23 individuals licensed or certified in another jurisdiction if
24 its requirements are at least as stringent as West Virginia's
25 requirements.

§16-35-6. Lead abatement contractor's duties.

1 A lead abatement contractor shall:

2 (1) Ensure that each of his or her employees or
3 agents who will come in contact with lead or who will be
4 responsible for a lead abatement project is licensed as
5 required by this article;

6 (2) Ensure that each lead abatement project is
7 supervised by a licensed lead abatement supervisor;

8 (3) Maintain sampling records for each contained
9 work area of a lead abatement project until it meets the
10 minimum clearance standards established by the director
11 before allowing reoccupancy; and

12 (4) Keep a record of each lead abatement project and
13 make the record available to the division and the divisions
14 of commerce, labor, and environmental protection upon
15 request. Records required by this subsection shall be kept
16 for at least three years and shall include at a minimum:

17 (A) The name, address and license number of the
18 individual who supervised the lead abatement project and
19 each employee or agent who worked on the project;

20 (B) The location and design of the project, if
21 applicable, and the amount of lead-containing material
22 that was removed;

23 (C) The starting and completion date of each project
24 and a summary of the procedures that were used to
25 comply with all federal and state standards; and

26 (D) The name and address of each disposal site where
27 lead-contaminated waste was deposited and the disposal
28 site receipts.

§16-35-7. Exemptions from notification and licensure.

1 (a) Homeowners performing lead abatement or
2 interim abatement controls on their single unit owner-
3 occupied housing are exempt from the requirements of
4 this article.

5 (b) Abatement does not include renovation,
6 remodeling, landscaping or other activities, when the
7 purpose of such activities are not intended to permanently
8 eliminate lead-based paint hazards, but, instead, are
9 designed to repair, restore or remodel a given structure or
10 dwelling, even though these activities may incidentally
11 result in a reduction or elimination of lead-based paint
12 hazards. Abatement also does not include interim
13 controls, operations and maintenance activities, or other
14 measures and activities designed to temporarily, but not
15 permanently reduce lead-based paint hazards.

16 (c) The provisions of this article do not apply to lead-
17 hazard reduction activities or to persons performing such
18 activities when such activities are performed wholly within
19 or on an industrial facility and are performed by persons
20 who are subject to the training requirements of OSHA:
21 *Provided*, That the provisions of this article do apply to
22 any child-occupied building or area such as a child day
23 care center located at an industrial facility.

§16-35-8. Notification of elevated blood-lead levels required.

1 The director may, by legislative rule, establish
2 requirements for laboratories and lead abatement
3 contractors for mandatory reporting of any persons
4 medically confirmed elevated blood-lead level.

§16-35-9. Notification of lead abatement projects required.

1 Each owner or other person responsible for the
2 operation of a building, facility, residence or structure
3 where a lead abatement project is to occur shall notify the
4 division in the time specified by the director prior to
5 commencement of each lead abatement project, and
6 comply with all applicable state and federal regulatory
7 requirements for a lead abatement project.

§16-35-10. Accreditation of lead abatement training courses.

1 (a) The director shall propose legislative rules
2 establishing criteria and procedures for certification of
3 training course curricula and examinations that shall
4 ensure the qualifications of applications for licensure or
5 certification as required in this article. To qualify for
6 certification, a training course shall contain a combination
7 of class instruction, practical application, and public health
8 procedures of a length and content that, to the satisfaction
9 of the director, ensure adequate training for the level and
10 type of responsibility for each named certification
11 category.

12 (b) All courses certified under this section shall be
13 conducted by instructors whose training and experience is
14 determined by the director to be appropriate for the
15 subject matter being taught and the level of licensure
16 category for which the course is designed. An approved
17 initial course for any category of person engaged in lead-
18 hazard reduction activities shall include all of the
19 following, but not be limited to:

20 (1) Worker health and safety instruction no less
21 stringent than required under applicable federal law and
22 regulations;

23 (2) Instruction in the importance of safe work
24 practices in promoting public health, and the importance
25 of proper decontamination procedures in eliminating the
26 risk of contaminating individual workers' home
27 environment; and

28 (3) Instruction in the workers' rights and obligations
29 under federal and state law.

30 (c) In addition to developing criteria for classroom
31 instruction pursuant to this section, the director shall
32 develop minimum criteria for hands-on training or on-site
33 instruction. The criteria for certification of training
34 courses shall include minimum trainee competency and
35 proficiency requirements, evidenced through both written
36 examinations and minimum skills demonstration
37 examinations. Upon successful completion of an
38 approved retraining course, the trainee shall be issued a
39 certificate by the director or the accredited training
40 provider under the authority of the director.

41 (d) All training courses must be recertified annually
42 by the director. The director may establish by legislative
43 rule, reasonable application fees for the accreditation of
44 training courses and discipline examiners, and establish
45 criteria for renewals of training course certification.

**§16-35-11. Suspension or revocation of license; violations;
hearings.**

1 (a) The director may suspend or revoke a lead
2 abatement discipline license if the licensee:

3 (1) Fraudulently or deceptively obtains or attempts to
4 obtain a license or knowingly aids another in such fraud
5 or deception;

6 (2) Fails at any time to meet the qualifications for the
7 license or to comply with the requirements of this article
8 or any applicable legislative rules;

9 (3) Fails to comply with applicable federal or state
10 standards for lead abatement projects;

11 (4) Employs or permits an individual not licensed as
12 required by this article to work on a lead abatement
13 project; or

14 (5) Falsifies or attempts to falsify any document
15 related to a lead abatement project.

16 (b) The director may investigate all suspected
17 violations of this article or any rule promulgated
18 hereunder. Upon the finding of a violation in connection
19 with any lead abatement project, the director shall issue a

20 cease and desist order directing that all work on the
21 project is halted forthwith or a notice of violation directing
22 compliance with this article or any rule promulgated
23 hereunder. Posting of cease and desist orders or notice of
24 violations on project sites shall constitute notice of its
25 contents to the property owner and all persons working on
26 the lead abatement project. The director may also deliver
27 a copy of such order or notice by certified mail, return
28 receipt requested, to the property owner and to the
29 contractor.

30 (c) Hearings regarding violations of this article and
31 any rules promulgated hereunder shall be conducted in
32 accordance with the division's rules of procedure for
33 contested case hearings and declaratory rulings and the
34 administrative procedures act of chapter twenty-nine-a of
35 this code.

§16-35-12. Special revenue account.

1 The director shall deposit all moneys collected as fees
2 and civil penalties under the provisions of this article a
3 special account in the state treasury to be known as the
4 "lead abatement account". Expenditures from said fund
5 shall be for the purposes set forth in this article and are
6 not authorized from collections but are to be made only in
7 accordance with appropriation by the Legislature and in
8 accordance with the provisions of article three, chapter
9 twelve of this code and upon the fulfillment of the
10 provisions set forth in article two, chapter five-a of this
11 code: *Provided*, That for the fiscal year ending the
12 thirtieth day of June, one thousand nine hundred ninety-
13 nine, expenditures are authorized from collections rather
14 than pursuant to an appropriation of the Legislature.

§16-35-13. Penalties and fines.

1 (a) The director may impose a civil penalty of not less
2 than two hundred fifty dollars and not more than five
3 thousand dollars for each separate violation of this article
4 or any rules promulgated hereunder. In any case where a
5 person fails to halt work following the issuance of a cease
6 and desist order by the director, the violation shall be

7 presumed to be willful and the person shall be assessed a
8 civil penalty by the director of not less than ten thousand
9 dollars nor more than twenty-five thousand dollars for an
10 initial violation and not less than twenty-five thousand
11 dollars nor more than fifty thousand dollars for each
12 subsequent violation. Failure to pay a civil penalty
13 imposed by the director within thirty days of receipt of
14 notification constitutes a separate violation.

15 (b) Notwithstanding any other provision of this code,
16 any person who violates any provision of this article or
17 any rule promulgated hereunder is guilty of a
18 misdemeanor and, upon conviction thereof, shall be fined
19 not less than two hundred fifty dollars, nor more than fifty
20 thousand dollars, or confined in the county or regional jail
21 not more than one year, or both fined and confined.

CHAPTER 196

(Com. Sub. for H. B. 4144—By Delegates Hunt, Linch, Compton, Jenkins,
Faircloth and Riggs)

[Passed March 12, 1998; in effect from passage. Approved by the Governor.]

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

authorizing department of administration to promulgate legislative rules relating to purchasing card program; and authorizing division of personnel to promulgate legislative rules relating to administrative rules.

Be it enacted by the Legislature of West Virginia:

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

Article

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

ARTICLE 1. GENERAL LEGISLATIVE AUTHORIZATION.

§64-1-1. Legislative authorization.

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

19 All proposed legislative rules for which bills of
20 authorization have been introduced in the Legislature not
21 specifically authorized under articles two through eleven
22 of this chapter are disapproved by the Legislature.

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

§64-2-1. Department of administration and the auditor.

§64-2-2. Division of personnel.

§64-2-1. Department of administration and the auditor.

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

§64-2-2. Division of personnel.

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

12 "On page 35, Subsection 12.6, by following the words
13 'wage or salary' by inserting the following: 'or is paid
14 temporary total disability under the provisions of section
15 one, article four, chapter twenty-three of this code,'."

CHAPTER 197

(Com. Sub. for H. B. 4136—By Delegates Hunt, Linch, Compton, Jenkins,
Faircloth and Riggs)

[Passed March 14, 1998; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article three, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section two, all relating generally to the promulgation of administrative rules by the various executive or administrative agencies and the procedures relating thereto; legislative mandate or authorization for the promulgation of certain legislative rules by various executive and administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the state register; authorizing certain of the agencies to promulgate legislative rules as amended by the Legislature; authorizing certain of the agencies to promulgate legislative rules with various modifications presented to and recommended by the legislative rule-making review committee; authorizing division of environmental protection to promulgate legislative rules relating to acid rain provisions and permits; authorizing division of environmental protection to promulgate legislative rules relating to emission standards for hazardous air pollutants pursuant to 40 CFR Part 63; authorizing division of environmental protection to promulgate legislative rules relating to hazardous waste management; authorizing division of environmental protection to promulgate legislative rules relating to requirements governing water quality standards; authorizing division of environmental protection to promulgate legislative rules relating to prevention and control particulate air pollution from manufacturing process operations; authorizing division of environmental protection to promulgate legislative rules relating to prevention and control of emissions from municipal solid waste landfills; authorizing division of environmental protection to promulgate legislative rules relating to emission standards for

hazardous air pollutants pursuant to 40 CFR Part 63; authorizing division of environmental protection to promulgate legislative rules relating to surface mining and reclamation regulations; authorizing environmental quality board to promulgate legislative rules relating to water quality standards; and authorizing environmental quality board to promulgate legislative rules relating to groundwater standards.

Be it enacted by the Legislature of West Virginia:

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

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

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

§64-3-2. Environmental quality board.

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

1 (a) The legislative rule filed in the state register on the
2 first day of August, one thousand nine hundred
3 ninety-seven, authorized under the authority of section
4 seven, article five, chapter twenty-two, of this code, relating
5 to the division of environmental protection (acid rain
6 provisions and permits, 45 CSR 33), is authorized.

7 (b) The legislative rule filed in the state register on the
8 first day of August, one thousand nine hundred ninety-
9 seven, authorized under the authority of section seven,
10 article five, chapter twenty-two of this code, relating to the
11 division of environmental protection (emission standards
12 for hazardous air pollutants pursuant to 40 CFR Part 63,
13 45 CSR 34), is authorized.

14 (c) The legislative rule filed in the state register on the
15 first day of August, one thousand nine hundred ninety-
16 seven, authorized under the authority of section six, article
17 eighteen, chapter twenty-two of this code, relating to the
18 division of environmental protection (hazardous waste
19 management, 33 CSR 20), is authorized.

20 (d) The legislative rule filed in the state register on the
21 fourteenth day of August, one thousand nine hundred
22 ninety-seven, authorized under the authority of section
23 four, article five, chapter twenty-two, of this code, relating
24 to the division of environmental protection(to prevent and
25 control particulate air pollution from manufacturing
26 process operations, 45 CSR 7) is authorized.

27 (e) The legislative rule filed in the state register on the
28 first day of August, one thousand nine hundred
29 ninety-seven, authorized under the authority of section
30 four, article five, chapter twenty-two, of this code,
31 modified by the division of environmental protection to
32 meet the objections of the legislative rule-making review
33 committee and refiled in the state register on the seventh
34 day of January, one thousand nine hundred ninety-eight,
35 relating to the division of environmental protection (to
36 prevent and control of emissions from municipal solid
37 waste landfills, 45 CSR 23), is authorized.

38 (f) The legislative rule filed in the state register on the
39 first day of August, one thousand nine hundred ninety-
40 seven, authorized under the authority of section seven,
41 article one, chapter twenty-two of this code, modified by
42 the division of environmental protection to meet the
43 objections of the legislative rule-making review committee
44 and refiled in the state register on the second day of
45 December, one thousand nine hundred ninety-seven,
46 relating to the division of environmental protection (to
47 prevent and control air pollution from hazardous waste
48 treatment, storage or disposal facilities, 45 CSR 25), is
49 authorized.

50 (g) The legislative rule filed in the state register on the
51 first day of August, one thousand nine hundred ninety-
52 seven, authorized under the authority of section three,
53 article one, chapter twenty-two of this code, modified by
54 the division of environmental protection to meet the
55 objections of the legislative rule-making review committee
56 and refiled in the state register on the fifth day of January,
57 one thousand nine hundred ninety-eight, relating to the
58 division of environmental protection (surface mining and
59 reclamation regulations, 38 CSR 2), is authorized.

§64-3-2. Environmental quality board.

1 (a) The legislative rule filed in the state register on the
2 first day of August, one thousand nine hundred
3 ninety-seven, authorized under the authority of section
4 four, article three, chapter twenty-two-b, of this code,
5 modified by the environmental quality board to meet the
6 objections of the legislative rule-making review committee
7 and refiled in the state register on the twenty-second day
8 of January, one thousand nine hundred ninety-eight,
9 relating to the environmental quality board (requirements
10 governing water quality standards, 46 CSR 1), is
11 authorized until the thirtieth day of October, 1999:
12 *Provided*, That the environmental quality board shall
13 review, revise and propose, within this statutory deadline,
14 and in accordance with the provisions of chapter twenty-
15 nine-a of this code, emergency and legislative rules to
16 address the interpretive differences regarding the
17 designation of category A waters and analyze the need for
18 distance prohibitors for the policies of public drinking
19 water intake, with the following amendments:

20 By deleting the strike-throughs in subdivisions 8.22.1
21 and 8.22.2;

22 And,

23 On page fourteen, subsection 7.2.b after the word
24 'NOTE:' by inserting the following:

25 'With the exception of section 7.2.c.5 listed herein
26 exceptions do not apply to trout waters nor the
27 requirements of section 3.'

28 And on page fourteen, after paragraph 7.2.c.4 by
29 inserting a new paragraph 7.2.c.5, to read as follows:

30 'For the upper Blackwater River from the mouth of
31 Yellow Creek to a point 5.1 miles upstream, when flow is
32 less than 7Q10, naturally occurring values for Dissolved
33 Oxygen as established by data collected by the dischargers
34 within this reach and reviewed by the Board and Division
35 of Environmental Protection shall be the applicable
36 criteria.'

37 And,

38 On page forty-four, by striking out subsection 8.17.1
39 in its entirety and inserting in lieu thereof a new
40 subsection 8.17.1 to read as follows:

41 “Effluent limitations regarding Mn shall not apply
42 where the applicant certifies the stream or stream segment
43 is not category A water.”

44 (b) The legislative rule filed in the state register on the
45 first day of August, one thousand nine hundred
46 ninety-seven, authorized under the authority of section
47 four, article three, chapter twenty-two-b, of this code,
48 modified by the environmental quality board to meet the
49 objections of the legislative rule-making review committee
50 and refiled in the state register on the twenty-third day of
51 January, one thousand nine hundred ninety-eight, relating
52 to the environmental quality board (requirements
53 governing groundwater standards, 46 CSR 12), is
54 authorized.

CHAPTER 198

(Com. Sub. for S. B. 305—By Senators Ross, Anderson, Bowman,
Macnaughtan, Boley and Buckalew)

[Passed March 12, 1998; in effect from passage. Approved by the Governor.]

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

modifications presented to and recommended by the legislative rule-making review committee; authorizing the division of health to promulgate a legislative rule relating to asbestos abatement licensing; authorizing division of health to promulgate legislative rules relating to fund for breast and cervical cancer; authorizing division of health to promulgate legislative rules relating to certain clinical laboratory licensure; authorizing division of health to promulgate legislative rules relating to drinking water treatment revolving fund; and authorizing division of health to promulgate legislative rules relating to sewage systems.

Be it enacted by the Legislature of West Virginia:

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

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

§64-5-1. State board of health; division of health.

1 (a) The legislative rule filed in the state register on the
2 eighteenth day of November, one thousand nine hundred
3 ninety-six, authorized under the authority of section three,
4 article thirty-two, chapter sixteen of this code, modified by
5 the division of health to meet the objections of the
6 legislative rule-making review committee and refiled in the
7 state register on the sixteenth day of December, one
8 thousand nine hundred ninety-seven, relating to the
9 division of health (asbestos abatement licensing, 64 CSR
10 63), is authorized.

11 (b) The legislative rule filed in the state register on the
12 first day of August, one thousand nine hundred
13 ninety-seven, authorized under the authority of section
14 eight, article thirty-three, chapter sixteen of this code,
15 modified by the division of health to meet the objections
16 of the legislative rule-making review committee and
17 refiled in the state register on the sixteenth day of
18 December, one thousand nine hundred ninety-seven,
19 relating to the division of health (breast and cervical

20 cancer diagnostic and treatment fund, 64 CSR 69), is
21 authorized.

22 (c) The legislative rule filed in the state register on the
23 first day of August, one thousand nine hundred ninety-
24 seven, under the authority of section ten, article five-j,
25 chapter sixteen of this code, modified by the director of
26 the division of health to meet the objections of the
27 legislative rule-making review committee and refiled in the
28 state register on the twenty-third day of January, one
29 thousand nine hundred ninety-eight, relating to the
30 division of health (clinical laboratory technician and
31 technologist licensure and certification, 64 CSR 57), is
32 authorized.

33 (d) The legislative rule filed in the state register on the
34 twenty-second day of December, one thousand nine
35 hundred ninety-seven, authorized under the authority of
36 section two, article thirteen-c, chapter sixteen of this code,
37 relating to the division of health (drinking water treatment
38 revolving fund, 64 CSR 49), is authorized.

39 (e) The legislative rule filed in the state register on the
40 fourth day of June, one thousand nine hundred
41 ninety-seven, authorized under the authority of section
42 seven, article one, chapter sixteen of this code, modified
43 by the division of health to meet the objections of the
44 legislative rule-making review committee and refiled in the
45 state register on the sixteenth day of December, one
46 thousand nine hundred ninety-seven, relating to the
47 division of health (sewage systems, 64 CSR 9), is
48 authorized with the following amendment:

49 On page 7, subsection 5.1. following the sentence
50 which ends "local health department offices." by inserting
51 the following: "Provided, that the director shall issue a
52 permit for the installation of a National Sanitation
53 Foundation Class I home aeration unit to be installed on a
54 single family dwelling unit when no other approved
55 system can be installed."

CHAPTER 199

(Com. Sub. for H. B. 4200—By Delegates Hunt, Linch, Compton, Jenkins,
Faircloth and Riggs)

[Passed March 12, 1998; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article six, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto two new sections, designated sections two and three, all relating generally to the promulgation of administrative rules by the various executive or administrative agencies and the procedures relating thereto; legislative mandate or authorization for the promulgation of certain legislative rules by various executive and administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the state register; authorizing certain of the agencies to promulgate legislative rules as amended by the Legislature; authorizing certain of the agencies to promulgate legislative rules with various modifications presented to and recommended by the legislative rule-making review committee; authorizing fire commission to promulgate legislative rules relating to building code; authorizing fire commission to promulgate legislative rules relating to fire code; authorizing state police to promulgate legislative rules relating to administration; authorizing state police to promulgate legislative rules relating to cadet selection; authorizing state police to promulgate legislative rules relating to carrying of handguns; authorizing state police to promulgate legislative rules relating to contracted services; authorizing state police to promulgate legislative rules relating to vehicle inspections; authorizing state police to promulgate legislative rules relating to grievance procedures; and authorizing director of veterans' affairs to expend funds for headstones or markers.

Be it enacted by the Legislature of West Virginia:

That section one, article six, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as

amended, be amended and reenacted; and that said article be further amended by adding thereto two new sections, designated sections two and three, all to read as follows:

CHAPTER 64. LEGISLATIVE RULES.

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

§64-6-1. Fire commission.

§64-6-2. State police.

§64-6-3. Division of veterans' affairs; headstones or markers.

§64-6-1. Fire commission.

1 (a) The legislative rule filed in the state register on the
2 twenty-second day of October, one thousand nine
3 hundred ninety-seven, modified by the fire commission
4 to meet the objections of the legislative rule-making
5 review committee and refiled in the state register on the
6 twentieth day of January, one thousand nine hundred
7 ninety-eight, relating to the fire commission (state
8 building code, 87 CSR 4), is authorized.

9 (b) The legislative rule filed in the state register on the
10 twenty-fourth day of July, one thousand nine hundred
11 ninety-seven, authorized under the authority of section
12 five, article three, chapter twenty-nine, of this code,
13 modified by the fire commission to meet the objections of
14 the legislative rule-making review committee and refiled in
15 the state register on the twelfth day of November, one
16 thousand nine hundred ninety-seven, relating to the fire
17 commission (state fire code, 87 CSR 1), is authorized with
18 the following amendment:

19 On page one, section §87-1-2, line four, after the word
20 "incident" and the period by striking out the remainder
21 of the section and inserting in lieu thereof the words
22 "*Provided*, That any fire or explosion involving human
23 fatality, arson or suspected arson shall be reported
24 immediately."

25 And,

26 On page one, section §87-1-3, line two, after the word
27 "dwellings" by inserting the words "*Provided*, That a
28 single unvented fuel fired heater is permitted for

29 demonstration purposes in authorized mercantile
30 applications when installed in accordance with
31 manufacturers recommendations. The single heater must
32 be connected to a permanent source of fuel and shall not
33 be used as a permanent or alternate source of heating.
34 The unvented heater shall be shut off at the end of each
35 business day.”

§64-6-2. State police.

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

10 (b) The legislative rule filed in the state register on the
11 seventeenth day of July, one thousand nine hundred
12 ninety-seven, under the authority of section twenty-five,
13 article two, chapter fifteen, of this code, modified by the
14 state police to meet the objections of the legislative
15 rule-making review committee and refiled in the state
16 register on the twenty-third day of January, one thousand
17 nine hundred ninety-eight, relating to the state police
18 (cadet selection, 81 CSR 2), is authorized.

19 (c) The legislative rule filed in the state register on the
20 seventeenth day of July, one thousand nine hundred
21 ninety-seven, under the authority of section twenty-five,
22 article two, chapter fifteen, of this code, modified by the
23 state police to meet the objections of the legislative
24 rule-making review committee and refiled in the state
25 register on the twenty-third day of January, one thousand
26 nine hundred ninety-eight, relating to the state police
27 (carrying of handguns by retired or medically discharged
28 members, 81 CSR 6), is authorized.

29 (d) The legislative rule filed in the state register on the
30 seventeenth day of July, one thousand nine hundred
31 ninety-seven, under the authority of section eighteen,
32 article two, chapter fifteen, of this code, modified by the
33 state police to meet the objections of the legislative
34 rule-making review committee and refiled in the state
35 register on the twenty-third day of January, one thousand

36 nine hundred ninety-eight, relating to the state police
37 (contracted police or security services, 81 CSR 5), is
38 authorized with the following amendment:

39 "On page 2, Section 3.1, by reinserting the stricken
40 words 'in writing'."

41 (e) The legislative rule filed in the state register on the
42 seventeenth day of July, one thousand nine hundred
43 ninety-seven, under the authority of section forty-eight,
44 article two, chapter fifteen, of this code, relating to the state
45 police (modified vehicle inspections, 81 CSR 4), is
46 authorized.

47 (f) The legislative rule filed in the state register on the
48 thirtieth day of July, one thousand nine hundred
49 ninety-seven, under the authority of section six, article two,
50 chapter fifteen, of this code, modified by the state police
51 to meet the objections of the legislative rule-making
52 review committee and refiled in the state register on the
53 twenty-third day of January, one thousand nine hundred
54 ninety-eight, relating to the state police (police grievance
55 procedure, 81 CSR 8), is authorized.

§64-6-3. Division of veterans' affairs; headstones or markers.

1 The legislative rule filed in the state register on the
2 tenth day of February, one thousand nine hundred ninety-
3 eight, relating to the division of veterans' affairs (VA
4 headstones or markers, 86 CSR 4) is authorized.

CHAPTER 200

(Com. Sub. for S. B. 317—By Senators Ross, Anderson, Bowman,
Macnaughtan, Boley and Buckalew)

[Passed March 12, 1998; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article eight, chapter sixty-four of the code of West Virginia, one thousand nine

hundred thirty-one, as amended, relating generally to the promulgation of administrative rules by the various executive or administrative agencies and the procedures relating thereto; legislative mandate or authorization for the promulgation of certain legislative rules by various executive and administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the state register; authorizing certain of the agencies to promulgate legislative rules as amended by the Legislature; authorizing certain of the agencies to promulgate legislative rules with various modifications presented to and recommended by the legislative rule-making review committee; authorizing the division of motor vehicles to promulgate a legislative rule relating to the denial, suspension, revocation or nonrenewal of driving privileges.

Be it enacted by the Legislature of West Virginia:

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

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

§64-8-1. Division of motor vehicles.

1 The legislative rule filed in the state register on the
2 twenty-fifth day of July, one thousand nine hundred
3 ninety-seven, authorized under the authority of section
4 nine, article two, chapter seventeen-a of this code,
5 modified by the division of motor vehicles to meet the
6 objections of the legislative rule-making review committee
7 and refiled in the state register on the second day of
8 December, one thousand nine hundred ninety-seven,
9 relating to the division of motor vehicles (denial,
10 suspension, revocation or nonrenewal of driving privileges,
11 91 CSR 5), is authorized.

CHAPTER 201

(Com. Sub. for S. B. 329—By Senators Ross, Anderson, Bowman,
Macnaughtan, Boley and Buckalew)

[Passed March 14, 1998; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, two, three, five, seven, nine, eleven and fourteen, article nine, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto nine new sections, designated sections twenty, twenty-one, twenty-two, twenty-three, twenty-four, twenty-five, twenty-six, twenty-seven and twenty-eight, all relating generally to the promulgation of administrative rules by the various executive or administrative agencies and the procedures relating thereto; legislative mandate or authorization for the promulgation of certain legislative rules by various executive and administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the state register; authorizing certain of the agencies to promulgate legislative rules as amended by the Legislature; authorizing certain of the agencies to promulgate legislative rules with various modifications presented to and recommended by the legislative rule-making review committee; disapproving and not authorizing certain rules; approving an amendment to an existing rule and directing a certain agency to refile the rule with amendment; authorizing commissioner of agriculture to promulgate legislative rules relating to fish processing; authorizing commissioner of agriculture to promulgate legislative rules relating to meat and poultry inspection; authorizing secretary of state to promulgate legislative rules relating to electronic records; authorizing secretary of state to promulgate legislative rules relating to certain filings; authorizing governor's committee on crime, delinquency and correction to promulgate legislative rules relating to basic training academy; authorizing governor's committee on crime, delinquency and correction to promulgate legislative rules relating to

law-enforcement protocol in response to domestic violence; authorizing auditor to promulgate legislative rules relating to transaction fee and rate structure; authorizing auditor to promulgate legislative rules relating to voluntary payroll deductions; authorizing board of dental examiners to promulgate legislative rules relating to professional limited liability companies; authorizing board of medicine to promulgate legislative rules relating to licensing; authorizing board of examiners of psychologists to promulgate legislative rules relating to fees; authorizing board of architects to promulgate legislative rules relating to board; authorizing board of examiners in counseling to promulgate legislative rules relating to licensing; disapproving and not authorizing human rights commission to promulgate legislative rules relating to definition of employer; authorizing board of occupational therapy to promulgate legislative rules relating to board; authorizing board of examiners in optometry to promulgate legislative rules relating to expanded prescriptive authority rules; authorizing board of examiners of radiologic technology to promulgate legislative rules relating to continuing education; authorizing board of examiners of radiologic technology to promulgate legislative rules relating to fees for services; authorizing board of social work examiners to promulgate legislative rules relating to social worker licensure; authorizing soil conservation committee to promulgate legislative rules relating to committee; authorizing treasurer to promulgate legislative rules relating to imprest funds; authorizing treasurer to promulgate legislative rules relating to deposit of moneys by state agencies; authorizing treasurer to promulgate legislative rules relating to payment processing; authorizing treasurer to promulgate legislative rules relating to debt capacity reporting; authorizing treasurer to promulgate legislative rules relating to state debt reporting; authorizing treasurer to promulgate legislative rules relating to selection of state depositories for disbursement of certain accounts; authorizing treasurer to promulgate legislative rules relating to selection of state depositories for receipt accounts; and reauthorizing the board of pharmacy rules relating to rules and regulations of the board of pharmacy.

Be it enacted by the Legislature of West Virginia:

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

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

- §64-9-1. Commissioner of agriculture.
- §64-9-2. Secretary of state.
- §64-9-3. Governor's committee on crime, delinquency and correction.
- §64-9-5. Auditor.
- §64-9-7. Board of dental examiners.
- §64-9-9. Board of medicine.
- §64-9-11. Board of pharmacy.
- §64-9-14. Board of examiners of psychologists.
- §64-9-20. Board of architects.
- §64-9-21. Board of examiners in counseling.
- §64-9-22. Human rights commission.
- §64-9-23. Board of occupational therapy.
- §64-9-24. Board of examiners in optometry.
- §64-9-25. Board of examiners of radiologic technology.
- §64-9-26. Board of social work examiners.
- §64-9-27. Soil conservation committee.
- §64-9-28. Office of the treasurer.

§64-9-1. Commissioner of agriculture.

- 1 (a) The legislative rule filed in the state register on the
- 2 first day of August, one thousand nine hundred
- 3 ninety-seven, authorized under the authority of section
- 4 one, article twenty-nine, chapter nineteen of this code,
- 5 modified by the commissioner of agriculture to meet the
- 6 objections of the legislative rule-making review committee
- 7 and refiled in the state register on the twenty-fifth day of
- 8 November, one thousand nine hundred ninety-seven,

9 relating to the commissioner of agriculture (fish
10 processing, 61 CSR 23A), is authorized.

11 (b) The legislative rule filed in the state register on the
12 eighth day of July, one thousand nine hundred
13 ninety-seven, authorized under the authority of section
14 three, article two-b, chapter nineteen of this code, modified
15 by the commissioner of agriculture to meet the objections
16 of the legislative rule-making review committee and
17 refiled in the state register on the twenty-third day of
18 September, one thousand nine hundred ninety-seven,
19 relating to the commissioner of agriculture (inspection of
20 meat and poultry, 61 CSR 16), is authorized.

§64-9-2. Secretary of state.

1 (a) The legislative rule filed in the state register on the
2 thirty-first day of July, one thousand nine hundred
3 ninety-seven, authorized under the authority of section
4 two, article one, chapter fifty-nine of this code, modified
5 by the secretary of state to meet the objections of the
6 legislative rule-making review committee and refiled in the
7 state register on the third day of November, one thousand
8 nine hundred ninety-seven, relating to the secretary of
9 state (fees relating to electronic records, 153 CSR 2), is
10 authorized.

11 (b) The legislative rule filed in the state register on the
12 thirty-first day of July, one thousand nine hundred
13 ninety-seven, authorized under the authority of section
14 sixty-seven, article one, chapter thirty-one of this code,
15 modified by the secretary of state to meet the objections
16 of the legislative rule-making review committee and
17 refiled in the state register on the fifth day of January, one
18 thousand nine hundred ninety-eight, relating to the
19 secretary of state (matters relating to corporations and
20 other business entity filing, 153 CSR 5), is authorized.

**§64-9-3. Governor's committee on crime, delinquency and
correction.**

1 (a) The legislative rule filed in the state register on the
2 thirty-first day of July, one thousand nine hundred ninety-
3 seven, under the authority of section three, article twenty-
4 nine, chapter thirty of this code, modified by the
5 governor's committee on crime, delinquency and
6 correction to meet the objections of the legislative
7 rule-making review committee and refiled in the state
8 register on the seventh day of January, one thousand nine
9 hundred ninety-eight, relating to the governor's committee
10 on crime, delinquency and correction (basic training
11 academy, annual in-service and biennial in-service training
12 standards, 149 CSR 2), is authorized.

13 (b) The legislative rule filed in the state register on the
14 twenty-eighth day of July, one thousand nine hundred
15 ninety-seven, authorized under the authority of section
16 nine, article two-a, chapter forty-eight of this code,
17 modified by the governor's committee on crime,
18 delinquency and correction to meet the objections of the
19 legislative rule-making review committee and refiled in the
20 state register on the seventh day of January, one thousand
21 nine hundred ninety-eight, relating to the governor's
22 committee on crime, delinquency and correction (protocol
23 for law enforcement response to domestic violence, 149
24 CSR 3), is authorized.

§64-9-5. Auditor.

1 (a) The legislative rule filed in the state register on the
2 sixth day of January, one thousand nine hundred
3 ninety-eight, authorized under the authority of section
4 ten-c, article three, chapter twelve of this code, modified
5 by the auditor to meet the objections of the legislative
6 rule-making review committee and refiled in the state
7 register on the twenty-first day of January, one thousand
8 nine hundred ninety-eight, relating to the auditor
9 (transaction fee and rate structure, 155 CSR 4), is
10 authorized.

11 (b) The legislative rule filed in the state register on the
12 twenty-eighth day of July, one thousand nine hundred
13 ninety-seven, authorized under the authority of section
14 thirteen-b, article three, chapter twelve of this code,
15 modified by the auditor to meet the objections of the
16 legislative rule-making review committee and refiled in the
17 state register on the twenty-second day of September, one
18 thousand nine hundred ninety-seven, relating to the
19 auditor (standards for voluntary payroll deductions, 155
20 CSR 3), is authorized.

§64-9-7. Board of dental examiners.

1 The legislative rule filed in the state register on the
2 twenty-eighth day of July, one thousand nine hundred
3 ninety-seven, authorized under the authority of section
4 one thousand three hundred four, article thirteen, chapter
5 thirty-one-b of this code, modified by the board of dental
6 examiners to meet the objections of the legislative
7 rule-making review committee and refiled in the state
8 register on the twenty-first day of November, one
9 thousand nine hundred ninety-seven, relating to the board
10 of dental examiners (formation and approval of
11 professional limited liability companies, 5 CSR 2), is
12 authorized.

§64-9-9. Board of medicine.

1 The legislative rule filed in the state register on the
2 sixteenth day of July, one thousand nine hundred
3 ninety-seven, authorized under the authority of section
4 sixteen, article three, chapter thirty of this code, modified
5 by the board of medicine to meet the objections of the
6 legislative rule-making review committee and refiled in the
7 state register on the seventh day of November, one
8 thousand nine hundred ninety-seven, relating to the board
9 of medicine (licensing, disciplinary and complaint
10 procedures, continuing education and physician assistants,
11 11 CSR 1B), is authorized with the following amendment:

12 On page five, by striking out all of section 2.6.1 and
13 the first line of section 2.6.2 and inserting in lieu thereof
14 the following language:

15 2.6.1. A supervising physician may not supervise
16 more than two (2) physician assistants at any one time,
17 except that a physician may supervise up to four (4)
18 hospital employed physician assistants.

19 2.6.2. A supervising physician may also serve as an
20 alternate supervising physician in the absence of another
21 supervising physician. The supervising physician is
22 legally responsible.

§64-9-11. Board of pharmacy.

1 The legislative rule relating to the board of pharmacy
2 (rules and regulations of the board of pharmacy, 15 CSR
3 1), effective the fourteenth day of June, one thousand nine
4 hundred ninety-three, is reauthorized and shall be refiled
5 by the board of pharmacy, with only the following
6 amendment:

7 Page 2, Subsection 2.9, is amended by adding at the
8 end of the subsection, the following sentence: 'The terms
9 Pharmacy, Drug Store or Apothecary do not include a
10 free clinic or a physician's office that dispenses medicines
11 for free.'

§64-9-14. Board of examiners of psychologists.

1 The legislative rule filed in the state register on the
2 twenty-fifth day of July, one thousand nine hundred
3 ninety-seven, authorized under the authority of section six,
4 article twenty-one, chapter thirty of this code, modified by
5 the board of examiners of psychologists to meet the
6 objections of the legislative rule-making review committee
7 and refiled in the state register on the twenty-third day of
8 January, one thousand nine hundred ninety-eight, relating
9 to the board of examiners of psychologists (fees, 17 CSR
10 1), is authorized.

§64-9-20. Board of architects.

1 The legislative rule filed in the state register on the
2 twenty-fifth day of July, one thousand nine hundred
3 ninety-seven, under the authority of section one, article
4 twelve, chapter thirty of this code, modified by the board
5 of architects to meet the objections of the legislative
6 rule-making review committee and refiled in the state
7 register on the third day of December, one thousand nine
8 hundred ninety-seven, relating to the board of architects
9 (rules of the West Virginia board of architects, 2 CSR 1), is
10 authorized.

§64-9-21. Board of examiners in counseling.

1 The legislative rule filed in the state register on the
2 first day of August, one thousand nine hundred
3 ninety-seven, under the authority of section five, article
4 thirty-one, chapter thirty of this code, modified by the
5 board of examiners in counseling to meet the objections
6 of the legislative rule-making review committee and
7 refiled in the state register on the first day of December,
8 one thousand nine hundred ninety-seven, relating to the
9 board of examiners in counseling (licensing, 27 CSR 1), is
10 authorized.

§64-9-22. Human rights commission.

1 The legislative rule filed in the state register on the
2 thirtieth day of July, one thousand nine hundred
3 ninety-seven, under the authority of section eight, article
4 eleven, chapter five of this code, modified by the human
5 rights commission to meet the objections of the legislative
6 rule-making review committee and refiled in the state
7 register on the twenty-first day of November, one
8 thousand nine hundred ninety-seven, relating to the
9 human rights commission (definition of employer under
10 the West Virginia human rights act, 77 CSR 9), is
11 disapproved and not authorized.

§64-9-23. Board of occupational therapy.

1 The legislative rule filed in the state register on the
2 first day of August, one thousand nine hundred
3 ninety-seven, authorized under the authority of section six,
4 article twenty-eight, chapter thirty of this code, modified
5 by the board of occupational therapy to meet the
6 objections of the legislative rule-making review committee
7 and refiled in the state register on the eighth day of
8 December, one thousand nine hundred ninety-seven,
9 relating to the board of occupational therapy
10 (administrative rules of the board of occupational therapy,
11 13 CSR 1), is authorized.

§64-9-24. Board of examiners in optometry.

1 The legislative rule filed in the state register on the
2 twenty-eighth day of July, one thousand nine hundred
3 ninety-seven, under the authority of sections two-a and
4 two-b, article eight, chapter thirty of this code, modified
5 by the board of examiners in optometry to meet the
6 objections of the legislative rule-making review committee
7 and refiled in the state register on the first day of
8 December, one thousand nine hundred ninety-seven,
9 relating to the board of examiners in optometry (rules for
10 expanded prescriptive authority, 14 CSR 2), is authorized
11 with the amendments set forth below:

12 On page 3, subdivision 14.2.7.1b before the word
13 “Corticosteroids” by inserting the word “Oral” and after
14 the word “Corticosteroids” by inserting the words “for a
15 duration of no more than six days; and”

16 On page 3, subdivision 14.2.7.1c, after the word
17 “Analgesics” by inserting a colon and the words
18 “*Provided*, That no oral narcotic analgesic shall be
19 prescribed for a duration of more than three days”;

20 And,

21 On page 3, by striking out subdivision 14.2.7.1.d.

§64-9-25. Board of examiners of radiologic technology.

1 (a) The legislative rule filed in the state register on the
2 thirtieth day of July, one thousand nine hundred
3 ninety-seven, under the authority of section five, article
4 twenty-three, chapter thirty of this code, modified by the
5 board of examiners of radiologic technology to meet the
6 objections of the legislative rule-making review committee
7 and refiled in the state register on the twentieth day of
8 January, one thousand nine hundred ninety-eight, relating
9 to the board of examiners of radiologic technology
10 (continuing education, 18 CSR 2), is authorized.

11 (b) The legislative rule filed in the state register on the
12 thirtieth day of July, one thousand nine hundred
13 ninety-seven, under the authority of section five, article
14 twenty-three, chapter thirty of this code, modified by the
15 board of examiners of radiologic technology to meet the
16 objections of the legislative rule-making review committee
17 and refiled in the state register on the twentieth day of
18 January, one thousand nine hundred ninety-eight, relating
19 to the board of examiners of radiologic technology
20 (schedule of fees for services rendered, 18 CSR 1), is
21 authorized.

§64-9-26. Board of social work examiners.

1 The legislative rule filed in the state register on the
2 twenty-fifth day of July, one thousand nine hundred
3 ninety-seven, under the authority of section three, article
4 thirty, chapter thirty of this code, modified by the board
5 of social work examiners to meet the objections of the
6 legislative rule-making review committee and refiled in the
7 state register on the eighth day of January, one thousand
8 nine hundred ninety-eight, relating to the board of social
9 work examiners (qualifications for licensure as a social
10 worker, 25 CSR 1), is authorized with the amendments set
11 forth below:

12 On page 3, subsection 3.3, line 3 of that paragraph,
13 after the words "applicant" by inserting the following:

14 "with the exception of employees of the Department
15 of Health and Human Resources,";

16 And,

17 On page 3, subsection 3.3, line 3 of that paragraph,
18 after the words "July 1" by striking out the number
19 "1998" and inserting in lieu thereof the number "2000";

20 And,

21 On page 4, subdivision 3.3.1(a), line 2 of this
22 paragraph, after the word "college" by striking out the
23 words "prior to July 1, 1998";

24 And,

25 On page 4, after subsection 3.3.3, by adding a new
26 subsection 3.3.4 to read as follows:

27 "The requirements of section 3.3 are to effectuate the
28 Board's goal of meeting the need for professionally
29 trained social workers in West Virginia. However, the
30 Board recognizes the unique position of the Department
31 of Health and Human Resources and, therefore, has
32 created a limited exemption to the requirement that
33 applicants for licensure obtain a degree in social work
34 after July 1, 2000. This exemption is granted with the
35 understanding that the Department will diligently pursue
36 hiring professionally trained social workers. The Board
37 and the Department shall file a progress report with the
38 Joint Committee on Government and Finance on their
39 efforts to achieve this goal on or before December 1,
40 2000.

41 And,

42 Renumbering the remainder of the section.

§64-9-27. Soil conservation committee.

1 The legislative rule filed in the state register on the
2 first day of August, one thousand nine hundred
3 ninety-seven, under the authority of section four, article
4 twenty-one-a, chapter nineteen of this code, modified by
5 the soil conservation committee to meet the objections of
6 the legislative rule-making review committee and refiled in
7 the state register on the second day of December, one
8 thousand nine hundred ninety-seven, relating to the soil
9 conservation committee (state soil conservation committee,
10 63 CSR 1), is authorized.

§64-9-28. Office of the treasurer.

1 (a) The legislative rule filed in the state register on the
2 third day of July, one thousand nine hundred
3 ninety-seven, under the authority of section two, article
4 two, chapter twelve of this code, modified by the treasurer
5 to meet the objections of the legislative rule-making
6 review committee and refiled in the state register on the
7 twenty-fifth day of September, one thousand nine
8 hundred ninety-seven, relating to the treasurer
9 (establishment of imprest funds, 112 CSR 3), is
10 authorized.

11 (b) The legislative rule filed in the state register on the
12 third day of July, one thousand nine hundred
13 ninety-seven, under the authority of section two, article
14 two, chapter twelve of this code, modified by the treasurer
15 to meet the objections of the legislative rule-making
16 review committee and refiled in the state register on the
17 twenty-eighth day of August, one thousand nine hundred
18 ninety-seven, relating to the treasurer (procedure for the
19 deposit of moneys with the state treasurer's office by state
20 agencies, 112 CSR 4), is authorized.

21 (c) The legislative rule filed in the state register on the
22 third day of July, one thousand nine hundred
23 ninety-seven, under the authority of section one, article
24 three, chapter twelve of this code, modified by the

25 treasurer to meet the objections of the legislative
26 rule-making review committee and refiled in the state
27 register on the twenty-eighth day of August, one thousand
28 nine hundred ninety-seven, relating to the treasurer
29 (procedures for processing payments from the state
30 treasury, 112 CSR 8), is authorized.

31 (d) The legislative rule filed in the state register on the
32 third day of July, one thousand nine hundred
33 ninety-seven, under the authority of section four, article
34 six-b, chapter twelve of this code, modified by the
35 treasurer to meet the objections of the legislative
36 rule-making review committee and refiled in the state
37 register on the twenty-fifth day of September, one
38 thousand nine hundred ninety-seven, relating to the
39 treasurer (reporting of debt capacity, 112 CSR 9), is
40 authorized with the amendment set forth below:

41 On page two, by striking out all of subsection 2.8 and
42 inserting in lieu thereof a new subsection 2.8 to read as
43 follows:

44 2.8. "Net tax supported debt" means: (1) general
45 obligation bonds of the state net of any refundings,
46 defeasances, reserve requirements or sinking funds; (2)
47 moral obligation bonds of the state net of any refundings,
48 defeasances, reserve requirements of sinking funds; (3)
49 capital leases, lease purchases, mortgages, installment
50 purchases, certificates of participation and any other debt
51 financing transaction extending beyond one year, net of
52 any refundings, defeasances, reserve requirements or
53 sinking funds, which are payable through an annual
54 appropriation of the Legislature. "Net tax supported
55 debt" includes Lottery bonds, but does not include
56 revenue bonds or any other debt that is self-supporting
57 from enterprise revenues: Provided, That the obligation
58 shall not be excluded to the extent the obligations are in
59 default.;

60 On page three, by striking out all of subsection 2.11
61 and inserting in lieu thereof a new subsection 2.11 to read
62 as follows:

63 2.11. "Moral Obligation Bond" is a bond secured by
64 a pledge of revenue and a moral commitment of the state
65 of West Virginia to appropriate funds to make up any
66 deficiency of the revenues needed to pay the debt service.;

67 On page three, by adding a new subsection 2.15 to
68 read as follows:

69 2.15. "Revenue bonds" are bonds secured by a
70 specified revenue stream, often with a lien imposed on the
71 revenues. The revenue stream may be a tax or assessment
72 or the revenues of the project financed.;

73 On page three, by adding a new subsection 2.16 to
74 read as follows:

75 2.16. "Lottery bonds" are bonds secured by lottery
76 revenues;

77 On page three, by adding a new subsection 2.17 to
78 read as follows:

79 2.17. "Revenues" means: (1) total funds deposited in
80 the general revenue; plus (2) the entire related revenue
81 stream for any net tax supported debt which is funded
82 from a source other than the state's general revenue fund;
83 plus (3) an amount equal to any deductions from the
84 gross general revenue for debt service of tax supported
85 debt before the revenue is added to the general revenue
86 fund.

87 An example of revenue as defined in this subdivision
88 2.17.2 of this subsection is the State Road Fund revenues.
89 The total revenues of the State Road Fund (exclusive of
90 Federal funds) are used to repay the Road Bonds and are
91 therefore included in revenue.

92 An example of revenue as defined in subdivision
93 2.17.3 of this subsection is the amount of severance tax
94 dedicated for repayment of the Infrastructure Bonds.
95 Those dedicated severance taxes are therefor included in
96 revenue;

97 On page three, by striking out all of subsection 3.1
98 and inserting in lieu thereof a new subsection 3.1 to read
99 as follows:

100 3.1. Annual debt capacity report - The division with
101 the cooperation and support of the Department of
102 Administration, the Department of Tax and Revenue and
103 the Bureau of Employment Programs shall issue an annual
104 report, on or before October 1st of each year. The annual
105 debt capacity report reviews the size and condition of the
106 state's net tax supported debt and estimates the maximum
107 amount of net tax supported debt which should be
108 authorized based upon ratios and guidelines established
109 by the major bond rating agencies. The ratios and
110 guidelines shall be consistently applied based upon the
111 state's definitions.;

112 On page three, subdivision 3.2.4 by striking out the
113 word "and";

114 And,

115 On page three by adding the following new
116 subdivisions:

117 3.2.6.

118 The total debt service as a percentage of revenue;

119 3.2.7.

120 Current ratios and guidelines as established and/or
121 reported by the major rating agencies; and

122 3.2.8.

123 A comparison of West Virginia's ratio to other states
124 with similar bonds ratings.

125 (e) The legislative rule filed in the state register on the
126 third day of July, one thousand nine hundred
127 ninety-seven, under the authority of section seven, article
128 six-a, chapter twelve of this code, modified by the
129 treasurer to meet the objections of the legislative
130 rule-making review committee and refiled in the state
131 register on the twenty-fifth day of September, one
132 thousand nine hundred ninety-seven, relating to the
133 treasurer (reporting of state debt to the state treasurer's
134 office, 112 CSR 10), is authorized.

135 (f) The legislative rule filed in the state register on the
136 third day of July, one thousand nine hundred
137 ninety-seven, under the authority of section two, article
138 one, chapter twelve of this code, modified by the treasurer
139 to meet the objections of the legislative rule-making
140 review committee and refiled in the state register on the
141 twenty-fifth day of September, one thousand nine
142 hundred ninety-seven, relating to the treasurer (selection
143 of state depositories for disbursement accounts through
144 competitive bidding, 112 CSR 6), is authorized with the
145 amendment set forth below:

146 'On page two, subsection 3.5, line one of said
147 subsection, following the words 'the Treasurer', by
148 striking out the words "the bids."

149 (g) The legislative rule filed in the state register on the
150 third day of July, one thousand nine hundred
151 ninety-seven, under the authority of section two, article
152 one, chapter twelve of this code, modified by the treasurer
153 to meet the objections of the legislative rule-making
154 review committee and refiled in the state register on the
155 twenty-fifth day of September, one thousand nine
156 hundred ninety-seven, relating to the treasurer (selection
157 of state depositories for receipt accounts, 112 CSR 7), is
158 authorized.

CHAPTER 202

(Com. Sub. for S. B. 320—By Senators Ross, Anderson, Bowman,
Macnaughtan, Boley and Buckalew)

[Passed March 10, 1998; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article ten, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto two new sections, designated sections three and four, all relating generally to the promulgation of administrative rules by the various executive or administrative agencies and the procedures relating thereto; legislative mandate or authorization for the promulgation of certain legislative rules by various executive and administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the state register; authorizing certain of the agencies to promulgate legislative rules as amended by the Legislature; authorizing certain of the agencies to promulgate legislative rules with various modifications presented to and recommended by the legislative rule-making review committee; authorizing division of natural resources to promulgate legislative rules relating to contracted law-enforcement services; authorizing division of natural resources to promulgate legislative rules relating to falconry; authorizing division of natural resources to promulgate legislative rules relating to general hunting; authorizing division of natural resources to promulgate legislative rules relating to hunting and trapping prohibitions; authorizing division of natural resources to promulgate legislative rules relating to special boating rule for Jennings Randolph lake; authorizing division of natural resources to promulgate legislative rules relating to special boating; authorizing division of natural resources to promulgate legislative rules relating to special fishing; authorizing division of natural resources to promulgate legislative rules relating to special migratory bird hunting;

authorizing division of natural resources to promulgate legislative rules relating to special waterfowl hunting; authorizing division of labor to promulgate legislative rules relating to occupational safety and health act; and authorizing board of miner training, education and certification to promulgate legislative rules relating to safety programs.

Be it enacted by the Legislature of West Virginia:

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

**ARTICLE 10. AUTHORIZATION FOR BUREAU OF COMMERCE
TO PROMULGATE LEGISLATIVE RULES.**

§64-10-1. Division of natural resources.

1 (a) The legislative rule filed in the state register on the
2 first day of August, one thousand nine hundred
3 ninety-seven, authorized under the authority of section
4 one-e, article seven, chapter twenty of this code, modified
5 by the division of natural resources to meet the objections
6 of the legislative rule-making review committee and
7 refiled in the state register on the fourth day of September,
8 one thousand nine hundred ninety-seven, relating to the
9 division of natural resources (contracted extraordinary
10 law-enforcement services, 58 CSR 13), is authorized.

11 (b) The legislative rule filed in the state register on the
12 fifth day of December, one thousand nine hundred
13 ninety-seven, authorized under the authority of section
14 seven, article one, chapter twenty of this code, modified by
15 the division of natural resources to meet the objections of
16 the legislative rule-making review committee and refiled in
17 the state register on the twenty-third day of January, one
18 thousand nine hundred ninety-eight, relating to the
19 division of natural resources (falconry, 58 CSR 65), is
20 authorized.

21 (c) The legislative rule filed in the state register on the
22 twenty-fifth day of July, one thousand nine hundred
23 ninety-seven, authorized under the authority of section
24 seven, article one, chapter twenty of this code, modified by
25 the division of natural resources to meet the objections of
26 the legislative rule-making review committee and refiled in
27 the state register on the twenty-eighth day of August, one
28 thousand nine hundred ninety-seven, relating to the
29 division of natural resources (general hunting, 58 CSR
30 49), is authorized.

31 (d) The legislative rule filed in the state register on the
32 twenty-fifth day of July, one thousand nine hundred
33 ninety-seven, authorized under the authority of section
34 seven, article one, chapter twenty of this code, relating to
35 the division of natural resources (prohibitions when
36 hunting and trapping, 58 CSR 47), is authorized.

37 (e) The legislative rule filed in the state register on the
38 twenty-seventh day of June, one thousand nine hundred
39 ninety-seven, authorized under the authority of section
40 seven, article one, chapter twenty of this code, modified by
41 the division of natural resources to meet the objections of
42 the legislative rule-making review committee and refiled in
43 the state register on the second day of December, one
44 thousand nine hundred ninety-seven, relating to the
45 division of natural resources (special boating rule for
46 Jennings Randolph lake, 58 CSR 29), is authorized.

47 (f) The legislative rule filed in the state register on the
48 twenty-fifth day of July, one thousand nine hundred
49 ninety-seven, authorized under the authority of section
50 twenty-three, article seven, chapter twenty of this code,
51 relating to the division of natural resources (special
52 boating, 58 CSR 26), is authorized.

53 (g) The legislative rule filed in the state register on the
54 twenty-fifth day of July, one thousand nine hundred
55 ninety-seven, authorized under the authority of section
56 seven, article one, chapter twenty of this code, relating to
57 the division of natural resources (special fishing, 58 CSR
58 61), is authorized.

59 (h) The legislative rule filed in the state register on the
60 twenty-fifth day of July, one thousand nine hundred
61 ninety-seven, authorized under the authority of section
62 seven, article one, chapter twenty of this code, modified by
63 the division of natural resources to meet the objections of
64 the legislative rule-making review committee and refiled in
65 the state register on the twenty-eighth day of August, one
66 thousand nine hundred ninety-seven, relating to the
67 division of natural resources (special migratory bird
68 hunting, 58 CSR 56), is authorized.

69 (i) The legislative rule filed in the state register on the
70 twenty-fifth day of July, one thousand nine hundred
71 ninety-seven, authorized under the authority of section
72 seven, article one, chapter twenty of this code, modified by
73 the division of natural resources to meet the objections of
74 the legislative rule-making review committee and refiled in
75 the state register on the twenty-eighth day of August, one
76 thousand nine hundred ninety-seven, relating to the
77 division of natural resources (special waterfowl hunting,
78 58 CSR 58), is authorized.

§64-10-3. Division of labor.

1 The legislative rule filed in the state register on the
2 thirty-first day of July, one thousand nine hundred
3 ninety-seven, under the authority of section six, article
4 three-a, chapter twenty-one of this code, modified by the
5 division of labor to meet the objections of the legislative
6 rule-making review committee and refiled in the state
7 register on the first day of December, one thousand nine
8 hundred ninety-seven, relating to the division of labor
9 (West Virginia occupational safety and health act, 42 CSR
10 15), is authorized.

§64-10-4. Board of miner training, education and certification.

1 The legislative rule filed in the state register on the
2 fourteenth day of January, one thousand nine hundred
3 ninety-seven, under the authority of section six, article
4 seven, chapter twenty-two-a of this code, modified by the
5 board of miner training, education and certification to

6 meet the objections of the legislative rule-making review
7 committee and refiled in the state register on the twenty-
8 sixth day of November, one thousand nine hundred
9 ninety-seven, relating to the board of miner training,
10 education and certification (safety training program for
11 prospective surface coal miners in West Virginia, 48 CSR
12 3), is authorized with the following amendments:

13 On page six, subsection 2.9, by striking out the
14 subsection in its entirety and inserting in lieu thereof the
15 following:

16 2.9 Independent coal truck driver certification.

17 a. Independent coal mine truck drivers who possess an
18 independent coal truck drivers' certification are not
19 required to complete the approved surface mining (40
20 hours) or underground mining (80 hours) apprenticeship
21 program nor must they possess a coal miners certification
22 in order to drive a coal truck on mine property.

23 b. To obtain an independent coal truck driver's
24 certificate, a prospective independent coal truck driver
25 must possess a first-aid card, a valid driver's license, and
26 must successfully complete an eight hour training course,
27 prescribed by the Board of Miner Training, Education,
28 and Certification prior to taking the examination.
29 Successful completion means a score of at least 80
30 percent.

31 c. Persons who possess an independent coal truck
32 driver's certification are limited to driving coal trucks
33 while on mine property and are not to engage in
34 reclamation work or other mining activities. This
35 experience will not be applicable toward a miner's
36 certificate.

37 And,

38 On page six, subsection 2.10, subpart b, line 3, after
39 the words "prior to" by striking out the words "June 1,
40 1995" and inserting in lieu thereof the words "January 14,
41 1997".

CHAPTER 203

(S. B. 765—By Senators Wooton, Ball, Bowman, Dittmar,
Hunter, Ross, Schoonover, Snyder and Buckalew)

[Passed March 10, 1998; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article eleven, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating generally to the promulgation of administrative rules by the various executive and administrative agencies; and authorizing certain agencies to modify certain legislative rules for the limited purpose of updating and making technical corrections to those legislative rules.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 11. TECHNICAL CORRECTIONS TO THE CODE OF STATE RULES.

§64-11-1. Division of environmental protection, office of oil and gas.

1 (a) The legislative rule filed in the state register on the
2 first day of July, one thousand nine hundred ninety-three,
3 authorized under the authority of section two, article six,
4 chapter twenty-two of this code, relating to the division of
5 environmental protection (abandoned wells, 38 CSR 22,
6 renumbered as 35 CSR 6), is authorized with the following
7 amendments:

8 “Beginning on page 1, and continuing throughout the
9 text of the rule, by renumbering the text breakdown as
10 necessary to conform with the rule of the secretary of state
11 relating to format (standard size and format for rules and
12 procedures for publication of the state register or parts of
13 the state register, 153 CSR 6);”

14 (b) The legislative rule filed in the state register on the
15 first day of June, one thousand nine hundred ninety-six,
16 authorized under the authority of section two, article six,
17 chapter twenty-two of this code, relating to the division of
18 environmental protection (coalbed methane wells, 38 CSR
19 23, renumbered as 35 CSR 3), is authorized with the
20 following amendments:

21 "Beginning on page 1, and continuing throughout the
22 text of the rule, by renumbering the text breakdown as
23 necessary to conform with the rule of the secretary of state
24 relating to format (standard size and format for rules and
25 procedures for publication of the state register or parts of
26 the state register, 153 CSR 6);"

27 (c) The legislative rule filed the first day of July, one
28 thousand nine hundred ninety-three, authorized under the
29 authority of section two, article six, chapter twenty-two of
30 this code, relating to the division of environmental
31 protection (designation of future use and inactive status
32 for oil and gas wells, 38 CSR 21, renumbered as 35 CSR
33 5), is authorized with the following amendments:

34 "Beginning on page 1, and continuing throughout the
35 text of the rule, by renumbering the text breakdown as
36 necessary to conform with the rule of the secretary of state
37 relating to format (standard size and format for rules and
38 procedures for publication of the state register or parts of
39 the state register, 153 CSR 6);"

40 (d) The legislative rule filed in the state register on the
41 first day of July, one thousand nine hundred ninety-three,
42 authorized under the authority of section two, article six,
43 chapter twenty-two of this code, relating to the division of
44 environmental protection (oil and gas wells and other
45 wells, 38 CSR 18, renumbered as 35 CSR 4), is authorized
46 with the following amendments:

47 "Beginning on page 1, and continuing throughout the
48 text of the rule, by renumbering the text breakdown as
49 necessary to conform with the rule of the secretary of state
50 relating to format (standard size and format for rules and
51 procedures for publication of the state register or parts of
52 the state register, 153 CSR 6);"

53 (e) The legislative rule filed in the state register on the
54 twelfth day of June, one thousand nine hundred eighty-
55 seven, authorized under the authority of section two,
56 article six, chapter twenty-two of this code, relating to the
57 division of environmental protection (oil and gas
58 operations - solid waste, 38 CSR 12, renumbered as 35
59 CSR 2), is authorized with the following amendment:

60 "Beginning on page 1, and continuing throughout the
61 text of the rule, by renumbering the text breakdown as
62 necessary to conform with the rule of the secretary of state
63 relating to format (standard size and format for rules and
64 procedures for publication of the state register or parts of
65 the state register, 153 CSR 6);"

66 (f) The legislative rule filed in the state register on the
67 first day of June, one thousand nine hundred ninety-one,
68 authorized under the authority of section two, article six,
69 chapter twenty-two of this code, relating to the division of
70 environmental protection (miscellaneous Water Pollution
71 Control, 38 CSR 11, renumbered as 35 CSR 1), is
72 authorized with the following amendment:

73 "Beginning on page 1, and continuing throughout the
74 text of the rule, by renumbering the text breakdown as
75 necessary to conform with the rule of the secretary of state
76 relating to format (standard size and format for rules and
77 procedures for publication of the state register or parts of
78 the state register, 153 CSR 6);"

79 (g) The legislative rule filed in the state register on the
80 thirty-first day of July, one thousand nine hundred
81 ninety-seven, authorized under the authority of section
82 two, article six, chapter twenty-two of this code, relating to
83 the division of environmental protection (dam control, 38
84 CSR 14), is repealed.

85 (h) The legislative rule filed in the state register on the
86 thirty-first day of July, one thousand nine hundred
87 ninety-seven, authorized under the authority of section
88 two, article six, chapter twenty-two of this code, relating to
89 the division of environmental protection (certification of
90 gas wells, 38 CSR 16), is repealed.

CHAPTER 204

(H. B. 4711—By Delegates Staton, Amores, Pino, Kominar,
Coleman, L. White and Faircloth)

[Passed March 14, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article twenty-one, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to environmental resources; coalbed methane wells and units; definitions; and modifying the definition of coalbed methane well.

Be it enacted by the Legislature of West Virginia:

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

§22-21-2. Definitions.

1 Unless the context in which used clearly requires a
2 different meaning, as used in this article:

3 (a) "Review board" means the West Virginia coalbed
4 methane review board which shall be comprised of the
5 members of the West Virginia shallow gas well review
6 board provided for in article eight, chapter twenty-two-c
7 of this code, the state geologist, a representative of the
8 United Mine Workers of America, an employee of the gas
9 industry, and the director of the office of miners' health,
10 safety and training, and the chairman of the review board
11 shall be the chairman of the West Virginia shallow gas
12 review board;

13 (b) "Coalbed" or "coal seam" means a seam of coal,
14 whether workable or unworkable, and the noncoal roof
15 and floor of said seam of coal;

16 (c) "Coalbed methane" means gas which can be
17 produced from a coal seam, the rock or other strata in

18 communication with a coal seam, a mined-out area or a
19 gob well;

20 (d) "Coalbed methane owner" means any owner of
21 coalbed methane;

22 (e) "Coalbed methane well" means any hole or well
23 sunk, drilled, bored or dug into the earth for the
24 production of coalbed methane for consumption or sale,
25 including a gob well. The term "well" shall mean a
26 coalbed methane well unless the context indicates
27 otherwise. The term "coalbed methane well" does not
28 include any shaft, hole or well sunk, drilled, bored or dug
29 into the earth for core drilling, production of coal or
30 water, venting gas from a mine area, or degasification of a
31 coal seam, or any coalbed methane well extending from
32 the surface into, but not below, a coal seam being mined
33 after such well or its horizontal extension has been plugged
34 in accordance with section twenty-three of this article;

35 (f) "Coalbed methane well operator" or "well operator"
36 means any person who has the right to operate or does
37 operate a coalbed methane well;

38 (g) "Coal operator" means any person who proposes to
39 or does operate a coal mine;

40 (h) "Coal owner" means any person who owns or
41 leases a coal seam;

42 (i) "Chief" means the chief of the office of oil and gas
43 of the division of environmental protection provided for
44 in section eight, article one of this chapter;

45 (j) "Director" means the director of the division of
46 environmental protection;

47 (k) "Division" means the division of environmental
48 protection;

49 (l) "Gob well" means a well drilled or vent hole
50 converted to a well pursuant to this article which produces
51 or is capable of producing coalbed methane or other
52 natural gas from a distressed zone created above and
53 below a mined-out coal seam by any prior full seam
54 extraction of the coal;

55 (m) "Mine" or "mine areas," including the
56 sub-definitions under "mine areas," shall have the same
57 definitions as are provided in section two, article one,
58 chapter twenty-two-a of this code;

59 (n) "Office" means office of oil and gas provided for
60 in section seven, article one of this chapter;

61 (o) "Person" means any natural person, corporation,
62 firm, partnership, partnership association, venture, receiver,
63 trustee, executor, administrator, guardian, fiduciary, other
64 representative of any kind, any recognized legal entity, or
65 political subdivision or agency thereof;

66 (p) "Stimulate" means any action taken to increase the
67 natural flow of coalbed methane or the inherent
68 productivity of a coalbed methane well, including, but not
69 limited to, fracturing, shooting, acidizing or water
70 flooding, but excluding cleaning out, bailing or workover
71 operations;

72 (q) "Waste" means: (i) Physical waste as the term is
73 generally understood in the gas industry and as provided
74 for in article six of this chapter, but giving special
75 consideration to coal mining operations and the safe
76 recovery of coal; (ii) the locating, drilling, equipping,
77 operating, producing or transporting coalbed methane in a
78 manner that causes or tends to cause a substantial
79 reduction in the quantity of coalbed methane recoverable
80 from a pool under prudent and proper operations, or that
81 causes or tends to cause a substantial or unnecessary or
82 excessive surface loss of coalbed methane; (iii) the drilling
83 of more wells than are reasonably required to recover
84 efficiently and economically the maximum amount of
85 coalbed methane from a pool; or (iv) substantially
86 inefficient, excessive or improper use, or the substantially
87 unnecessary dissipation of reservoir pressure. Waste does
88 not include coalbed methane vented or released from any
89 mine area, the degasification of a coal seam for the
90 purpose of mining coal, the plugging of coalbed methane
91 wells for the purpose of mining coal, or the conversion of
92 coalbed methane wells to vent holes for the purpose of
93 mining coal;

- 94 (r) "Workable coalbed" or "workable coal seam" means
95 any seam of coal twenty inches or more in thickness, or
96 any seam of less thickness which is being commercially
97 mined or can be shown to be capable of being
98 commercially mined.

CHAPTER 205

(Com. Sub. for H. B. 4288—By Delegates Martin, Varner, Kuhn,
Warner, Collins and Walters)

[Passed March 14, 1998; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-one, article one, chapter twenty-two-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section sixty-three, article two of said chapter, all relating to the office of miners health, safety and training; fees for certificate of approval and permits; providing that the fees collected for certificates of approval and permits be placed in the miners' health, safety and training fund; providing for expenditure of moneys placed in the fund; civil penalties assessed on operators of coal mines for health and safety rules; abolishing the special health, safety and training fund; providing that all civil penalties collected be deposited with the state treasurer; and removing the spending authority of the director of the West Virginia office of miners' health, safety and training for these funds.

Be it enacted by the Legislature of West Virginia:

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

Article

1. **Office of Miners' Health, Safety and Training; Administration; Enforcement.**

2. Underground Mines.

ARTICLE 1. OFFICE OF MINERS' HEALTH, SAFETY AND TRAINING; ADMINISTRATION; ENFORCEMENT.

§22A-1-21. Penalties.

1 (a) (1) Any operator of a coal mine in which a
2 violation occurs of any health or safety rule or who
3 violates any other provisions of this chapter shall be
4 assessed a civil penalty by the director under subdivision
5 (3) of this subsection, which shall be not more than three
6 thousand dollars, for each violation. Each violation
7 constitutes a separate offense. In determining the amount
8 of the penalty, the director shall consider the operator's
9 history of previous violations, the appropriateness of the
10 penalty to the size of the business of the operator charged,
11 the gravity of the violation and the demonstrated good
12 faith of the operator charged in attempting to achieve
13 rapid compliance after notification of a violation. Any
14 revisions to rules relating to the assessment of civil
15 penalties shall be proposed for promulgation as legislative
16 rules in accordance with the provisions of article three,
17 chapter twenty-nine-a of this code.

18 (2) Any miner who knowingly violates any health or
19 safety provision of this chapter or health or safety rule
20 promulgated pursuant to this chapter is subject to a civil
21 penalty assessed by the director under subdivision (3) of
22 this subsection which penalty shall not be more than two
23 hundred fifty dollars for each occurrence of the violation.

24 (3) A civil penalty shall be assessed by the director
25 only after the person charged with a violation under this
26 chapter or rule promulgated pursuant to this chapter has
27 been given an opportunity for a public hearing and the
28 director has determined, by a decision incorporating the
29 director's findings of fact in the decision, that a violation
30 did occur, and the amount of the penalty which is
31 warranted, and incorporating, when appropriate, an order
32 in the decision requiring that the penalty be paid. Any
33 hearing under this section shall be of record.

34 (4) If the person against whom a civil penalty is
35 assessed fails to pay the penalty within the time prescribed
36 in the order, the director may file a petition for
37 enforcement of the order in any appropriate circuit court.
38 The petition shall designate the person against whom the
39 order is sought to be enforced as the respondent. A copy
40 of the petition shall immediately be sent by certified mail,
41 return receipt requested, to the respondent and to the
42 representative of the miners at the affected mine or the
43 operator, as the case may be. The director shall certify
44 and file in the court the record upon which such order
45 sought to be enforced was issued. The court has
46 jurisdiction to enter a judgment enforcing, modifying, and
47 enforcing as so modified, or setting aside, in whole or in
48 part, the order and decision of the director or it may
49 remand the proceedings to the director for any further
50 action it may direct. The court shall consider and
51 determine de novo all relevant issues, except issues of fact
52 which were or could have been litigated in review
53 proceedings before a circuit court under section twenty of
54 this article, and upon the request of the respondent, those
55 issues of fact which are in dispute shall be submitted to a
56 jury. On the basis of the jury's findings the court shall
57 determine the amount of the penalty to be imposed.
58 Subject to the direction and control of the attorney
59 general, attorneys appointed for the director may appear
60 for and represent the director in any action to enforce an
61 order assessing civil penalties under this subdivision.

62 (b) Any operator who knowingly violates a health or
63 safety provision of this chapter or health or safety rule
64 promulgated pursuant to this chapter, or knowingly
65 violates or fails or refuses to comply with any order issued
66 under section fifteen of this article, or any order
67 incorporated in a final decision issued under this article,
68 except an order incorporated in a decision under
69 subsection (a) of this section or subsection (b), section
70 twenty-two of this article, shall be assessed a civil penalty
71 by the director under subdivision (3), subsection (a) of
72 this section, of not more than five thousand dollars, and
73 for a second or subsequent violation assessed a civil
74 penalty of not more than ten thousand dollars.

75 (c) Whenever a corporate operator knowingly violates
76 a health or safety provision of this chapter or health or
77 safety rules promulgated pursuant to this chapter, or
78 knowingly violates or fails or refuses to comply with any
79 order issued under this law or any order incorporated in a
80 final decision issued under this law, except an order
81 incorporated in a decision issued under subsection (a) of
82 this section or subsection (b), section twenty-two of this
83 article, any director, officer or agent of the corporation
84 who knowingly authorized, ordered or carried out the
85 violation, failure or refusal, is subject to the same civil
86 penalties that may be imposed upon a person under
87 subsections (a) and (b) of this section.

88 (d) Whoever knowingly makes any false statement,
89 representation or certification in any application, record,
90 report, plan or other document filed or required to be
91 maintained pursuant to this law or any order or decision
92 issued under this law, is guilty of a misdemeanor and,
93 upon conviction thereof, shall be fined not more than five
94 thousand dollars or imprisoned in the county jail not more
95 than six months, or both fined and imprisoned. The
96 conviction of any person under this subsection shall result
97 in the revocation of any certifications held by the person
98 under this chapter which certified or authorized the person
99 to direct other persons in coal mining by operation of law
100 and bars that person from being issued any such license
101 under this chapter, except a miner's certification, for a
102 period of not less than one year or for a longer period as
103 may be determined by the director.

104 (e) Whoever willfully distributes, sells, offers for sale,
105 introduces or delivers in commerce any equipment for use
106 in a coal mine, including, but not limited to, components
107 and accessories of the equipment, who willfully
108 misrepresents the equipment as complying with the
109 provisions of this law, or with any specification or rule of
110 the director applicable to the equipment, and which does
111 not comply with the law, specification or rule, is guilty of a
112 misdemeanor and, upon conviction thereof, is subject to
113 the same fine and imprisonment that may be imposed
114 upon a person under subsection (d) of this section.

115 (f) (1) There is created in the treasury of the state of
116 West Virginia a special health, safety and training fund.
117 All civil penalty assessments collected under section
118 twenty-one of this article shall be collected by the director
119 and deposited with the treasurer of the state of West
120 Virginia to the credit of the special health, safety and
121 training fund. The fund shall be used by the director who
122 is authorized to expend the moneys in the fund for the
123 administration of this chapter.

124 (2) After the thirtieth day of June, one thousand nine
125 hundred ninety-eight, the special health, safety and
126 training fund is abolished and any balances remaining in
127 the fund shall be deposited into the state general revenue
128 fund. On and after the first day of July, one thousand
129 nine hundred ninety-eight, all civil penalty assessments
130 collected under section twenty-one of this article shall be
131 collected by the director and paid to the state treasurer for
132 deposit into the state general revenue fund.

ARTICLE 2. UNDERGROUND MINES.

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

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

10 Within thirty days after the first day of January of
11 each year, the holder of a permit to open a mine shall
12 apply for the extension of the permit for an additional
13 year. The permit, evidenced by a document issued by the

14 director, shall be granted as a matter of right for a fee of
15 one hundred dollars if, at the time application is made, the
16 permit holder is in compliance with the provisions of
17 section seventy-seven of this article and has paid or
18 otherwise appealed all coal mine assessments issued to the
19 mine if operated by the permit holder and imposed under
20 article one of this chapter. Applications for extension of
21 permits not submitted within the time required shall be
22 processed as an application to open or reopen a mine and
23 shall be accompanied by a fee of one hundred dollars.

24 (b) Permits issued pursuant to this section are not
25 transferable.

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

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

55 notice is issued has thirty days from receipt of the
56 delinquency notice to request, by certified mail, return
57 receipt requested, a public hearing held in accordance with
58 the procedures of section seventeen, article one of this
59 chapter, and its implementing rules, including application
60 for temporary relief. Once the operator's certificate of
61 approval is revoked pursuant to this subsection, the
62 operator may not obtain any certificate of approval under
63 the provisions of this section to operate any other mine
64 until that operator pays the delinquent penalties that have
65 become final.

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

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

97 (f) The provisions of this section shall be printed on
98 the reverse side of every permit issued under subsection
99 (a) of this section and certificate of approval issued under
100 subsection (d) of this section.

101 (g) The district mine inspector shall conduct a pre-
102 inspection of the area proposed for underground mining
103 prior to issuance of any new opening permit approval.

104 (h) After the first day of July, one thousand nine
105 hundred ninety-seven, all moneys collected by the office
106 of miners' health, safety and training for the approval fees
107 set forth in subsections (a), (b) and (e) of this section shall
108 be deposited with the treasurer of the state of West
109 Virginia to the credit of the general
110 administration—operating permit fees fund. The
111 operating permit fees fund shall be used by the director
112 who is authorized to expend the moneys in the fund for
113 the administration of this chapter: *Provided*, That after the
114 thirtieth day of June, one thousand nine hundred ninety-
115 eight, all moneys collected by the office of miners' health,
116 safety and training for the approval fees set forth in
117 subsections (a), (b) and (e) of this section shall be
118 deposited with the state treasurer to the credit of the
119 general fund.

CHAPTER 206

(H. B. 4414—By Delegates Varner, Staton, Kuhn,
Collins, Williams, Martin and Beach)

[Passed March 14, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirty-five, article one, chapter twenty-two-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to office of miners' health, safety and training; administration; enforcement; mine rescue teams; qualification of members;

and removing the requirement that an applicant for initial mine rescue training be under fifty years of age.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. OFFICE OF MINERS' HEALTH, SAFETY AND TRAINING; ADMINISTRATION; ENFORCEMENT.

§22A-1-35. Mine rescue teams.

1 (a) It is the responsibility of the operator to provide
2 mine rescue coverage at each active underground mine.

3 (b) Mine rescue coverage may be provided by:

4 (1) Establishing at least two mine rescue teams which
5 are available at all times when miners are underground; or

6 (2) Entering into an arrangement for mine rescue
7 services which assures that at least two mine rescue teams
8 are available at all times when miners are underground.

9 (c) As used in this section, mine rescue teams shall be
10 considered available where teams are capable of
11 presenting themselves at the mine site(s) within a
12 reasonable time after notification of an occurrence which
13 might require their services. Rescue team members will be
14 considered available even though performing regular
15 work duties or while in an off-duty capacity. The
16 requirement that mine rescue teams be available does not
17 apply when teams are participating in mine rescue contests
18 or providing rescue services to another mine.

19 (d) In the event of a fire, explosion or recovery
20 operations in or about any mine, the director is hereby
21 authorized to assign any mine rescue team to said mine to
22 protect and preserve life and property. The director may
23 also assign mine rescue and recovery work to inspectors,
24 instructors or other qualified employees of the office as he
25 or she deems necessary.

26 (e) The ground travel time between any mine rescue
27 station and any mine served by that station shall not
28 exceed two hours. To ensure adequate rescue coverage
29 for all underground mines, no mine rescue station may
30 provide coverage for more than seventy mines within the
31 two-hour ground travel limit as defined in this subsection.

32 (f) Each mine rescue team shall consist of five
33 members and one alternate, who are fully qualified,
34 trained and equipped for providing emergency mine
35 rescue service. Each mine rescue team shall be trained by
36 a state certified mine rescue instructor.

37 (g) Each member of a mine rescue team must have
38 been employed in an underground mine for a minimum
39 of one year. For the purpose of mine rescue work only,
40 miners who are employed on the surface but work
41 regularly underground meet the experience requirement.
42 The underground experience requirement is waived for
43 those members of a mine rescue team on the effective date
44 of this statute.

45 (h) An applicant for initial mine rescue training shall
46 pass, on at least an annual basis, a physical examination by
47 a licensed physician certifying his or her fitness to
48 perform mine rescue work. A record that such
49 examination was taken, together with pertinent data
50 relating thereto, shall be kept on file by the operator and a
51 copy shall be furnished to the director.

52 (i) Upon completion of the initial training, all mine
53 rescue team members shall receive at least forty hours of
54 refresher training annually. This training shall be given at
55 least four hours each month, or for a period of eight hours
56 every two months, and shall include:

57 (1) Sessions underground at least once every six
58 months;

59 (2) The wearing and use of a breathing apparatus by
60 team members for a period of at least two hours, while
61 under oxygen, once every two months;

62 (3) Where applicable, the use, care, capabilities and
63 limitations of auxiliary mine rescue equipment, or a
64 different breathing apparatus;

65 (4) Mine map training and ventilation procedures.

66 (j) When engaged in rescue work required by an
67 explosion, fire or other emergency at a mine, all members
68 of mine rescue teams assigned to rescue operations shall,
69 during the period of their rescue work, be employees of
70 the operator of the mine where the emergency exists, and
71 shall be compensated by the operator at the rate
72 established in the area for such work. In no case shall this
73 rate be less than the prevailing wage rate in the industry
74 for the most skilled class of inside mine labor. During the
75 period of their emergency employment, members of mine
76 rescue teams shall be protected by the workers'
77 compensation subscription of such emergency employer.

78 (k) During the recovery work and prior to entering
79 any mine at the start of each shift, all rescue or recovery
80 teams shall be properly informed of existing conditions
81 and work to be performed by the designated company
82 official in charge.

83 (1) For every two teams performing rescue or
84 recovery work underground, one six-member team shall
85 be stationed at the mine portal.

86 (2) Each rescue or recovery team performing work
87 with a breathing apparatus shall be provided with a backup
88 team of equal number, stationed at each fresh air base.

89 (3) Two-way communication and a lifeline or its
90 equivalent shall be provided at each fresh air base for all
91 mine rescue or recovery teams and no mine rescue team
92 member shall advance more than one thousand feet in by
93 the fresh air base: *Provided*, That if a life may possibly be
94 saved and existing conditions do not create an
95 unreasonable hazard to mine rescue team members, the
96 rescue team may advance a distance agreed upon by those
97 persons directing the mine rescue or recovery operations:
98 *Provided, however*, That a lifeline or its equivalent shall be

99 provided in each fresh air base for all mine rescue or
100 recovery teams.

101 (4) A rescue or recovery team shall immediately
102 return to the fresh air base when the atmospheric pressure
103 of any member's breathing apparatus depletes to sixty
104 atmospheres, or its equivalent.

105 (1) Mine rescue stations shall provide a centralized
106 storage location for rescue equipment. This storage
107 location may be either at the mine site, affiliated mines or
108 a separate mine rescue structure. All mine rescue teams
109 shall be guided by the mine rescue apparatus and
110 auxiliary equipment manual. Each mine rescue station
111 shall be provided with at least the following equipment:

112 (1) Twelve self-contained oxygen breathing
113 apparatuses, each with a minimum of two hours capacity,
114 and any necessary equipment for testing such breathing
115 apparatuses;

116 (2) A portable supply of liquid air, liquid oxygen,
117 pressurized oxygen, oxygen generating or carbon dioxide
118 absorbent chemicals, as applicable to the supplied
119 breathing apparatuses and sufficient to sustain each team
120 for six hours while using the breathing apparatuses during
121 rescue operations;

122 (3) One extra, fully charged, oxygen bottle for each
123 self-contained compressed oxygen breathing apparatus, as
124 required under subdivision (1) of this subsection;

125 (4) One oxygen pump or a cascading system,
126 compatible with the supplied breathing apparatuses;

127 (5) Twelve permissible cap lamps and a charging rack;

128 (6) Two gas detectors appropriate for each type of gas
129 which may be encountered at the mines served;

130 (7) Two oxygen indicators or two flame safety lamps;

131 (8) One portable mine rescue communication system
132 or a sound-powered communication system. The wires or
133 cable to the communication system shall be of sufficient
134 tensile strength to be used as a manual communication

135 system. The communication system shall be at least one
136 thousand feet in length; and

137 (9) Necessary spare parts and tools for repairing the
138 breathing apparatuses and communication system, as
139 presently prescribed by the manufacturer.

140 (m) Mine rescue apparatuses and equipment shall be
141 maintained in a manner that will ensure readiness for
142 immediate use. A person trained in the use and care of
143 breathing apparatuses shall inspect and test the apparatuses
144 at intervals not exceeding thirty days and shall certify by
145 signature and date that the inspections and tests were done.
146 When the inspection indicates that a corrective action is
147 necessary, the corrective action shall be made and
148 recorded by said person. The certification and corrective
149 action records shall be maintained at the mine rescue
150 station for a period of one year and made available on
151 request to an authorized representative of the director.

152 (n) Authorized representatives of the director have the
153 right of entry to inspect any designated mine rescue
154 station.

155 (o) When an authorized representative finds a violation
156 of any of the mine rescue requirements, the representative
157 shall take appropriate corrective action in accordance with
158 section fifteen of this article.

159 (p) Operators affiliated with a station issued an order
160 by an authorized representative will be notified of that
161 order and that their mine rescue program is invalid. The
162 operators shall have twenty-four hours to submit to the
163 director a revised mine rescue program.

164 (q) Every operator of an underground mine shall
165 develop and adopt a mine rescue program for submission
166 to the director within thirty days of the effective date of
167 this statute: *Provided*, That a new program need only be
168 submitted when conditions exist as defined in subsection
169 (p) of this section, or when information contained within
170 the program has changed.

171 (r) A copy of the mine rescue program shall be posted
172 at the mine and kept on file at the operator's mine rescue

173 station or rescue station affiliate and the state regional
174 office where the mine is located. A copy of the mine
175 emergency notification plan filed pursuant to 30 CFR
176 §49.9(a) will satisfy the requirements of subsection (q) of
177 this section if submitted to the director.

178 (s) The operator shall immediately notify the director
179 of any changed conditions materially affecting the
180 information submitted in the mine rescue program.

CHAPTER 207

(H. B. 4592—By Delegates Proudfoot, Williams, Stemple,
Riggs, Willis, Kelley and Anderson)

[Passed March 14, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article seven, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto two new sections, designated sections eighteen-a and eighteen-b, all relating to establishing the misdemeanor criminal offense of negligent homicide when a motorboat or vessel is operated in reckless disregard of the safety of others and results in the death of any person and establishing the penalty therefor of imprisonment of not more than one year or fine of not less than one hundred dollars nor more than one thousand dollars, or both imprisonment and fine, and suspending motorboat or vessel operation privileges for a five-year period for one so convicted; establishing the felony criminal offense of operating a motorboat or vessel under the influence of alcohol, controlled substances, other drugs, or a combination thereof, when a motorboat or vessel is operated in reckless disregard of the safety of others and results in the death of any person, and establishing the penalty therefor of imprisonment of not less than one year nor more than ten years and fine of not less than one thousand dollars nor more than three thousand dollars; establishing the misdemeanor criminal offense of operating a motorboat or vessel under the influence of alcohol, controlled substances,

other drugs, or a combination thereof, when a motorboat or vessel is operated in violation of any act forbidden by law and results in the death of any person, and establishing the penalty therefor of imprisonment of not less than ninety days nor more than one year and fine of not less than five hundred dollars nor more than one thousand dollars; establishing the misdemeanor criminal offense of operating a motorboat or vessel under the influence of alcohol, controlled substances, other drugs, or a combination thereof, when a motorboat or vessel is operated in violation of any act forbidden by law and results in the injury of any person other than himself or herself, and establishing the penalty therefor of imprisonment of not less than one day nor more than one year, to include actual confinement of not less than twenty-four hours and fine of not less than two hundred dollars nor more than one thousand dollars; establishing the misdemeanor criminal offense of operating a motorboat or vessel under the influence of alcohol, controlled substances, other drugs, or a combination thereof, and establishing the penalty therefor of imprisonment of not less than one day nor more than six months, to include actual confinement of not less than twenty-four hours and fine of not less than one hundred dollars nor more than five hundred dollars; establishing the misdemeanor criminal offense of operating a motorboat or vessel by any person who is a habitual user of narcotic drugs or amphetamine, or derivative thereof, and establishing the penalty therefor of imprisonment of not less than one day nor more than six months, to include actual confinement of not less than twenty-four hours and fine of not less than one hundred dollars nor more than five hundred dollars; establishing the misdemeanor criminal offense of knowingly allowing the operation of one's motorboat or vessel by any person who is under the influence of alcohol, controlled substances, other drugs, or a combination thereof, and establishing the penalty therefor of imprisonment of not more than six months, and fine of not less than one hundred dollars nor more than five hundred dollars; establishing the misdemeanor criminal offense of knowingly allowing the operation of one's motorboat or vessel by any person who is an habitual user of narcotic drugs or amphetamine, or derivative thereof, and establishing the penalty therefor of imprisonment of not more than six

months and fine of not less than one hundred dollars nor more than five hundred dollars; establishing the misdemeanor criminal offense of operating a motorboat or vessel while under the age of twenty-one years while he or she has an alcohol blood concentration in his or her blood of two hundredths of one percent or more, by weight, but less than ten hundredths of one percent, by weight, and for a first offense, establishing the penalty therefor of a fine of not less than twenty-five dollars nor more than one hundred dollars, for a second offense, establishing the penalty therefor of imprisonment of twenty-four hours and a fine of not less than one hundred dollars nor more than five hundred dollars; prohibiting an arrest and charge under different subsections for the same transaction or occurrence; establishing the misdemeanor criminal offense of operating a motorboat or vessel under the influence of alcohol, controlled substances, other drugs, or a combination thereof with one or more persons on board who are less than sixteen years of age and establishing the penalty therefor of imprisonment of not less than two days nor more than twelve months, to include actual confinement of not less than forty-eight hours, and fine of not less than two hundred dollars nor more than one thousand dollars; establishing that a second offense shall constitute a misdemeanor with a penalty of confinement not less than six months nor more than one year, and a discretionary fine of not less than one thousand dollars nor more than three thousand dollars; establishing that a third offense shall constitute a felony with a penalty of confinement in the penitentiary not less than one nor more than three years, and a discretionary fine of not less than three thousand dollars nor more than five thousand dollars; establishing that subsequent offenses which constitute second or third convictions include subsections of this article, any municipal ordinance of this state or statute of the United States or any other state which has the same elements as an offense described in this article; permitting a person to be charged in warrant or indictment or information for a subsequent offense before final adjudication of the subsequent offense; negating a defense of prescribed use of alcohol or controlled substances; defining controlled substances; and, establishing that all sentences herein are mandatory while allowing the court certain discretion.

Be it enacted by the Legislature of West Virginia:

That article seven, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto two new sections, designated sections eighteen-a and eighteen-b, all to read as follows:

ARTICLE 7. LAW ENFORCEMENT, MOTORBOATING, LITTER.

§20-7-18a. Negligent homicide; penalties.

§20-7-18b. Operating under influence of alcohol, controlled substances or drugs; penalties.

§20-7-18a. Negligent homicide; penalties.

1 (a) When the death of any person ensues within one
2 year as a proximate result of injury received by operating
3 any motorboat or vessel anywhere in this state in reckless
4 disregard of the safety of others, the person so operating
5 such motorboat or vessel shall be guilty of negligent
6 homicide.

7 (b) Any person convicted of negligent homicide shall
8 be punished by imprisonment for not more than one year
9 or by fine of not less than one hundred dollars nor more
10 than one thousand dollars, or by both such fine and
11 imprisonment.

12 (c) The director shall suspend the privilege to operate
13 a motorboat or vessel in this state for a period of five years
14 from the date of conviction.

§20-7-18b. Operating under influence of alcohol, controlled substances or drugs; penalties.

1 (a) Any person who:

2 (1) Operates a motorboat or vessel in this state while:

3 (A) He or she is under the influence of alcohol; or

4 (B) He or she is under the influence of any controlled
5 substance; or

6 (C) He or she is under the influence of any other
7 drug; or

8 (D) He or she is under the combined influence of
9 alcohol and any controlled substance or any other drug;
10 or

11 (E) He or she has an alcohol concentration in his or
12 her blood of ten hundredths of one percent or more, by
13 weight; and

14 (2) When so operating does any act forbidden by law
15 or fails to perform any duty imposed by law in the
16 operating of such motorboat or vessel, which act or failure
17 proximately causes the death of any person within one
18 year next following such act or failure; and

19 (3) Commits such act or failure in reckless disregard
20 of the safety of others, and when the influence of alcohol,
21 controlled substances or drugs is shown to be a
22 contributing cause to such death, shall be guilty of a
23 felony and, upon conviction thereof, shall be imprisoned
24 in the penitentiary for not less than one nor more than ten
25 years and shall be fined not less than one thousand dollars
26 nor more than three thousand dollars.

27 (b) Any person who:

28 (1) Operates a motorboat or vessel in this state while:

29 (A) He or she is under the influence of alcohol; or

30 (B) He or she is under the influence of any controlled
31 substance; or

32 (C) He or she is under the influence of any other
33 drug; or

34 (D) He or she is under the combined influence of
35 alcohol and any controlled substance or any other drug;
36 or

37 (E) He or she has an alcohol concentration in his or
38 her blood of ten hundredths of one percent or more, by
39 weight; and

40 (2) When so operating does any act forbidden by law
41 or fails to perform any duty imposed by law in the
42 operating of such motorboat or vessel, which act or failure
43 proximately causes the death of any person within one

44 year next following such act or failure, is guilty of a
45 misdemeanor and, upon conviction thereof, shall be
46 confined in jail for not less than ninety days nor more
47 than one year and shall be fined not less than five hundred
48 dollars nor more than one thousand dollars.

49 (c) Any person who:

50 (1) Operates a motorboat or vessel in this state while:

51 (A) He or she is under the influence of alcohol; or

52 (B) He or she is under the influence of any controlled
53 substance; or

54 (C) He or she is under the influence of any other
55 drug; or

56 (D) He or she is under the combined influence of
57 alcohol and any controlled substance or any other drug;
58 or

59 (E) He or she has an alcohol concentration in his or
60 her blood of ten hundredths of one percent or more, by
61 weight; and

62 (2) When so operating does any act forbidden by law
63 or fails to perform any duty imposed by law in the
64 operating of such motorboat or vessel, which act or failure
65 proximately causes bodily injury to any person other than
66 himself or herself, is guilty of a misdemeanor and, upon
67 conviction thereof, shall be confined in jail for not less
68 than one day nor more than one year, which jail term shall
69 include actual confinement of not less than twenty-four
70 hours, and shall be fined not less than two hundred dollars
71 nor more than one thousand dollars.

72 (d) Any person who:

73 (1) Operates a motorboat or vessel in this state while:

74 (A) He or she is under the influence of alcohol; or

75 (B) He or she is under the influence of any controlled
76 substance; or

77 (C) He or she is under the influence of any other
78 drug; or

79 (D) He or she is under the combined influence of
80 alcohol and any controlled substance or any other drug;
81 or

82 (E) He or she has an alcohol concentration in his or
83 her blood of ten hundredths of one percent or more, by
84 weight;

85 (2) Is guilty of a misdemeanor and, upon conviction
86 thereof, shall be confined in jail for not less than one day
87 nor more than six months, which jail term shall include
88 actual confinement of not less than twenty-four hours, and
89 shall be fined not less than one hundred dollars nor more
90 than five hundred dollars.

91 (e) Any person who, being an habitual user of narcotic
92 drugs or amphetamine or any derivative thereof, operates
93 a motorboat or vessel in this state, is guilty of a
94 misdemeanor and, upon conviction thereof, shall be
95 confined in jail for not less than one day nor more than
96 six months, which jail term shall include actual
97 confinement of not less than twenty-four hours, and shall
98 be fined not less than one hundred dollars nor more than
99 five hundred dollars.

100 (f) Any person who:

101 (1) Knowingly permits his or her motorboat or vessel
102 to be operated in this state by any other person who is:

103 (A) Under the influence of alcohol; or

104 (B) Under the influence of any controlled substance;
105 or

106 (C) Under the influence of any other drug; or

107 (D) Under the combined influence of alcohol and any
108 controlled substance or any other drug; or

109 (E) Has an alcohol concentration in his or her blood
110 of ten hundredths of one percent or more, by weight;

111 (2) Is guilty of a misdemeanor and, upon conviction
112 thereof, shall be confined in jail for not more than six
113 months and shall be fined not less than one hundred
114 dollars nor more than five hundred dollars.

115 (g) Any person who:

116 Knowingly permits his or her motorboat or vessel to
117 be operated in this state by any other person who is an
118 habitual user of narcotic drugs or amphetamine or any
119 derivative thereof, is guilty of a misdemeanor and, upon
120 conviction thereof, shall be confined in jail for not more
121 than six months and shall be fined not less than one
122 hundred dollars nor more than five hundred dollars.

123 (h) Any person under the age of twenty-one years
124 who operates a motorboat or vessel in this state while he or
125 she has an alcohol concentration in his or her blood of
126 two hundredths of one percent or more, by weight, but less
127 than ten hundredths of one percent, by weight, shall, for a
128 first offense under this subsection, be guilty of a
129 misdemeanor and, upon conviction thereof, shall be fined
130 not less than twenty-five dollars nor more than one
131 hundred dollars. For a second or subsequent offense
132 under this subsection, such person is guilty of a
133 misdemeanor and, upon conviction thereof, shall be
134 confined in jail for twenty-four hours, and shall be fined
135 not less than one hundred dollars nor more than five
136 hundred dollars.

137 A person arrested and charged with an offense under
138 the provisions of subsection (a), (b), (c), (d), (e), (f), (g) or
139 (i) of this section may not also be charged with an offense
140 under this subsection arising out of the same transaction
141 or occurrence.

142 (i) Any person who:

143 (1) Operates a motorboat or vessel in this state while:

144 (A) He or she is under the influence of alcohol; or

145 (B) He or she is under the influence of any controlled
146 substance; or

147 (C) He or she is under the influence of any other
148 drug; or

149 (D) He or she is under the combined influence of
150 alcohol and any controlled substance or any other drug;
151 or

152 (E) He or she has an alcohol concentration in his or
153 her blood of ten hundredths of one percent or more, by
154 weight; and

155 (2) The person when so operating has on or within the
156 motorboat or vessel one or more other persons who are
157 unemancipated minors who have not reached their
158 sixteenth birthday, shall be guilty of a misdemeanor and,
159 upon conviction thereof, shall be confined in jail for not
160 less than two days nor more than twelve months, which jail
161 term shall include actual confinement of not less than
162 forty-eight hours, and shall be fined not less than two
163 hundred dollars nor more than one thousand dollars.

164 (j) A person violating any provision of subsection (b),
165 (c), (d), (e), (f), (g) or (i) of this section shall, for the
166 second offense under this section, be guilty of a
167 misdemeanor and, upon conviction thereof, shall be
168 confined in jail for a period of not less than six months
169 nor more than one year, and the court may, in its
170 discretion, impose a fine of not less than one thousand
171 dollars nor more than three thousand dollars.

172 (k) A person violating any provision of subsection (b),
173 (c), (d), (e), (f), (g) or (i) of this section shall, for the third
174 or any subsequent offense under this section, be guilty of
175 a felony and, upon conviction thereof, shall be imprisoned
176 in the penitentiary for not less than one nor more than
177 three years, and the court may, in its discretion, impose a
178 fine of not less than three thousand dollars nor more than
179 five thousand dollars.

180 (l) For purposes of subsections (j) and (k) of this
181 section relating to second, third and subsequent offenses,
182 the following types of convictions shall be regarded as
183 convictions under this section:

184 (1) Any conviction under the provisions of subsection
185 (a), (b), (c), (d), (e) or (f) of this section for an offense
186 which occurred on or after the effective date of this
187 section;

188 (2) Any conviction under the provisions of subsection
189 (a) or (b) of this section for an offense which occurred

190 within a period of five years immediately preceding the
191 date of the offense; and

192 (3) Any conviction under a municipal ordinance of
193 this state or any other state or a statute of the United States
194 or of any other state of an offense which has the same
195 elements as an offense described in subsection (a), (b), (c),
196 (d), (e), (f) or (g) of this section, which offense occurred
197 after the effective date of this section.

198 (m) A person may be charged in a warrant or
199 indictment or information for a second or subsequent
200 offense under this section if the person has been
201 previously arrested for or charged with a violation of this
202 section which is alleged to have occurred within the
203 applicable time periods for prior offenses, notwithstanding
204 the fact that there has not been a final adjudication of the
205 charges for the alleged previous offense. In such case, the
206 warrant or indictment or information must set forth the
207 date, location and particulars of the previous offense or
208 offenses. No person may be convicted of a second or
209 subsequent offense under this section unless the
210 conviction for the previous offense has become final.

211 (n) The fact that any person charged with a violation
212 of subsection (a), (b), (c), (d) or (e) of this section, or any
213 person permitted to operate as described under subsection
214 (f) or (g) of this section, is or has been legally entitled to
215 use alcohol, a controlled substance or a drug shall not
216 constitute a defense against any charge of violating
217 subsection (a), (b), (c), (d), (e), (f) or (g) of this section.

218 (o) For purposes of this section, the term "controlled
219 substance" shall have the meaning ascribed to it in chapter
220 sixty-a of this code.

221 (p) The sentences provided herein upon conviction for
222 a violation of this article are mandatory and shall not be
223 subject to suspension or probation: *Provided*, That the
224 court may apply the provisions of article eleven-a, chapter
225 sixty-two of this code to a person sentenced or committed
226 to a term of one year or less. An order for home
227 detention by the court pursuant to the provisions of article
228 eleven-b, chapter sixty-two of this code may be used as an
229 alternative sentence to any period of incarceration
230 required by this section.

CHAPTER 208

(Com. Sub. for S. B. 390—By Senators Ball, Wooton, Hunter and Love)

[Passed March 14, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eight, article twenty-four, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to allowing towing companies that have towed an abandoned vehicle, or licensed motor vehicle dealers who have had a vehicle abandoned on their property, to acquire title and registration to that vehicle from the division of motor vehicles when the vehicle is not claimed by the owner or the owner cannot otherwise be determined; providing that the vehicle may then be sold at private sale or public auction by the towing company or licensed motor vehicle dealer; changing notification periods; and placing a monetary cap on application of section.

Be it enacted by the Legislature of West Virginia:

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

**ARTICLE 24. DISPOSAL OF ABANDONED MOTOR VEHICLES,
JUNKED MOTOR VEHICLES, OLD VEHICLE
TIRES AND ABANDONED OR INOPERATIVE
HOUSEHOLD APPLIANCES.**

**§17-24-8. Abandoned or junked motor vehicles; notification
to motor vehicle owner and lienholder; charges
and fees; exceptions.**

- 1 (a) The enforcement agency which takes into custody
- 2 and possession an abandoned motor vehicle or junked
- 3 motor vehicle shall, within fifteen days after taking
- 4 custody and possession thereof, notify the last known
- 5 registered owner of the motor vehicle and all lienholders
- 6 of record that the motor vehicle has been taken into
- 7 custody and possession, the notification to be by

8 registered or certified mail, return receipt requested. The
9 notice shall:

10 (1) Contain a description of the motor vehicle,
11 including the year, make, model, manufacturer's serial or
12 identification number or any other number which may
13 have been assigned to the motor vehicle by the
14 commissioner of motor vehicles and any distinguishing
15 marks;

16 (2) Set forth the location of the facility where the
17 motor vehicle is being held and the location where the
18 motor vehicle was taken into custody and possession;

19 (3) Inform the owner and any lienholders of record of
20 their right to reclaim the motor vehicle within ten days
21 after the date notice was received by the owner or
22 lienholders, upon payment of all towing, preservation and
23 storage charges resulting from taking and placing the
24 motor vehicle into custody and possession; and

25 (4) State that the failure of the owner or lienholders of
26 record to exercise their right to reclaim the motor vehicle
27 within the ten-day period shall be deemed a waiver by the
28 owner and all lienholders of record of all right, title and
29 interest in the motor vehicle and of their consent to the
30 sale or disposal of the abandoned motor vehicle or junked
31 motor vehicle at a public auction or to a licensed salvage
32 yard or demolisher.

33 (b) If the identity of the last registered owner of the
34 abandoned motor vehicle or junked motor vehicle cannot
35 be determined, or if the certificate of registration or
36 certificate of title contains no address for the owner, or if it
37 is impossible to determine with reasonable certainty the
38 identity and addresses of all lienholders, notice shall be
39 published as a Class I legal advertisement in compliance
40 with the provisions of article three, chapter fifty-nine of
41 this code, and the publication area for the publication shall
42 be the county wherein the motor vehicle was located at the
43 time the enforcement agency took custody and possession
44 thereof, and the notice shall be sufficient to meet all
45 requirements of notice pursuant to this article. Any notice

46 by publication may contain multiple listings of abandoned
47 motor vehicles and junked motor vehicles. The notice
48 shall be published within fifteen days after the motor
49 vehicle is taken into custody and possession and shall have
50 the same contents required for a notice pursuant to
51 subsection (a) of this section, except that the ten-day
52 period shall run from the date the notice is published as
53 aforesaid.

54 (c) An enforcement agency which hires any person or
55 entity to take into custody and possession an abandoned
56 or junked motor vehicle pursuant to this section shall
57 notify the person or entity of the name and address of the
58 registered owner of the motor vehicle, if known, and all
59 lienholders of record, if any, within fifteen days after the
60 vehicle is taken into custody and possession: *Provided,*
61 That the requirements of this subsection shall not apply to
62 motor vehicles for which the registered owner thereof
63 cannot be ascertained by due diligence or investigation.

64 (d) The person or entity hired by an enforcement
65 agency to take into custody or possession an abandoned
66 or junked motor vehicle shall, within thirty days after the
67 possession, notify the registered owner of the vehicle and
68 all lienholders of record, if any, as identified by the
69 enforcement agency pursuant to subsection (c) herein, by
70 registered mail, return receipt requested, of the location of
71 the facility where the motor vehicle is being stored and of
72 the owner's liability for all towing, preservation and
73 storage charges for the motor vehicle. Upon the issuance
74 of the notice, the identified owner of the motor vehicle is
75 liable and responsible for all costs for towing, preservation
76 and storage of the motor vehicle: *Provided,* That failure
77 to issue the notice required by this subsection within thirty
78 days after possession of the motor vehicle relieves the
79 identified owner of the motor vehicle of any liability for
80 charges for towing, preservation and storage in excess of
81 the sum of the first five days of such charges: *Provided,*
82 *however,* That the requirements of this subsection do not
83 apply to motor vehicles for which the registered owner
84 thereof cannot be ascertained by due diligence or
85 investigation.

86 (e) For abandoned or junked vehicles having a retail
87 value of one thousand dollars or less, as ascertained by
88 values placed upon vehicles using a standard industry
89 reference book, a person or entity hired by an
90 enforcement agency to tow such an abandoned or junked
91 motor vehicle may, if the motor vehicle is not claimed by
92 the owner or a lienholder after notice within the time set
93 forth in subsection (d) of this section, or if the identity of
94 the last registered owner of the abandoned motor vehicle
95 or junked motor vehicle cannot be determined, or if the
96 certificate of registration or certificate of title contains no
97 address of the owner, or if it is impossible to determine
98 with reasonable certainty the identity and address of all
99 lienholders after publication as set forth in subsection (b)
100 of this section, file an application with the division of
101 motor vehicles for a certificate of title and registration
102 which, upon payment of the appropriate fees, shall be
103 issued. The person or entity may then sell the motor
104 vehicle at private sale or public auction.

105 (f) For abandoned or junked vehicles having a retail
106 value of one thousand dollars or less, as ascertained by
107 values placed upon vehicles using a standard industry
108 reference book, a licensed motor vehicle dealer, as defined
109 in section one, article one, chapter seventeen-a of this code
110 may, if a motor vehicle is abandoned on the property or
111 place of business of the dealer and is not claimed by the
112 owner or a lienholder after notice within the time set forth
113 in subsection (d) of this section, or if the identity of the
114 last registered owner of the abandoned motor vehicle
115 cannot be determined, or if the certificate of registration
116 or certificate of title contains no address of the owner, or if
117 it is impossible to determine with reasonable certainty the
118 identity and address of all lienholders after publication as
119 set forth in subsection (b) of this section, file an
120 application with the division of motor vehicles for a
121 certificate of title and registration which, upon payment of
122 the appropriate fees, shall be issued. The dealer may then
123 sell the motor vehicle at private sale or public auction.

CHAPTER 209

(Com. Sub. for H. B. 4451—By Delegate Warner)

[Passed March 12, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections four and sixteen, article three; section three, article seven; and sections one, three and five, article ten, all of chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to motor vehicle registration; providing for a permanent, nontransferable license plate for commercial type trailers at a one time fee; eliminating certain classes of registration; circumstances under which vehicles are not to be registered; and suspension of registration.

Be it enacted by the Legislature of West Virginia:

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

Article

3. Original and Renewal of Registration; Issuance of Certificates of Title.

7. Special Stickers.

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

§17A-3-4. Application for certificate of title; tax for privilege of certification of title; penalty for false swearing.

§17A-3-16. Expiration of registration and certificates of title.

§17A-3-4. Application for certificate of title; tax for privilege of certification of title; penalty for false swearing.

1 (a) Certificates of registration of any vehicle or
2 registration plates therefor, whether original issues or

3 duplicates, may not be issued or furnished by the division
4 of motor vehicles or any other officer charged with the
5 duty, unless the applicant therefor already has received, or
6 at the same time makes application for and is granted, an
7 official certificate of title of the vehicle. The application
8 shall be upon a blank form to be furnished by the division
9 of motor vehicles and shall contain a full description of
10 the vehicle, which description shall contain a
11 manufacturer's serial or identification number or other
12 number as determined by the commissioner and any
13 distinguishing marks, together with a statement of the
14 applicant's title and of any liens or encumbrances upon
15 the vehicle, the names and addresses of the holders of the
16 liens and any other information as the division of motor
17 vehicles may require. The application shall be signed and
18 sworn to by the applicant.

19 (b) A tax is hereby imposed upon the privilege of
20 effecting the certification of title of each vehicle in the
21 amount equal to five percent of the value of the motor
22 vehicle at the time of the certification, to be assessed as
23 follows:

24 (1) If the vehicle is new, the actual purchase price or
25 consideration to the purchaser thereof is the value of the
26 vehicle. If the vehicle is a used or secondhand vehicle, the
27 present market value at time of transfer or purchase is the
28 value thereof for the purposes of this section: *Provided,*
29 That so much of the purchase price or consideration as is
30 represented by the exchange of other vehicles on which
31 the tax imposed by this section has been paid by the
32 purchaser shall be deducted from the total actual price or
33 consideration paid for the vehicle, whether the vehicle be
34 new or secondhand. If the vehicle is acquired through
35 gift, or by any manner whatsoever, unless specifically
36 exempted in this section, the present market value of the
37 vehicle at the time of the gift or transfer is the value
38 thereof for the purposes of this section.

39 (2) No certificate of title for any vehicle may be issued
40 to any applicant unless the applicant has paid to the
41 division of motor vehicles the tax imposed by this section
42 which is five percent of the true and actual value of the

43 vehicle whether the vehicle is acquired through purchase,
44 by gift or by any other manner whatsoever except gifts
45 between husband and wife or between parents and
46 children: *Provided*, That the husband or wife, or the
47 parents or children previously have paid the tax on the
48 vehicles transferred to the state of West Virginia.

49 (3) The division of motor vehicles may issue a
50 certificate of registration and title to an applicant if the
51 applicant provides sufficient proof to the division of
52 motor vehicles that the applicant has paid the taxes and
53 fees required by this section to a motor vehicle dealership
54 that has gone out of business or has filed bankruptcy
55 proceedings in the United States bankruptcy court and the
56 taxes and fees so required to be paid by the applicant have
57 not been sent to the division by the motor vehicle
58 dealership or have been impounded due to the bankruptcy
59 proceedings: *Provided*, That the applicant makes an
60 affidavit of the same and assigns all rights to claims for
61 money the applicant may have against the motor vehicle
62 dealership to the division of motor vehicles.

63 (4) The division of motor vehicles shall issue a
64 certificate of registration and title to an applicant without
65 payment of the tax imposed by this section if the applicant
66 is a corporation, partnership or limited liability company
67 transferring the vehicle to another corporation, partnership
68 or limited liability company when the entities involved in
69 the transfer are members of the same controlled group
70 and the transferring entity has previously paid the tax on
71 the vehicle transferred. For the purposes of this section,
72 control means ownership, directly or indirectly, of stock or
73 equity interests possessing fifty percent or more of the
74 total combined voting power of all classes of the stock of a
75 corporation or equity interests of a partnership or limited
76 liability company entitled to vote or ownership, directly or
77 indirectly, of stock or equity interests possessing fifty
78 percent or more of the value of the corporation,
79 partnership or limited liability company.

80 (5) The tax imposed by this section does not apply to
81 vehicles to be registered as Class H vehicles or Class M
82 vehicles, as defined in section one, article ten of this

83 chapter, which are used or to be used in interstate
84 commerce. Nor does the tax imposed by this section
85 apply to the titling of Class B vehicles registered at a gross
86 weight of fifty-five thousand pounds or more, or to the
87 titling of Class C semitrailers, full trailers, pole trailers and
88 converter gear: *Provided*, That if an owner of a vehicle
89 has previously titled the vehicle at a declared gross weight
90 of fifty-five thousand pounds or more and the title was
91 issued without the payment of the tax imposed by this
92 section, then before the owner may obtain registration for
93 the vehicle at a gross weight less than fifty-five thousand
94 pounds, the owner shall surrender to the commissioner the
95 exempted registration, the exempted certificate of title, and
96 pay the tax imposed by this section based upon the
97 current market value of the vehicle: *Provided, however*,
98 That notwithstanding the provisions of section nine, article
99 fifteen, chapter eleven of this code, the exemption from
100 tax under this section for Class B vehicles in excess of
101 fifty-five thousand pounds and Class C semitrailers, full
102 trailers, pole trailers and converter gear may not subject
103 the sale or purchase of the vehicles to the consumers sales
104 tax.

105 (6) The tax imposed by this section does not apply to
106 titling of vehicles leased by residents of West Virginia. A
107 tax is hereby imposed upon the monthly payments for the
108 lease of any motor vehicle leased by a resident of West
109 Virginia, which tax is equal to five percent of the amount
110 of the monthly payment, applied to each payment, and
111 continuing for the entire term of the initial lease period.
112 The tax shall be remitted to the division of motor vehicles
113 on a monthly basis by the lessor of the vehicle.

114 (7) The tax imposed by this section does not apply to
115 titling of vehicles by a registered dealer of this state for
116 resale only, nor does the tax imposed by this section apply
117 to titling of vehicles by this state or any political
118 subdivision thereof, or by any volunteer fire department
119 or duly chartered rescue or ambulance squad organized
120 and incorporated under the laws of the state of West
121 Virginia as a nonprofit corporation for protection of life
122 or property. The total amount of revenue collected by
123 reason of this tax shall be paid into the state road fund and

124 expended by the commissioner of highways for matching
125 federal funds allocated for West Virginia. In addition to
126 the tax, there is a charge of five dollars for each original
127 certificate of title or duplicate certificate of title so issued:
128 *Provided*, That this state or any political subdivision
129 thereof, or any volunteer fire department, or duly
130 chartered rescue squad is exempt from payment of the
131 charge.

132 (8) The certificate is good for the life of the vehicle, so
133 long as the vehicle is owned or held by the original holder
134 of the certificate, and need not be renewed annually, or
135 any other time, except as provided in this section.

136 (9) If, by will or direct inheritance, a person becomes
137 the owner of a motor vehicle and the tax imposed by this
138 section previously has been paid, to the division of motor
139 vehicles, on that vehicle, he or she is not required to pay
140 the tax.

141 (10) A person who has paid the tax imposed by this
142 section may not be required to pay the tax a second time
143 for the same motor vehicle, but is required to pay a charge
144 of five dollars for the certificate of retitle of that motor
145 vehicle, except that the tax shall be paid by the person
146 when the title to the vehicle has been transferred either in
147 this or another state from the person to another person
148 and transferred back to the person.

149 (c) Notwithstanding any provisions of this code to the
150 contrary, the owners of trailers, semitrailers, recreational
151 vehicles and other vehicles not subject to the certificate of
152 title tax prior to the enactment of this chapter are subject
153 to the privilege tax imposed by this section: *Provided*,
154 That the certification of title of any recreational vehicle
155 owned by the applicant on the thirtieth day of June, one
156 thousand nine hundred eighty-nine, is not subject to the
157 tax imposed by this section: *Provided, however*, That
158 mobile homes, manufactured homes, modular homes and
159 similar nonmotive propelled vehicles, except recreational
160 vehicles and house trailers, susceptible of being moved
161 upon the highways but primarily designed for habitation
162 and occupancy, rather than for transporting persons or
163 property, or any vehicle operated on a nonprofit basis and

164 used exclusively for the transportation of mentally
165 retarded or physically handicapped children when the
166 application for certificate of registration for the vehicle is
167 accompanied by an affidavit stating that the vehicle will be
168 operated on a nonprofit basis and used exclusively for the
169 transportation of mentally retarded and physically
170 handicapped children, are not subject to the tax imposed
171 by this section, but are taxable under the provisions of
172 articles fifteen and fifteen-a, chapter eleven of this code.

173 (d) Any person making any affidavit required under
174 any provision of this section, who knowingly swears
175 falsely, or any person who counsels, advises, aids or abets
176 another in the commission of false swearing is on the first
177 offense guilty of a misdemeanor and, upon conviction
178 thereof, shall be fined not more than five hundred dollars
179 or be imprisoned in the county or regional jail for a
180 period not to exceed six months or, in the discretion of the
181 court, both fined and imprisoned. For a second or any
182 subsequent conviction within five years, that person is
183 guilty of a felony and, upon conviction thereof, shall be
184 fined not more than five thousand dollars or be
185 imprisoned in the penitentiary for not less than one year
186 nor more than five years or, in the discretion of the court,
187 fined and imprisoned.

188 (e) Notwithstanding any other provisions of this
189 section, any person in the military stationed outside West
190 Virginia, or his or her dependents who possess a motor
191 vehicle with valid registration, are exempt from the
192 provisions of this article for a period of nine months from
193 the date that that person returns to this state or the date his
194 or her dependent returns to this state, whichever is later.

195 (f) After the first day of July, one thousand nine
196 hundred ninety-seven, no person may transfer, purchase
197 or sell a factory-built home without a certificate of title
198 issued by the commissioner in accordance with the
199 provisions of this article:

200 (1) Any person who fails to provide a certificate of
201 title upon the transfer, purchase or sale of a factory-built
202 home is guilty of a misdemeanor and, upon conviction
203 thereof, shall for the first offense be fined not less than

204 one hundred dollars nor more than one thousand dollars,
205 or be imprisoned in the county or regional jail for not
206 more than one year or, both fined and imprisoned. For
207 each subsequent offense, the fine may be increased to not
208 more than two thousand dollars, with imprisonment in the
209 county or regional jail not more than one year or, both
210 fined and imprisoned.

211 (2) Failure of the seller to transfer a certificate of title
212 upon sale or transfer of the factory-built home gives rise
213 to a cause of action, upon prosecution thereof, and allows
214 for the recovery of damages, costs and reasonable attorney
215 fees.

§17A-3-16. Expiration of registration and certificates of title.

1 (a) Every vehicle registration under this chapter and
2 every registration card and registration plate issued under
3 this chapter expires at midnight on the last day of the
4 month designated by the commissioner: *Provided*, That
5 the commissioner may extend the period during which the
6 registration plates may be used.

7 Certificates of title need not be renewed annually but
8 remain valid until canceled by the division for cause or
9 upon a transfer of any interest shown in the vehicle.

10 (b) Notwithstanding the provisions of this section or of
11 any provision of this chapter, the commissioner shall
12 adopt a staggered registration system whereby the
13 registration of Class A motor vehicles is for a period of
14 twelve consecutive calendar months, the expiration dates
15 of the registrations to be staggered throughout the year:
16 *Provided*, That on or after the first day of July, one
17 thousand nine hundred ninety-seven, the commissioner
18 shall also offer an optional two-year registration system,
19 whereby the registration of all vehicles shall be for a
20 period of twenty-four consecutive calendar months, the
21 expiration dates of the registrations to be staggered
22 throughout the year. Under this option, all annual fees
23 due at the time of registration shall be multiplied by two.

24 (1) On or after the first day of July, one thousand nine
25 hundred ninety-seven, all Class A motor vehicles as

26 defined in section one, article ten of this chapter, shall be
27 registered for a period of twelve or twenty-four
28 consecutive calendar months. There hereby are
29 established twelve registration periods, each of which shall
30 start on the first day of each calendar month of the year
31 and shall end on the last day of the twelfth month from
32 date of beginning. The period ending on the thirty-first
33 day of January is designated the first period; that ending
34 on the twenty-eighth (twenty-ninth) day of February is
35 designated the second; that ending on the thirty-first day
36 of March is designated the third; that ending on the
37 thirtieth day of April is designated the fourth; that ending
38 on the thirty-first day of May is designated the fifth; that
39 ending on the thirtieth day of June is designated the sixth;
40 that ending on the thirty-first day of July is designated the
41 seventh; that ending on the thirty-first day of August is
42 designated the eighth; that ending on the thirtieth day of
43 September is designated the ninth; that ending on the
44 thirty-first day of October is designated the tenth; that
45 ending on the thirtieth day of November is designated the
46 eleventh; and that ending on the thirty-first day of
47 December is designated the twelfth.

48 (2) All Class A motor vehicles, which are operated for
49 the first time upon the public highways of this state to and
50 including the fifteenth day of any given month are subject
51 to registration and payment of the fee for the twelve or
52 twenty-four-month period commencing the first day of
53 the month of operation. All Class A motor vehicles
54 operated for the first time upon the public highways of
55 this state on and after the sixteenth day of any given
56 month are subject to registration and payment of fee for
57 the twelve or twenty-four-month period commencing the
58 first day of the month of the next following calendar
59 month.

60 (c) On or before the first day of July, one thousand
61 nine hundred ninety-six, all Class T and Class R vehicles
62 shall be registered for a maximum period of three years or
63 portion thereof based on the number of years remaining
64 in the three-year period designated by the commissioner.

65 (d) On or before the first day of July, two thousand, all
66 Class C trailers shall be registered for the duration of the
67 owner's interest in the trailer and shall not expire until
68 either sold or otherwise permanently removed from the
69 service of the owner.

ARTICLE 7. SPECIAL STICKERS.

§17A-7-3. Operation of house trailer under special stickers; application and fees; expiration; issuance of special stickers to holders of Class B registration plates.

1 Upon application therefor on a form prescribed by
2 him or her the commissioner may issue to the owner of a
3 house trailer a special one-movement sticker of such
4 design and content, as may be prescribed by him or her:
5 *Provided*, That such special sticker shall not be issued to
6 any house trailer or trailer dealer. Such sticker shall be
7 valid for the movement of a house trailer one time only
8 over the streets and highways of this state, and no more
9 than one such sticker may be issued for the same house
10 trailer while owned by the same person. A fee of two
11 dollars shall be received by the department for each
12 special sticker. In order that any holder of a Class B
13 registration plate who is engaged in the business of
14 moving house trailers for hire may move a house trailer at
15 the request of the owner thereof without the delay which
16 would be incident to such owner obtaining a special one-
17 movement sticker, any such holder may from time to time
18 apply to the commissioner for a supply of said special
19 one-movement stickers, and upon proper application
20 therefor on a form prescribed by the commissioner and
21 payment of the fee for each such sticker hereinbefore in
22 this section prescribed, the commissioner shall issue to
23 such holder a supply of serially numbered stickers, not in
24 excess of twenty-five upon any one application. Before
25 moving any such house trailer, the holder of the Class B
26 registration plate who has obtained a supply of such
27 special one-movement stickers shall issue such a sticker to
28 the owner thereof and shall make certain that such sticker
29 is affixed to the house trailer prior to the movement
30 thereof. No refund or credit of fees paid by the holder of

31 any such Class B registration plate for any such special
32 one-movement sticker shall be made or allowed.

ARTICLE 10. FEES FOR REGISTRATION, LICENSING, ETC.

§17A-10-1. Classification of vehicles for purpose of registration.

§17A-10-3. Registration fees for vehicles equipped with pneumatic tires.

§17A-10-5. Public service commission assessment must be paid before vehicle registered; suspension of registration cards and plates issued to motor carriers; privilege to exchange suspended registration cards and plates.

§17A-10-1. Classification of vehicles for purpose of registration.

1 Vehicles subject to registration under the provisions of
2 this chapter shall be placed in the following classes for the
3 purpose of registration:

4 Class A. Motor vehicles of passenger type and trucks
5 with a gross weight of not more than eight thousand
6 pounds;

7 Class B. Motor vehicles designated as trucks with a
8 gross weight of more than eight thousand pounds, truck
9 tractors or road tractors;

10 Class C. All trailers and semitrailers, except house
11 trailers and trailers or semitrailers designed to be drawn by
12 Class A motor vehicles and having a gross weight of less
13 than two thousand pounds;

14 Class G. Motorcycles and parking enforcement
15 vehicles;

16 Class H. Motor vehicles operated regularly for the
17 transportation of persons for compensation under a
18 certificate of convenience and necessity or contract carrier
19 permit issued by the public service commission;

20 Class J. Motor vehicles operated for transportation of
21 persons for compensation by common carriers, not
22 running over a regular route or between fixed termini;

23 Class M. Mobile equipment as defined in subdivision
24 (oo), section one, article one of this chapter;

25 Class R. House trailers;

26 Class T. Trailers or semitrailers of a type designed to
27 be drawn by Class A vehicles and having a gross weight of
28 less than two thousand pounds; and

29 Class Farm Truck. Motor vehicles designated as
30 trucks having a minimum gross weight of more than eight
31 thousand pounds and a maximum gross weight of sixty-
32 four thousand pounds, used exclusively in the conduct of
33 a farming business, engaged in the production of
34 agricultural products by means of: (a) The planting,
35 cultivation and harvesting of agricultural, horticultural,
36 vegetable or other products of the soil; or (b) the raising,
37 feeding and care of livestock, poultry, bees and dairy
38 cattle. Such farm truck shall be used only for the
39 transportation of agricultural products so produced by the
40 owner thereof, or for the transportation of agricultural
41 supplies used in such production, or for private passenger
42 use.

**§17A-10-3. Registration fees for vehicles equipped with
pneumatic tires.**

1 The following registration fees for the classes
2 indicated shall be paid to the division for the registration
3 of vehicles subject to registration under this chapter when
4 equipped with pneumatic tires:

5 (a) Registration fees for the following classes shall be
6 paid to the division annually:

7 (1) *Class A.* — The registration fee for all motor
8 vehicles of this class is twenty-eight dollars and fifty cents:
9 *Provided*, That the registration fees and any other fees
10 required by this chapter for Class A vehicles under the
11 optional biennial staggered registration system shall be
12 multiplied by two and paid biennially to the division.

13 No license fee shall be charged for vehicles owned by
14 churches, or by trustees for churches, which are regularly
15 used for transporting parishioners to and from church
16 services. Notwithstanding the exemption, the certificate of
17 registration and license plates shall be obtained the same
18 as other cards and plates under this article.

19 (2) *Class B.*— The registration fee for all motor
20 vehicles of this class is as follows:

21 (A) For declared gross weights of eight thousand one
22 pounds to sixteen thousand pounds — twenty-eight
23 dollars plus five dollars for each one thousand pounds or
24 fraction thereof that the gross weight of the vehicle or
25 combination of vehicles exceeds eight thousand pounds.

26 (B) For declared gross weights greater than sixteen
27 thousand pounds, but less than fifty-five thousand pounds
28 — seventy-eight dollars and fifty cents plus ten dollars for
29 each one thousand pounds or fraction thereof that the
30 gross weight of the vehicle or combination of vehicles
31 exceeds sixteen thousand pounds.

32 (C) For declared gross weights of fifty-five thousand
33 pounds or more — seven hundred thirty-seven dollars and
34 fifty cents plus fifteen dollars and seventy-five cents for
35 each one thousand pounds or fraction thereof that the
36 gross weight of the vehicle or combination of vehicles
37 exceeds fifty-five thousand pounds.

38 (3) *Class G.* — The registration fee for each
39 motorcycle or parking enforcement vehicle is eight
40 dollars.

41 (4) *Class H.* — The registration fee for all vehicles for
42 this class operating entirely within the state is five dollars;
43 and for vehicles engaged in interstate transportation of
44 persons, the registration fee is the amount of the fees
45 provided by this section for Class B, reduced by the
46 amount that the mileage of the vehicles operated in states
47 other than West Virginia bears to the total mileage
48 operated by the vehicles in all states under a formula to be
49 established by the division of motor vehicles.

50 (5) *Class J.* — The registration fee for all motor
51 vehicles of this class is eighty-five dollars. Ambulances
52 and hearses used exclusively as such are exempt from the
53 special fees set forth in this section.

54 (6) *Class M.* — The registration fee for all vehicles of
55 this class is seventeen dollars and fifty cents.

56 (7) *Class Farm Truck.* — The registration fee for all
57 motor vehicles of this class is as follows:

58 (A) For farm trucks of declared gross weights of eight
59 thousand one pounds to sixteen thousand pounds — thirty
60 dollars.

61 (B) For farm trucks of declared gross weights of
62 sixteen thousand one pounds to twenty-two thousand
63 pounds — sixty dollars.

64 (C) For farm trucks of declared gross weights of
65 twenty-two thousand one pounds to twenty-eight thousand
66 pounds — ninety dollars.

67 (D) For farm trucks of declared gross weights of
68 twenty-eight thousand one pounds to thirty-four thousand
69 pounds — one hundred fifteen dollars.

70 (E) For farm trucks of declared gross weights of
71 thirty-four thousand one pounds to forty-four thousand
72 pounds — one hundred sixty dollars.

73 (F) For farm trucks of declared gross weights of
74 forty-four thousand one pounds to fifty-four thousand
75 pounds — two hundred five dollars.

76 (G) For farm trucks of declared gross weights of
77 fifty-four thousand one pounds to sixty-four thousand
78 pounds — two hundred fifty dollars.

79 (b) Registration fees for the following classes shall be
80 paid to the division for a maximum period of three years,
81 or portion thereof based on the number of years
82 remaining in the three-year period designated by the
83 commissioner:

84 (1) *Class R.* — The annual registration fee for all
85 vehicles of this class is twelve dollars.

86 (2) *Class T.* — The annual registration fee for all
87 vehicles of this class is eight dollars.

88 (c) The fees paid to the division for a multi-year
89 registration provided for by this chapter shall be the same
90 as the annual registration fee established by this section

91 and any other fee required by this chapter multiplied by
92 the number of years for which the registration is issued.

93 (d) The registration fee for all Class C vehicles shall be
94 fifty dollars. On or before the first day of July, two-
95 thousand, all Class C trailers shall be registered for the
96 duration of the owner's interest in the trailer and shall not
97 expire until either sold or otherwise permanently removed
98 from the service of the owner.

**§17A-10-5. Public service commission assessment must be paid
before vehicle registered; suspension of
registration cards and plates issued to motor
carriers; privilege to exchange suspended
registration cards and plates.**

1 The commissioner shall not register any vehicle
2 subject to economic regulation by the public service
3 commission unless the assessment for such vehicle
4 provided for in section six, article six, chapter twenty-four-
5 a of this code shall have been paid and notice of such
6 payment shall have been received by the commissioner in
7 the manner provided by said section.

8 The commissioner shall suspend any registration card
9 and registration plate issued by the department under
10 authority of this section for any vehicle subject to
11 economic regulation by the public service commission,
12 pursuant to chapter twenty-four-a of this code, upon
13 receiving certification in writing from the public service
14 commission that said commission has canceled, suspended
15 or revoked the certificate of convenience and necessity,
16 permit or other operating authority of the motor carrier to
17 whom or to which such registration card and registration
18 plate were issued under the authority provided by the first
19 paragraph of this section: *Provided*, That the motor
20 carrier to whom or to which said registration card and
21 registration plate were issued shall have the privilege of
22 receiving in exchange for any such suspended registration
23 card and registration plate a registration card and
24 registration plate for a vehicle of a different class as
25 provided by section one of article four of this chapter.

20 deliver it to the purchaser. The vehicle shall not be titled
21 or registered for operation on the streets or highways of
22 this state unless there is compliance with subsection (c) of
23 this section. In the event a motor vehicle is determined to
24 be damaged in excess of seventy-five percent of its retail
25 price as described in the national automobile dealers
26 association official used car guide, a junk card will be
27 issued in lieu of a salvage certificate.

28 (b) Any owner, who scraps, compresses, dismantles or
29 destroys a vehicle for which a certificate of title or salvage
30 certificate has been issued, shall, within twenty days,
31 surrender the certificate of title or salvage certificate to the
32 division for cancellation. Any person who purchases or
33 acquires a vehicle as salvage or scrap, to be dismantled,
34 compressed or destroyed, shall within twenty days
35 surrender the certificate to the division. Should a vehicle
36 less than eight years old be determined to be a complete
37 loss as a result of fire, flood or a basket, a photograph of
38 the vehicle shall accompany the surrendered certificate:
39 *Provided*, That the term "basket" means a vehicle which
40 has been damaged more than seventy-five percent of the
41 retail price as described in the national automobile dealers
42 association official used car guide. If the vehicle is to be
43 reconstructed, the owner must obtain a salvage certificate
44 and comply with the provisions of subsection (c) of this
45 section.

46 (c) If the motor vehicle is a "reconstructed vehicle" as
47 defined in section one, article one of this chapter, it may
48 not be titled or registered for operation until it has been
49 inspected by an official state inspection station and by a
50 representative of the division of motor vehicles who has
51 been designated by the commissioner as an investigator.
52 Following an approved inspection, an application for a
53 new certificate of title may be submitted to the division;
54 however, the applicant shall be required to retain all
55 receipts for component parts, equipment and materials
56 used in the reconstruction. The salvage certificate must
57 also be surrendered to the division before a certificate of
58 title may be issued.

59 (d) The owner or title holder of any motor vehicle
60 titled in this state which has previously been branded in
61 this state or another state as "salvage", "reconstructed",
62 "flood" or "fire" or an equivalent term under another
63 state's laws shall, upon becoming aware of the brand,
64 apply for and receive a title from the division of motor
65 vehicles on which the brand "reconstructed", "salvage",
66 "flood" or "fire" is shown. A fee of five dollars will be
67 charged for each title so issued.

68 (e) If application is made for title to a motor vehicle,
69 the title to which has previously been branded
70 "reconstructed", "salvage", "flood" or "fire" by the division
71 of motor vehicles under this section and said application is
72 accompanied by a title from another state which does not
73 carry the brand, the division shall, before issuing the title,
74 affix the brand "reconstructed", "flood" or "fire" to the
75 title. The privilege tax paid on a motor vehicle titled as
76 "reconstructed" under the provisions of this subsection,
77 "flood" or "fire" shall be based on fifty percent of the loan
78 value as described in the national automobile dealers
79 association official used car guide.

80 (f) The division shall charge a fee of fifteen dollars
81 for the issuance of each salvage certificate but shall not
82 require the payment of the five percent privilege tax.
83 However, upon application for a certificate of title for a
84 reconstructed, flood or fire damaged vehicle, the division
85 shall collect the five percent privilege tax on the fair
86 market value of the vehicle as determined by the
87 commissioner unless the applicant is otherwise exempt
88 from the payment of such privilege tax. A
89 wrecker/dismantler/rebuilder is exempt from the five
90 percent privilege tax upon titling a reconstructed vehicle.
91 The division shall collect a fee of thirty-five dollars per
92 vehicle for inspections of reconstructed vehicles. These
93 fees shall be deposited in a special fund created in the state
94 treasurer's office and may be expended by the division to
95 carry out the provisions of this article. Licensed
96 wreckers/dismantlers/rebuilders may charge a fee not to
97 exceed twenty-five dollars for all vehicles owned by
98 private rebuilders which are inspected at the place of
99 business of a wrecker/dismantler/rebuilder.

100 (g) A certificate of title issued by the division for a
101 reconstructed vehicle shall contain markings in bold print
102 on the face of the title that it is for a reconstructed, flood
103 or fire damaged vehicle.

104 Any person who violates the provisions of this section
105 shall be guilty of a misdemeanor and, upon conviction
106 thereof, shall be fined not less than five hundred dollars
107 nor more than one thousand dollars, or imprisoned in the
108 county jail for not more than one year, or both fined and
109 imprisoned.

CHAPTER 211

(S. B. 179—By Senators White, Ball, Fanning, Hunter, Ross, Buckalew, Scott,
Deem, Kimble, Oliverio, Schoonover, Wooton, McKenzie, Minear, Sprouse,
Anderson, Helmick, Bowman and Walker)

[Passed February 19, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article thirteen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating generally to parking for handicapped persons; defining terms; establishing qualifications; requiring special registration plates and removable windshield placards; establishing expiration dates for special registration plates and permanent removable windshield placards; establishing duties of commissioner; determining violations; authorizing law-enforcement agencies to utilize trained volunteers; and establishing penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 13. STOPPING, STANDING AND PARKING.

§17C-13-6. Stopping, standing or parking privileges for persons with a mobility impairment; definitions; qualification; special registration plates and removable windshield placards; expiration; application; violation; penalties.

1 (a) Any owner of a Class A motor vehicle subject to
2 registration under the provisions of article three, chapter
3 seventeen-a of this code, who is:

4 (1) A person with a mobility impairment;

5 (2) A relative of a person with a mobility impairment;

6 (3) A person who regularly resides with a person with
7 a mobility impairment; or

8 (4) A person who regularly transports a person who
9 has a mobility impairment, may submit an application for
10 a special registration plate or a removable windshield
11 placard.

12 (b) Any person with a mobility impairment, any
13 relative of a person with a mobility impairment, any
14 person who regularly resides with a person with a mobility
15 impairment or any person who regularly transports a
16 person who has a mobility impairment may submit an
17 application for a special registration plate or a removable
18 windshield placard or both for a Class A vehicle by
19 submitting to the commissioner:

20 (1) An application on a form prescribed and furnished
21 by the commissioner, specifying whether the applicant
22 desires a special registration plate, a removable windshield
23 placard, or both; and

24 (2) A certificate issued by a licensed physician stating
25 that the applicant or the applicant's relative is a person with
26 a mobility impairment, or that the person regularly
27 residing with the applicant or regularly transported by the
28 applicant is a person with a mobility impairment, as
29 defined in this section, and furthermore, the physician
30 shall specify whether the disability is temporary (not to
31 exceed six months) or permanent (one to five years or
32 more in expected duration).

33 Upon receipt of the completed application, the
34 physician's certificate and the regular registration fee for
35 the applicant's vehicle class, if the commissioner finds that
36 the applicant qualifies for the special registration plate or a
37 removable windshield placard as provided in this section,
38 he or she shall issue to the applicant a special registration
39 plate (upon remittance of the regular registration fee), or a
40 removable windshield placard (red for temporary and blue
41 for permanent), or both. Upon request, the commissioner
42 shall also issue to any otherwise qualified applicant one
43 additional placard having the same expiration date as the
44 applicant's original placard. The placard shall be
45 displayed by hanging it from the interior rearview mirror
46 of the motor vehicle so that it is conspicuously visible
47 from outside the vehicle when parked in a designated
48 handicapped parking space. The placard may be removed
49 from the rearview mirror whenever the vehicle is being
50 operated to ensure clear vision and safe driving. Only in
51 the event that there is no suitable rearview mirror in the
52 vehicle may the placard be displayed on the dashboard of
53 the vehicle.

54 (c) As used in this section, the following terms have
55 the meanings ascribed to them in this subsection:

56 (1) A person with a "mobility impairment" means a
57 person who, as determined by a licensed physician:

58 (A) Cannot walk two hundred feet without stopping to
59 rest;

60 (B) Cannot walk without the use of or assistance from
61 a brace, cane, crutch, prosthetic device, wheelchair, other
62 assistive device or another person;

63 (C) Is restricted by lung disease to such an extent that
64 the person's force (respiratory) expiratory volume for one
65 second, when measured by spirometry, is less than one
66 liter or the arterial oxygen tension is less than sixty mm/hg
67 on room air at rest;

68 (D) Uses portable oxygen;

69 (E) Has a cardiac condition to such an extent that the
70 person's functional limitations are classified in severity as

71 Class III or Class IV according to standards established by
72 the American heart association; or

73 (F) Is severely limited in his or her ability to walk
74 because of an arthritic, neurological, orthopedic or other
75 physical condition;

76 (2) "Special registration plate" means a registration
77 plate that displays the international symbol of access in a
78 color that contrasts with the background, in letters and
79 numbers the same size as those on the plate, and which
80 may be used in lieu of a regular registration plate;

81 (3) "Removable windshield placard" (permanent or
82 temporary) means a two-sided, hanger style placard
83 measuring three inches by nine and one-half inches, with
84 all of the following on each side:

85 (A) The international symbol of access, measuring at
86 least three inches in height, centered on the placard, in
87 white on a blue background for permanent designations
88 and in white on a red background for temporary
89 designations;

90 (B) An identification number measuring one inch in
91 height;

92 (C) An expiration date in numbers measuring one
93 inch in height; and

94 (D) The seal or other identifying symbol of the
95 issuing authority;

96 (4) "Regular registration fee" means the standard
97 registration fee for a vehicle of the same class as the
98 applicant's;

99 (5) "Public entity" means state or local government or
100 any department, agency, special purpose district or other
101 instrumentality of a state or local government;

102 (6) "Public facility" means all or any part of any
103 buildings, structures, sites, complexes, roads, parking lots
104 or other real or personal property, including the site where
105 the facility is located;

106 (7) "Place(s) of public accommodation" means a
107 facility or facilities operated by a private entity whose
108 operations affect commerce and fall within at least one of
109 the following categories:

110 (A) Inns, hotels, motels and other places of lodging;

111 (B) Restaurants, bars or other establishments serving
112 food or drink;

113 (C) Motion picture houses, theaters, concert halls,
114 stadiums or other places of exhibition or entertainment;

115 (D) Auditoriums, convention centers, lecture halls or
116 other places of public gatherings;

117 (E) Bakeries, grocery stores, clothing stores, hardware
118 stores, shopping centers or other sales or rental
119 establishments;

120 (F) Laundromats, dry cleaners, banks, barber and
121 beauty shops, travel agencies, shoe repair shops, funeral
122 parlors, gas or service stations, offices of accountants and
123 attorneys, pharmacies, insurance offices, offices of
124 professional health care providers, hospitals or other
125 service establishments;

126 (G) Terminals, depots or other stations used for public
127 transportation;

128 (H) Museums, libraries, galleries or other places of
129 public display or collection;

130 (I) Parks, zoos, amusement parks or other places of
131 recreation;

132 (J) Public or private nursery, elementary, secondary,
133 undergraduate or post-graduate schools or other places of
134 learning and day care centers, senior citizen centers,
135 homeless shelters, food banks, adoption agencies or other
136 social services establishments; and

137 (K) Gymnasiums, health spas, bowling alleys, golf
138 courses or other places of exercise or recreation;

139 (8) "Commercial facility" means a facility whose
140 operations affect commerce and which are intended for
141 nonresidential use by a private entity.

142 Any person who falsely or fraudulently obtains or
143 seeks to obtain the special plate or the removable
144 windshield placard provided for in this section, and any
145 person who falsely certifies that a person is mobility
146 impaired in order that an applicant may be issued the
147 special registration plate or windshield placard hereunder,
148 is guilty of a misdemeanor and, upon conviction thereof,
149 in addition to any other penalty he or she may otherwise
150 incur, shall be fined one hundred dollars.

151 (d) The commissioner shall set the expiration date for
152 special registration plates and permanent removable
153 windshield placards on the last day of a given month and
154 year, to be valid for a minimum of one year but not more
155 than five years, after which time a new application must be
156 submitted to the commissioner. After the commissioner
157 receives the new application, signed by a certified
158 physician, the commissioner shall issue: (i) A new special
159 registration plate or new permanent removable windshield
160 placard; or (ii) official labels imprinted with the new
161 expiration date and designed so as to be placed over the
162 old dates on the original registration plate or windshield
163 placard.

164 (e) The commissioner shall set the expiration date of
165 temporary removable windshield placards to be valid for a
166 period of approximately six months after the application
167 was received and approved by the commissioner.

168 (f) The commissioner shall issue to each applicant who
169 is granted a special registration plate or windshield placard
170 an identification card bearing the applicant's name,
171 assigned identification number and expiration date. The
172 applicant must thereafter carry this identification card on
173 his or her person whenever parking in a handicapped
174 parking space.

175 (g) A handicapped parking space should comply with
176 the provisions of the Americans with Disabilities Act
177 Guidelines, contained in 28 C.F.R. 36, Appendix A,

178 Section 4.6. In particular, the parking space should be a
179 minimum of eight feet wide with an adjacent access aisle
180 for vans having side mounted handicap lifts. Access aisles
181 should be marked using diagonal stripes or other
182 appropriate markings denoting that the space is a no-
183 parking zone. Lines or markings on the pavement or
184 curbs for parking spaces and access aisles may be in any
185 color, although blue is the generally accepted color for
186 handicapped parking.

187 (h) A vehicle from any other state, United States
188 territory or foreign country displaying an officially issued
189 special registration plate, placard or decal bearing the
190 international symbol of access, shall be recognized and
191 accepted as meeting the requirements of this section,
192 regardless of where the plate, placard or decal is mounted
193 or displayed on the vehicle.

194 (i) Free stopping, standing or parking places marked
195 with the international symbol of access shall be designated
196 in close proximity to all public entities, including state,
197 county and municipal buildings and facilities, places of
198 public accommodation and commercial facilities. These
199 parking places shall be reserved solely for persons with a
200 mobility impairment during the hours that those buildings
201 are open for business.

202 (j) Any person whose vehicle properly displays a valid,
203 unexpired special registration plate or removable
204 windshield placard may park the vehicle for unlimited
205 periods of time in parking zones unrestricted as to length
206 of parking time permitted: *Provided*, That this privilege
207 does not mean that the vehicle may park in any zone
208 where stopping, standing or parking is prohibited or which
209 creates parking zones for special types of vehicles or
210 which prohibits parking during heavy traffic periods
211 during specified rush hours or where parking would
212 clearly present a traffic hazard. To the extent any
213 provision of any ordinance of any political subdivision of
214 this state is contrary to the provisions of this section, the
215 provisions of this section take precedence and apply.

216 The privileges provided for in this subsection apply
217 only during those times when the vehicle is being used for

218 the transportation of a person with a mobility impairment.
219 Any person who knowingly exercises, or attempts to
220 exercise, these privileges at a time when the vehicle is not
221 being used for the transportation of a person with a
222 mobility impairment is guilty of a misdemeanor and, upon
223 conviction thereof, in addition to any other penalty he or
224 she may otherwise incur, shall be fined one hundred
225 dollars.

226 (k) Any person whose vehicle does not display a valid,
227 special registration plate or removable windshield placard
228 may not stop, stand or park a motor vehicle in an area
229 designated, zoned or marked for handicapped parking
230 with signs or instructions displaying the international
231 symbol of access, either by itself or with explanatory text.
232 Such signs may be mounted on a post or a wall in front of
233 the handicapped parking space and instructions may
234 appear on the ground or pavement, but use of both
235 methods is preferred. Handicapped parking spaces for
236 vans having an eight-foot adjacent access aisle should be
237 designated as "van accessible" but may be used by any
238 vehicle displaying a valid special registration plate or
239 removable windshield placard. These spaces are intended
240 solely for persons with a mobility impairment, as defined
241 in this section: *Provided*, That any person in the act of
242 transporting a person with a mobility impairment as
243 defined in this section, may stop, stand or park a motor
244 vehicle not displaying a special registration plate or
245 removable windshield placard in the area designated for
246 handicapped parking by the international symbol of
247 access for the limited purposes of loading or unloading a
248 passenger with a mobility impairment: *Provided*,
249 *however*, That the vehicle shall be promptly moved after
250 the completion of this limited purpose.

251 Any person who violates the provisions of this
252 subsection is guilty of a misdemeanor and, upon
253 conviction thereof, shall be fined one hundred dollars.

254 (l) Signs erected in the future that designate areas as
255 "handicapped parking" or that display the international
256 symbol of access shall also include the words "\$100 fine".

257 (m) No person may stop, stand or park a motor
258 vehicle in an area designated or marked off as an access

259 aisle adjacent to a van-accessible parking space or regular
260 handicapped parking space. Any person, including a
261 driver of a vehicle displaying a valid removable windshield
262 placard or special registration plate, who violates the
263 provisions of this subsection is guilty of a misdemeanor
264 and, upon conviction thereof, shall be fined one hundred
265 dollars.

266 (n) Parking enforcement personnel who otherwise
267 enforce parking violations are hereby authorized to issue
268 citations for violations of this section.

269 (o) Law-enforcement agencies may establish a
270 program to utilize trained volunteers to collect
271 information necessary to issue citations to persons who
272 illegally park in designated handicapped parking spaces.
273 Any law-enforcement agency choosing to establish a
274 program shall provide for workers' compensation and
275 liability coverage. The volunteers shall photograph the
276 illegally parked vehicle and complete a form, to be
277 developed by supervising law-enforcement agencies, that
278 includes the vehicle's license plate number, date, time and
279 location of the illegally parked vehicle. The photographs
280 must show the vehicle in the handicapped space and a
281 readable view of the license plate. Within the discretion of
282 the supervising law-enforcement agency, the volunteers
283 may issue citations or the volunteers may submit the
284 photographs of the illegally parked vehicle and the form
285 to the supervising law-enforcement agency, who may issue
286 a citation, which includes the photographs and the form, to
287 the owner of the illegally parked vehicle. Volunteers shall
288 be trained on the requirements for citations for vehicles
289 parked in marked, zoned or designated handicapped
290 parking areas by the supervising law-enforcement agency.

291 (p) The commissioner shall establish a grace period
292 for individuals who, on the effective date of the
293 amendment adding this subsection, hold special
294 registration plates or removable windshield placards
295 bearing no expiration date to submit their applications for
296 newly issued special registration plates and windshield
297 placards, after which time any undated registration plate or
298 windshield placard is invalid and subject to confiscation
299 by any duly appointed law-enforcement officer.

300 (q) The commissioner shall adopt and promulgate
301 rules in accordance with the provisions of article three,
302 chapter twenty-nine-a of this code to effectuate the
303 provisions of this section and provide for an orderly
304 transition to provisions enacted by the Legislature in its
305 regular session in the year one thousand nine hundred
306 ninety-six.

CHAPTER 212

(S. B. 682—By Senators Schoonover, Ross and Helmick)

[Passed March 13, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section nineteen, article fifteen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to approved additional lighting equipment for motor vehicles; authorizing additional lighting equipment to be used by funeral hearses; and authorizing the use of electroluminescent solid state ceramic front identification plates.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 15. EQUIPMENT.

*§17C-15-19. Additional lighting equipment.

- 1 (a) Any motor vehicle may be equipped with not more
- 2 than two side cowl or fender lamps which shall emit an
- 3 amber or white light without glare.

*Clerk's Note: This section was also amended by HB 2785 (Chapter 157), which passed prior to this act.

4 (b) Any motor vehicle may be equipped with not more
5 than one running board courtesy lamp on each side
6 thereof which shall emit a white or amber light without
7 glare.

8 (c) Except for school buses as provided in this
9 subsection, any motor vehicle may be equipped with not
10 more than two back-up lamps either separately or in
11 combination with other lamps, but any such back-up lamp
12 shall not be lighted when the motor vehicle is in forward
13 motion. School buses used for the transportation of
14 school children in this state, whether owned and operated
15 by a county board of education or privately owned and
16 operated under contract with a county board of education,
17 shall be equipped with two back-up lamps, one on each
18 side of the rear door, with white lens or reflectors, capable
19 of lighting the roadway and objects to the rear of the bus
20 for safe backing during darkness, and which, at the option
21 of the county board of education, may each provide fifty
22 candlepower in illumination intensity instead of thirty-two
23 candlepower.

24 (d) Any vehicle may be equipped with lamps which
25 may be used for the purpose of warning the operators of
26 other vehicles of the presence of a vehicular traffic hazard
27 requiring the exercise of unusual care in approaching,
28 overtaking or passing, and when so equipped may display
29 such warning in addition to any other warning signals
30 required by this article. The lamps used to display such
31 warning to the front shall be mounted at the same level
32 and as widely spaced laterally as practicable and shall
33 display simultaneously flashing white or amber lights, or
34 any shade of color between white and amber. The lamps
35 used to display such warning to the rear shall be mounted
36 at the same level and as widely spaced laterally as
37 practicable, and shall show simultaneously flashing amber
38 or red lights, or any shade of color between amber and
39 red.

40 (e) Vehicles used by "rural mail carriers" in carrying or
41 delivering mail in rural areas may be equipped with amber
42 flashing lights. Such lights shall be on the front and rear
43 of the vehicle and may be activated when the vehicle is
44 stopped or decreasing speed in order to stop in the course
45 of carrying, delivering or picking up mail along the route.

46 (f) Notwithstanding any other provision of this code to
47 the contrary, any motor vehicle may be equipped with not
48 more than one electroluminescent solid state ceramic front
49 identification plate without glare, mounted in
50 conformance with the manufacturer's specifications.

51 (g) Vehicles used as the lead car in a funeral
52 procession are hereby authorized to be equipped with, but
53 are not required to use, purple lamps or purple flashing
54 lights. Such lamps may be used for the purpose of
55 warning the operators of other vehicles of the presence of
56 a vehicular traffic hazard requiring the exercise of unusual
57 care in approaching, overtaking or passing a funeral
58 procession, and when so equipped may display such
59 warning in addition to any other warning signals required
60 by this article. The lamps or flashing lights used to
61 display such warning to the front shall be mounted at the
62 same level and as widely spaced laterally as practicable
63 and shall display simultaneously either illuminated or
64 flashing purple lights. The lamps used to display such
65 warning to the rear shall be mounted at the same level and
66 as widely spaced laterally as practicable, and shall show
67 simultaneously flashing or illuminated purple lights.

CHAPTER 213

(S. B. 164—By Senators Dittmar, Ball, Fanning,
Oliverio, Schoonover, Buckalew and Kimble)

[Passed February 11, 1998; in effect July 1, 1998. Approved by the Governor.]

AN ACT to amend and reenact section two, article ten, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section one, article thirty-four of said chapter, all relating to municipal court procedures; requiring municipal court judges to complete mandatory training; providing that municipal courts follow the rules of criminal procedure for magistrate courts; providing for appeals from municipal

court to circuit court; creating time frames, bonds and stays for such appeals; providing limited record of such court proceedings; providing for the preparation and designation of such records for appeal, electronic recordation of trials and preparation of transcripts of such proceedings; providing circuit court discretion to schedule oral argument, receive memoranda of law and take evidence; providing factors and standards for appeals of municipal court decisions; establishing time frames for circuit court review of such proceedings; providing actions which the circuit court may take to dispose of such appeals; and clarifying eligibility to the judicial retirement system.

Be it enacted by the Legislature of West Virginia:

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

Article

10. Powers and Duties of Certain Officers.

34. Judicial Review.

ARTICLE 10. POWERS AND DUTIES OF CERTAIN OFFICERS.

PART II. MUNICIPAL COURT.

§8-10-2. Municipal court for municipalities.

1 (a) Notwithstanding any charter provision to the
2 contrary, any city may provide by charter provision and
3 any municipality may provide by ordinance for the
4 creation and maintenance of a municipal court, for the
5 appointment or election of an officer to be known as
6 municipal court judge, and for his or her compensation,
7 and authorize the exercise by the court or judge of the
8 jurisdiction and the judicial powers, authority and duties
9 set forth in section one of this article and similar or related
10 judicial powers, authority and duties enumerated in any
11 applicable charter provisions, as set forth in the charter or
12 ordinance.

13 (b) Effective the first day of July, one thousand nine
14 hundred ninety-eight, any person who assumes the duties

15 of municipal court judge who has not been admitted to
16 practice law in this state shall attend and complete the next
17 available course of instruction in rudimentary principles
18 of law and procedure. The course shall be conducted by
19 the municipal league or a like association whose members
20 include more than one half of the chartered cities and
21 municipalities of this state. The instruction must be
22 performed by or with the services of an attorney licensed
23 to practice law in this state for at least three years. Any
24 municipal court judge serving on the first day of July, one
25 thousand nine hundred ninety-eight, shall complete such
26 course within one year, unless he or she has been admitted
27 to the practice of law in this state. Any municipal court
28 judge may, thereafter, attend a course for the purpose of
29 continuing education. The cost of any course referred to
30 in this section shall be paid by the municipality which
31 employs the municipal judge.

32 (c) Only a defendant who has been charged with an
33 offense for which a period of confinement in jail may be
34 imposed is entitled to a trial by jury. If a municipal court
35 judge determines, upon demand of a defendant, to
36 conduct a trial by jury in a criminal matter, it shall follow
37 the procedures set forth in the rules of criminal procedure
38 for magistrate courts promulgated by the supreme court
39 of appeals, except that the jury in municipal court shall
40 consist of twelve members.

41 (d) Effective the first day of July, one thousand nine
42 hundred ninety-eight, a police court judge of any
43 municipality shall thereafter be referred to as the
44 municipal court judge.

ARTICLE 34. JUDICIAL REVIEW.

§8-34-1. General right of appeal; recordation of jury trial; preparation of record.

1 (a) Every person sentenced under this chapter by any
2 mayor, acting in a judicial capacity, or municipal court
3 judge to confinement or to the payment of a fine may
4 appeal that sentence to the circuit court as provided in this
5 section. When the municipality is located in more than one
6 county, the appeal shall be taken to the circuit court of the

7 county in which the major portion of the territory of the
8 municipality is located.

9 (b) For purposes of appeal, when a jury trial is had
10 before a mayor or in municipal court, that court shall be a
11 court of limited record. Trials before a mayor or
12 municipal court when a jury is empaneled shall be
13 recorded electronically. A magnetic tape or other
14 electronic recording medium on which a trial is recorded
15 shall be indexed and securely preserved by the court.
16 When requested by the municipal prosecutor or by the
17 defendant, or by any interested person, that court shall
18 provide a duplicate copy of the tape or other electronic
19 recording medium of each trial held. For evidentiary
20 purposes, a duplicate of such electronic recording
21 prepared by the court shall be a "writing" or "recording" as
22 those terms are defined in rule 1001 of the West Virginia
23 rules of evidence, and unless the duplicate is shown not to
24 reflect the contents accurately, it shall be treated as an
25 original in the same manner that data stored in a computer
26 or similar data is regarded as an "original" under such
27 rule. Unless the requesting party is a defendant
28 proceeding as an indigent, the party shall pay to the court
29 an amount equal to the actual cost of the tape or other
30 medium or the sum of five dollars, whichever is greater.

31 (c) If the defendant in such a proceeding waives the
32 right to trial by jury or if no jury trial is required by law,
33 the matter shall be tried by the mayor or municipal court
34 judge sitting without a jury. For purposes of appeal, when
35 a nonjury trial is had before a mayor or municipal court
36 judge that court shall not be a court of limited record and
37 the proceedings shall not be electronically recorded.

38 (d) Any person convicted of an offense by a mayor or
39 municipal court judge may appeal such conviction to
40 circuit court as a matter of right by requesting such appeal
41 within twenty days after the sentencing for such
42 conviction. The mayor or municipal court judge may
43 require the posting of bond with good security
44 conditioned upon the appearance of the defendant as

45 required in circuit court, but such bond may not exceed
46 the maximum amount of any fine which could be
47 imposed for the offense. The bond may be upon the
48 defendant's own recognizance. If no appeal is perfected
49 within such twenty-day period, the circuit court may, not
50 later than ninety days after the sentencing, grant an appeal
51 upon a showing of good cause why such appeal was not
52 filed within the twenty-day period. The filing or granting
53 of an appeal shall automatically stay the sentence of the
54 mayor or municipal court judge.

55 (e) In the case of an appeal of such a proceeding tried
56 before a jury, the hearing on the appeal before the circuit
57 court shall be a hearing on the record. In the case of an
58 appeal of such a proceeding tried before the mayor or
59 municipal court judge without a jury, the hearing on the
60 appeal before the circuit court shall be a trial de novo,
61 triable to the court, without a jury.

62 (f) In the case of an appeal of such a proceeding tried
63 before a jury, the following provisions shall apply:

64 (1) To prepare the record for appeal, the defendant
65 shall file with the circuit court a petition setting forth the
66 grounds relied upon, and designating those portions of the
67 testimony or other matters reflected in the recording, if
68 any, which he or she will rely upon in prosecuting the
69 appeal. The municipal prosecutor may designate
70 additional portions of the recording. Unless otherwise
71 ordered by the circuit court, the preparation of a transcript
72 of the portions of the recording designated by the
73 defendant, and the payment of the cost thereof shall be the
74 responsibility of the defendant: *Provided*, That such costs
75 may be waived due to the defendant's indigence. The
76 circuit court may, by general order or by order entered in
77 a specific case, dispense with preparation of a transcript
78 and review the designated portions of the recording orally.

79 (2) The designated portions of the recording or the
80 transcript thereof, as the case may be, and the exhibits,
81 together with all papers and requests filed in the
82 proceeding, constitute the exclusive record for appeal, and

83 shall be made available to the defendant and the municipal
84 prosecutor.

85 (3) After the record for appeal is filed in the office of
86 the circuit clerk, the court may, in its discretion, schedule
87 the matter for oral argument or require the parties to
88 submit written memoranda of law. The circuit court shall
89 consider whether the judgment or order of the mayor or
90 municipal court judge is:

91 (A) Arbitrary, capricious, an abuse of discretion or
92 otherwise not in conformance with the law;

93 (B) Contrary to constitutional right, power, privilege or
94 immunity;

95 (C) In excess of statutory jurisdiction, authority or
96 limitations or short of statutory right;

97 (D) Without observance of procedure required by law;

98 (E) Unsupported by the evidence; or

99 (F) Unwarranted by the facts.

100 (4) The circuit court may take any of the following
101 actions which may be necessary to dispose of the
102 questions presented on appeal, with justice to the
103 defendant and the municipality:

104 (A) Dismiss the appeal;

105 (B) Reverse, affirm or modify the judgment or order
106 being appealed;

107 (C) Remand the case for further proceedings, with
108 instructions to the mayor or municipal court judge;

109 (D) Finally dispose of the action by entering judgment
110 on appeal; or

111 (E) Retain the matter and retry the issues of fact, or
112 some part or portions thereof, as may be required by the
113 provisions of subdivision (5) of this subsection.

114 (5) If the circuit court finds that a record for appeal is
115 deficient as to matters which might be affected by
116 evidence not considered or inadequately developed, the
117 court may proceed to take such evidence and make
118 independent findings of fact to the extent that questions of
119 fact and law may merge in determining whether the
120 evidence was such, as a matter of law, as to require a
121 particular finding. If the circuit court finds that the
122 proceedings below were subject to error to the extent that
123 the defendant was effectively denied a jury trial, the circuit
124 court may, upon motion of the defendant, empanel a jury
125 to reexamine the issues of fact, or some part or portions
126 thereof.

127 (6) The review by the court and a decision on the
128 appeal shall be completed within ninety days after the
129 appeal is regularly placed upon the docket of the circuit
130 court.

131 (g) In the case of an appeal of a municipal court
132 proceeding tried without a jury, the defendant shall file
133 with the circuit court a petition for appeal and trial de
134 novo. The exhibits, together with all papers and requests
135 filed in the proceeding, constitute the exclusive record for
136 appeal and shall be made available to the parties.

137 (h) Notwithstanding any other provision of this code
138 to the contrary, there shall be no appeal from a plea of
139 guilty where the defendant was represented by counsel at
140 the time the plea was entered: *Provided*, That the
141 defendant shall have an appeal from a plea of guilty where
142 an extraordinary remedy would lie or where the mayor or
143 municipal court judge lacked jurisdiction.

144 (i) The designation in this section of a mayor, acting
145 as municipal court judge, or of municipal courts as "courts
146 of limited record" shall not be construed to give standing
147 or eligibility to mayors or municipal court judges to
148 participate or be included in the retirement system for
149 judges of courts of record established under the provisions
150 of article nine, chapter fifty-one of this code.

CHAPTER 214

(H. B. 4241—By Delegates Tucker, Compton, Stalnaker,
Kuhn, Pettit, Buchanan and Ennis)

[Passed March 14, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article sixteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to general powers and authority of board for municipal public works and increasing bidding threshold before certain contracts are required to be advertised for bids.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 16. MUNICIPAL PUBLIC WORKS; REVENUE BOND FINANCING.

PART III. GENERAL POWERS AND AUTHORITY.

§8-16-5. Powers of board.

1 The board shall have plenary power and authority to
2 take all steps and proceedings, and to make and enter into
3 all contracts or agreements necessary, appropriate, useful,
4 convenient or incidental to the performance of its duties
5 and the execution of its powers and authority under this
6 article: *Provided*, That any contract or agreement relating
7 to the financing, or the construction, reconstruction,
8 establishment, acquisition, improvement, renovation,
9 extension, enlargement, increase or equipment of any such
10 works, and any trust indenture with respect thereto as
11 hereafter provided for, shall be approved by the governing
12 body or bodies.

13 The board may employ engineers, architects, inspect-
14 ors, superintendents, managers, collectors, attorneys and
15 such other employees as in its judgment may be necessary
16 in the execution of its powers and duties, and may fix their
17 compensation, all of whom shall do such work as the
18 board may direct. All such compensation and expenses
19 incurred in carrying out the provisions of this article shall

20 be paid solely from funds provided under the authority of
21 this article, and the board shall not exercise or carry out
22 any power or authority herein given it so as to bind said
23 board or any municipality beyond the extent to which
24 money shall have been, or may be provided under the
25 authority of this article. No contract or agreement with
26 any contractor or contractors for labor or materials, or
27 both, exceeding in amount the sum of ten thousand
28 dollars shall be made without advertising for bids, which
29 bids shall be publicly opened and an award made to the
30 lowest responsible bidder, with power and authority in the
31 board to reject any and all bids. After the construction,
32 reconstruction, establishment, acquisition, renovation or
33 equipment of any such works, the board shall maintain,
34 operate, manage and control the same, and may order and
35 complete any improvements, extensions, enlargements,
36 increase or repair (including replacements) of and to the
37 works that the board may deem expedient, if funds
38 therefor be available, or are made available, as provided in
39 this article, and shall establish rules for the use, main-
40 tenance and operation of the works, and do all things
41 necessary or expedient for the successful operation
42 thereof. All public ways or public works damaged or
43 destroyed by the board in carrying out its authority under
44 this article shall be restored or repaired by the board and
45 placed in their original condition, as nearly as practicable,
46 if requested so to do by proper authority, out of the funds
47 provided under the authority of this article.

CHAPTER 215

(H. B. 4502—By Delegates Proudfoot, Leggett, Williams,
Willis, Evans, Stemple and Tillis)

[Passed March 14, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article one, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to natural resources; definitions; clarifying that bag limit and creel limit apply to any individual; and providing that game fish includes all game fish hybrids.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. ORGANIZATION AND ADMINISTRATION.

§20-1-2. Definitions.

1 As used in this chapter, unless the context clearly
2 requires a different meaning:

3 "Agency" means any branch, department or unit of the
4 state government, however designated or constituted.

5 "Alien" means any person not a citizen of the United
6 States.

7 "Bag limit" or "creel limit" means the maximum
8 number of wildlife which may be taken, caught, killed or
9 possessed by any person.

10 "Bona fide resident, tenant or lessee" means a person
11 who permanently resides on the land.

12 "Citizen" means any native born citizen of the United
13 States, and foreign born persons who have procured their
14 final naturalization papers.

15 "Closed season" means the time or period during
16 which it shall be unlawful to take any wildlife as specified
17 and limited by the provisions of this chapter.

18 "Commission" means the natural resources
19 commission.

20 "Commissioner" means a member of the advisory
21 commission of the natural resources commission.

22 "Director" means the director of the division of natural
23 resources.

24 "Fishing" or "to fish" means the taking, by any means,
25 of fish, minnows, frogs or other amphibians, aquatic turtles
26 and other forms of aquatic life used as fish bait.

27 "Fur-bearing animals" include: (a) The mink; (b) the
28 weasel; (c) the muskrat; (d) the beaver; (e) the opossum;
29 (f) the skunk and civet cat, commonly called polecat; (g)
30 the otter; (h) the red fox; (i) the gray fox; (j) the wildcat,
31 bobcat or bay lynx; (k) the raccoon; and (l) the fisher.

32 "Game" means game animals, game birds and game
33 fish as herein defined.

34 "Game animals" include: (a) The elk; (b) the deer; (c)
35 the cottontail rabbits and hares; (d) the fox squirrels,
36 commonly called red squirrels, and gray squirrels and all
37 their color phases — red, gray, black or albino; (e) the
38 raccoon; (f) the black bear; and (g) the wild boar.

39 "Game birds" include: (a) The Anatidae, commonly
40 known as swan, geese, brants and river and sea ducks; (b)
41 the Rallidae, commonly known as rails, sora, coots,
42 mudhens and gallinales; (c) the Limicolae, commonly
43 known as shorebirds, plover, snipe, woodcock, sandpipers,
44 yellow legs and curlews; (d) the Galli, commonly known
45 as wild turkey, grouse, pheasants, quails and partridges
46 (both native and foreign species); and (e) the Columbidae,
47 commonly known as doves, and the Icteridae, commonly
48 known as blackbirds, redwings and grackle.

49 "Game fish" include: (a) Brook trout; (b) brown trout;
50 (c) rainbow trout; (d) golden rainbow trout; (e)
51 largemouth bass; (f) smallmouth bass; (g) spotted bass; (h)
52 striped bass; (i) chain pickerel; (j) muskellunge; (k)
53 walleye; (l) northern pike; (m) rock bass; (n) white bass;
54 (o) white crappie; (p) black crappie; (q) all sunfish
55 species; (r) channel catfish; (s) flathead catfish; (t) sauger;
56 and (u) all game fish hybrids.

57 "Hunt" means to pursue, chase, catch or take any wild
58 birds or wild animals.

59 "Lands" means land, waters and all other
60 appurtenances connected therewith.

61 "Migratory birds" means any migratory game or
62 nongame birds included in the terms of conventions

63 between the United States and Great Britain and between
64 the United States and United Mexican States, known as
65 the "Migratory Bird Treaty Act", for the protection of
66 migratory birds and game mammals concluded,
67 respectively, the sixteenth day of August, one thousand
68 nine hundred sixteen, and the seventh day of February,
69 one thousand nine hundred thirty-six.

70 "Nonresident" means any person who is a citizen of
71 the United States and who has not been a domiciled
72 resident of the state of West Virginia for a period of thirty
73 consecutive days immediately prior to the date of his or
74 her application for a license or permit except any full-time
75 student of any college or university of this state, even
76 though he or she is paying a nonresident tuition.

77 "Open season" means the time during which the
78 various species of wildlife may be legally caught, taken,
79 killed or chased in a specified manner, and shall include
80 both the first and the last day of the season or period
81 designated by the director.

82 "Person" except as otherwise defined elsewhere in this
83 chapter, means the plural "persons" and shall include
84 individuals, partnerships, corporations or other legal
85 entities.

86 "Preserve" means all duly licensed private game
87 farmlands, or private plants, ponds or areas, where hunting
88 or fishing is permitted under special licenses or seasons
89 other than the regular public hunting or fishing seasons.

90 "Protected birds" means all wild birds not included
91 within the definition of "game birds" and "unprotected
92 birds".

93 "Resident" means any person who is a citizen of the
94 United States and who has been a domiciled resident of
95 the state of West Virginia for a period of thirty consecutive
96 days or more immediately prior to the date of his or her
97 application for license or permit: *Provided*, That a
98 member of the armed forces of the United States who is
99 stationed beyond the territorial limits of this state, but who
100 was a resident of this state at the time of his or her entry

101 into such service, and any full-time student of any college
102 or university of this state, even though he or she is paying
103 a nonresident tuition, shall be considered a resident under
104 the provisions of this chapter.

105 "Roadside menagerie" means any place of business,
106 other than commercial game farm, commercial fish
107 preserve, place or pond, where any wild bird, game bird,
108 unprotected bird, game animal or fur-bearing animal is
109 kept in confinement for the attraction and amusement of
110 the people for commercial purposes.

111 "Take" means to hunt, shoot, pursue, lure, kill, destroy,
112 catch, capture, keep in captivity, gig, spear, trap, ensnare,
113 wound or injure any wildlife, or attempt to do so.

114 "Unprotected birds" shall include: (a) The English
115 sparrow, (b) the European starling, (c) the cowbird, and
116 (d) the crow.

117 "Wild animals" means all mammals native to the state
118 of West Virginia occurring either in a natural state or in
119 captivity, except house mice or rats.

120 "Wild birds" shall include all birds other than: (a)
121 Domestic poultry — chickens, ducks, geese, guinea fowl,
122 peafowls and turkeys; (b) psittacidae, commonly called
123 parrots and parakeets; and (c) other foreign cage birds
124 such as the common canary, exotic finches and ring dove.
125 All wild birds, either: (a) Those occurring in a natural
126 state in West Virginia; or (b) those imported foreign game
127 birds, such as waterfowl, pheasants, partridges, quail and
128 grouse, regardless of how long raised or held in captivity,
129 shall remain wild birds under the meaning of this chapter.

130 "Wildlife" means wild birds, wild animals, game and
131 fur-bearing animals, fish (including minnows), reptiles,
132 amphibians, mollusks, crustaceans and all forms of aquatic
133 life used as fish bait, whether dead or alive.

134 "Wildlife refuge" means any land set aside by action of
135 the director as an inviolate refuge or sanctuary for the
136 protection of designated forms of wildlife.

CHAPTER 216

(H. B. 4062—By Delegates Proudfoot, Prunty, Leggett, Flanigan,
Boggs, Border and Damron)

[Passed February 19, 1998; in effect from passage. Became law without signature of Governor.]

AN ACT to amend and reenact section four, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the possession of wildlife; providing for the lawful possession of wildlife lawfully taken, killed or obtained; permitting the possession of certain wildlife killed by a motor vehicle after certain notification requirements are met; and requiring the director of natural resources to propose administrative policy pursuant to the section provisions.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-4. Possession of wildlife.

- 1 Except for wildlife, lawfully taken, killed, or obtained,
 - 2 no person shall have in his or her possession any wildlife,
 - 3 or parts thereof, during closed seasons. It is unlawful to
 - 4 possess any wildlife, or parts thereof, which have been
 - 5 illegally taken, killed or obtained. Any wildlife illegally
 - 6 taken, killed or possessed shall be forfeited to the state and
 - 7 shall be counted toward the daily, seasonal, bag, creel and
 - 8 possession limit of the person in possession of, or
 - 9 responsible for, the illegal taking or killing of any wildlife.
- 10 Wildlife lawfully taken outside of this state shall be
 - 11 subject to the same laws and rules as that taken within this
 - 12 state.

13 Migratory wild birds shall be possessed only in
14 accordance with the "Migratory Bird Treaty Act" and
15 regulations thereunder.

16 The restrictions in this section do not apply to the
17 director or duly authorized agents, who may, in any
18 manner, take or maintain in captivity, at any time, any
19 wildlife for the purpose of carrying out the provisions of
20 this chapter.

21 Wildlife, except protected birds, spotted fawn, and bear
22 cubs, killed or mortally wounded as a result of being
23 accidentally or inadvertently struck by a motor vehicle
24 may be lawfully possessed: *Provided*, That the possessor
25 of such wildlife shall provide notice of the claim within
26 twelve hours to a relevant law-enforcement agency, and
27 obtain a nonhunting game tag within twenty-four hours of
28 possession. The director shall propose administrative
29 policy which shall address the means, methods and
30 administrative procedures for implementing the provisions
31 of this section.

CHAPTER 217

(H. B. 4501—By Delegates Proudfoot, Ennis, Anderson,
Damron, Kelley, Williams and Evans)

[Passed March 2, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-eight, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to permitting residents sixty-five years of age or older to hunt, trap or fish without a license; requiring that any such person carry on his or her person a valid driver's license or nondriver picture identification card issued by the division of motor vehicles while hunting, trapping or fishing; and abolishing the card previously issued by the director of the division of natural resources.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-28. When licenses or permits not required.

1 Persons in the following categories shall not be
2 required to obtain licenses or permits as indicated:

3 (a) Bona fide resident landowners or their resident
4 children, or resident parents, or bona fide resident tenants
5 of such land, may hunt, trap or fish on their own land
6 during open season in accordance with the laws and
7 regulations applying to such hunting, trapping and fishing
8 without obtaining a license to do so unless such lands have
9 been designated as a wildlife refuge or preserve.

10 (b) Any bona fide resident of this state who is totally
11 blind may fish in this state without obtaining a fishing
12 license to do so. A written statement or certificate from a
13 duly licensed physician of this state showing the said
14 resident to be totally blind shall serve in lieu of a fishing
15 license and shall be carried on the person of said resident
16 at all times while he or she is fishing in this state.

17 (c) All residents of West Virginia on active duty in the
18 armed forces of the United States of America, while on
19 leave or furlough, shall have the right and privilege to
20 hunt, trap or fish in season in West Virginia without
21 obtaining a license to do so. Leave or furlough papers
22 shall serve in lieu of any such license and shall be carried
23 on the person at all times while trapping, hunting or
24 fishing.

25 (d) In accordance with the provisions of section
26 twenty-seven of this article, any resident sixty-five years of
27 age or older is not required to have a license to hunt, trap
28 or fish during the legal seasons in West Virginia, but in
29 lieu of such license any such person shall at all times while
30 hunting, trapping or fishing, carry on his or her person a
31 valid West Virginia driver's license or nondriver
32 identification card issued by the division of motor
33 vehicles.

34 (e) Residents of the state of Maryland who carry
35 hunting or fishing licenses valid in that state may hunt or

36 fish from the West Virginia banks of the Potomac River
37 without obtaining licenses to do so, but such hunting or
38 fishing shall be confined to the fish and waterfowl of the
39 river proper and not on its tributaries: *Provided*, That the
40 state of Maryland shall first enter into a reciprocal
41 agreement with the director extending a like privilege of
42 hunting and fishing on the Potomac River from the
43 Maryland banks of said river to licensed residents of West
44 Virginia, without requiring said residents to obtain
45 Maryland hunting and fishing licenses.

46 (f) Residents of the state of Ohio who carry hunting or
47 fishing licenses valid in that state may hunt or fish on the
48 Ohio River or from the West Virginia banks of said river
49 without obtaining licenses to do so, but such hunting or
50 fishing shall be confined to fish and waterfowl of the river
51 proper and not on its tributaries: *Provided*, That the state
52 of Ohio shall first enter into a reciprocal agreement with
53 the director extending a like privilege of hunting and
54 fishing from the Ohio banks of said river to licensed
55 residents of West Virginia without requiring said residents
56 to obtain Ohio hunting and fishing licenses. In the event
57 the state of Ohio accords this privilege to residents of West
58 Virginia, such Ohio residents will not be required to obtain
59 the license provided for by section forty-two of this
60 article.

61 (g) Any resident of West Virginia who was honorably
62 discharged from the armed forces of the United States of
63 America, and who receives a veteran's pension based on
64 total permanent service connected disability as certified to
65 by the veterans administration, shall be permitted to hunt,
66 trap or fish in this state without obtaining a license
67 therefor. The director shall propose rules for legislative
68 approval in accordance with the provisions of article three,
69 chapter twenty-nine-a of this code setting forth the
70 procedure for the certification of the veteran, manner of
71 applying for and receiving the certification and
72 requirements as to identification while said veteran is
73 hunting, trapping or fishing.

74 (h) Any disabled veteran, who is a resident of West
75 Virginia, and who, as certified to by the commissioner of
76 motor vehicles, is eligible to be exempt from the payment
77 of any fee on account of registration of any motor vehicle

78 owned by such disabled veteran as provided for in section
79 eight, article ten, chapter seventeen-a of this code, shall be
80 permitted to hunt, trap or fish in this state without
81 obtaining a license therefor. The director shall propose
82 rules for legislative approval in accordance with the
83 provisions of article three, chapter twenty-nine-a of this
84 code setting forth the procedure for the certification of the
85 disabled veteran, manner of applying for and receiving the
86 certification, and requirements as to identification while
87 said disabled veteran is hunting, trapping or fishing.

88 (i) Any resident or inpatient in any state mental health,
89 health or benevolent institution or facility may fish in this
90 state, under proper supervision of the institution involved,
91 without obtaining a fishing license to do so. A written
92 statement or certificate signed by the superintendent of the
93 mental health, health or benevolent institution or facility in
94 which the resident or inpatient, as the case may be, is
95 institutionalized shall serve in lieu of a fishing license and
96 shall be carried on the person of the resident or inpatient
97 at all times while he or she is fishing in this state.

98 (j) Any resident who is developmentally disabled, as
99 certified by a physician and the director of the division of
100 health, may fish in this state without obtaining a fishing
101 license to do so. As used in this section, "developmentally
102 disabled" means a person with a severe, chronic disability
103 which:

104 (1) Is attributable to a mental or physical impairment,
105 or a combination of mental and physical impairments;

106 (2) Is manifested before the person attains age
107 twenty-two;

108 (3) Results in substantial functional limitations in three
109 or more of the following areas of major life activity: (A)
110 Self-care; (B) receptive and expressive language; (C)
111 learning; (D) mobility; (E) self-direction; (F) capacity for
112 independent living; and (G) economic self-sufficiency;
113 and

114 (4) Reflects the person's need for a combination and
115 sequence of care, treatment or supportive services which
116 are of lifelong or extended duration and are individually
117 planned and coordinated.

CHAPTER 218

(H. B. 4418—By Delegates Williams, Stemple, Collins,
Beach, Michael and Proudfoot)

[Passed March 14, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section fifty-four, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to license for privately-owned commercial shooting preserves; permits an additional month of hunting; requires operators to furnish numbered tags; and removes the exemption of nonresidents purchasing required state hunting licenses.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-54. License for privately-owned commercial shooting preserves.

- 1 (1) The director may issue a license for privately-
2 owned commercial shooting preserves to any person who
3 meets the following requirements:
- 4 (a) Each commercial shooting preserve shall contain a
5 minimum of three hundred acres in one tract of leased or
6 owned land (including water area, if any) and shall be
7 restricted to no more than three thousand contiguous acres
8 (including water area, if any), except that preserves
9 confined to the releasing of ducks only shall be
10 authorized to operate with a minimum of fifty contiguous
11 acres (including water area); and
- 12 (b) The exterior boundaries of each commercial
13 shooting preserve shall be clearly defined and posted with
14 signs erected around the extremity at intervals of one
15 hundred fifty yards or less.

16 (2) The director shall designate the game which may
17 be hunted under this section on which a more liberal
18 season may be allowed.

19 (3) The operating licenses or permits issued by the
20 director shall entitle holders thereof, and their guests or
21 customers, to recover not more than eighty percent of the
22 total number of each species of game bird released on the
23 premises each year, except mallard, black duck,
24 ringnecked pheasant, chukar partridge and other
25 nonnative game species upon which a one hundred
26 percent recovery may be allowed.

27 (4) Except for the required compliance with the
28 restriction on the maximum number of released birds that
29 may be recovered from each preserve each year, as
30 provided in subsections (3) and (8) of this section,
31 shooting preserve operators may establish their own
32 shooting limitations and restrictions on the age, sex and
33 number of birds that may be taken by each person.

34 (5) In order to give a reasonable opportunity for a fair
35 return on a sizeable investment, a liberal season shall be
36 designated by the director during the nine-month period,
37 beginning the first day of August and ending the thirtieth
38 day of April.

39 (6) All harvested game shall be tagged with a
40 numbered tag prior to being either consumed on the
41 premises or removed therefrom, such tags to remain
42 affixed until the game actually is delivered to the point of
43 consumption.

44 (7) Each shooting preserve operator shall maintain a
45 registration book listing all names, addresses and hunting
46 license numbers of all shooters; the date on which they
47 hunted; the amount of game and the species taken; and
48 the tag numbers affixed to each carcass. An accurate
49 record likewise must be maintained of the total number,
50 by species, of game birds and ducks raised and/or
51 purchased, and the date and number of all species
52 released. These records shall be open to inspection by a
53 delegated representative of the director at any reasonable
54 time, and shall be the basis upon which the game recovery
55 limits in subsection (3) of this section shall be determined.

56 (8) Any wild game found on commercial shooting
57 preserves may be harvested in accordance with applicable
58 game and hunting laws pertaining to open seasons, bag
59 and possession limits, and so forth, as are established
60 regularly by the director and the United States fish and
61 wildlife service.

62 (9) State hunting licenses shall be required of all
63 persons hunting or shooting on shooting preserves.

64 (10) The fee for such commercial shooting preserve
65 license shall be fifty dollars per fiscal year for the first
66 three hundred acres of the shooting preserve area, plus
67 twenty-five dollars per fiscal year for each additional three
68 hundred acres or part thereof.

CHAPTER 219

(H. B. 4472—By Mr. Speaker, Mr. Kiss, and Delegates Clements,
Varner, Anderson, Leggett, Proudfoot and Border)

[Passed March 21, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article two-b, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section two-a, all relating to the wildlife endowment fund; providing for four additional citizen members to the wildlife endowment fund board; providing that no more than three citizen members may be from the same political party; and creating the Ohio River management fund advisory board to advise the wildlife endowment fund board with respect to the management and expenditures of the Ohio River management fund account within the wildlife endowment fund.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2B. WILDLIFE ENDOWMENT FUND.

§20-2B-2. Board created; composition.

§20-2B-2a. Ohio River management fund advisory board created; composition; responsibilities.

§20-2B-2. Board created; composition.

1 The board of trustees of the wildlife endowment fund
2 of the division of natural resources has full authority over
3 the administration of the wildlife endowment fund. The
4 chairman of the board is the director of the division of
5 natural resources and the members are the executive
6 secretary of the division, the division fiscal officer, the
7 chief of the wildlife resources section, the chief of the law-
8 enforcement section and six citizen members, to be
9 appointed by the governor. To the extent possible, the
10 governor shall appoint the citizen members to ensure an
11 equal geographic representation throughout the state and
12 their terms shall be staggered from the first day of July,
13 one thousand nine hundred ninety-nine. Existing citizen
14 members shall retain their appointed positions for a period
15 of two years from that date. Initial citizen appointments to
16 the board shall be as follows: Two citizen members shall
17 be appointed for a term of three years; two citizen
18 members shall be appointed for a term of four years; and
19 subsequent citizen member appointments to the board
20 shall be for a term of four years. No more than three
21 citizen members may be members of one political party.
22 The actual expenses of the citizen members incurred in
23 the performance of their duties under this section are
24 payable from funds of the division. The state treasurer is
25 the custodian of the wildlife endowment fund and shall
26 invest its assets in accordance with the provisions of article
27 six, chapter twelve of this code.

§20-2B-2a. Ohio River management fund advisory board created; composition; responsibilities.

1 There is created an advisory board to the board of
2 trustees of the wildlife endowment fund, designated the
3 Ohio river management fund advisory board, which shall
4 be composed of the director of the division of natural
5 resources, the chief of the wildlife resources section of the
6 division and three citizen members to be appointed by the
7 governor. One citizen member shall be a resident of
8 Hancock, Brooke, Ohio or Marshall county; one citizen
9 member shall be a resident of Wetzel, Tyler, Pleasants or
10 Wood county; and one citizen member shall be a resident
11 of Jackson, Mason, Cabell or Wayne county. The actual
12 expenses of the citizen members incurred in the
13 performance of their duties under this section shall be
14 payable from the funds of the division. The advisory
15 board shall advise the wildlife endowment fund board with
16 respect to the management and expenditure of funds from
17 the Ohio River management fund account within the
18 wildlife endowment fund.

CHAPTER 220

(S. B. 59—By Senators Dittmar, Kessler, Love,
Sharpe, Bowman, White, Ball and Anderson)

[Passed March 14, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one-c, article seven, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to adding and redesignating ranks; setting corporals salary; updating the minimum base pay scale for conservation officers; requiring across-the-board pay increases be included in minimum base pay scale; and providing for retention of merit increases.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. LAW ENFORCEMENT, MOTORBOATING, LITTER.**§20-7-1c. Conservation officers, ranks, salary schedule, base pay, exceptions.**

1 (a) Notwithstanding any provision of this code to the
 2 contrary, the ranks within the law-enforcement section of
 3 the division of natural resources are colonel, lieutenant
 4 colonel, major, captain, lieutenant, sergeant, corporal,
 5 conservation officer first class, senior conservation officer,
 6 conservation officer and conservation officer-in-training.
 7 Each officer while in uniform shall wear the insignia of
 8 rank as provided by the chief conservation officer.

9 (b) Conservation officers shall be paid the minimum
 10 annual salaries based on the following schedule:

11 ANNUAL SALARY SCHEDULE (BASE PAY)	
12 SUPERVISORY AND NONSUPERVISORY RANKS	
13 Conservation Officer-In-Training	
14 (first year)	\$22,025
15 Conservation Officer (second year)	\$24,214
16 Conservation Officer (third year)	\$24,486
17 Senior Conservation Officer (fourth year)	\$24,698
18 Conservation Officer First Class	
19 (after fifth year)	\$26,276
20 Conservation Officer (after tenth year)	\$27,854
21 Conservation Officer (after fifteenth year)	\$29,254
22 Corporal	\$31,065
23 Sergeant	\$32,877
24 Lieutenant	\$35,697
25 Captain	\$37,983
26 Major	\$40,266
27 Lieutenant Colonel	\$42,308
28 Colonel	

29 Conservation officers in service at the time the
30 amendment to this section becomes effective shall be
31 given credit for prior service and shall be paid salaries as
32 the same length of service will entitle them to receive
33 under the provisions of this section.

34 (c) This section does not apply to special or
35 emergency conservation officers appointed under the
36 authority of section one of this article.

37 (d) Nothing in this section prohibits other pay
38 increases as provided for under section two, article five,
39 chapter five of this code: *Provided*, That an across-the-
40 board pay increase granted by the Legislature or the
41 governor is added to, and reflected in, the minimum
42 salaries set forth in this section; and that merit increases
43 are retained by an officer when he or she advances from
44 one rank to another.

CHAPTER 221

(H. B. 4664—By Delegates Ennis, Cann, Proudfoot,
Evans and Martin)

[Passed March 13, 1998; in effect from passage. Approved by the Governor.]

AN ACT to amend article seven, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section one-f, relating to natural resources; law enforcement; special conservation officers; providing for the award of service revolver to certain officers upon retirement; exceptions; and furnishing uniform for burial upon death of current or honorably retired officer.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. LAW ENFORCEMENT, MOTORBOATING, LITTER.

§20-7-1f. Awarding service revolver to special conservation officers upon retirement; furnishing uniform for burial.

1 (a) Upon the retirement of any special conservation
2 officer selected and appointed pursuant to section one of
3 this article, the chief of the officer's section shall award to
4 the retiring special conservation officer his or her service
5 revolver, without charge, upon determining:

6 (1) That the special conservation officer is retiring
7 honorably with at least twenty-five years of recognized
8 special law-enforcement service as determined by the chief
9 conservation officer; or

10 (2) That such special conservation officer is retiring
11 with less than twenty-five years of service based upon a
12 determination that he or she is totally physically disabled
13 as a result of service with the division.

14 (b) Notwithstanding the provisions of subsection (a) of
15 this section, the section chief shall not award a service
16 revolver to any special conservation officer who has been
17 declared mentally incompetent by a licensed physician or
18 any court of law, or who, in the opinion of the chief
19 conservation officer constitutes a danger to any person or
20 the community.

21 (c) Upon the death of any current or honorably
22 retired special conservation officer, the respective chief
23 shall, upon request of the deceased officer's family,
24 furnish a full uniform for burial of the deceased officer.

CHAPTER 222

(H. B. 4574—By Delegates Douglas, Collins, Stalnaker,
Heck, Everson, Varner and Davis)

[Passed March 14, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, three, four, five, seven, eight, ten, eleven, twelve, fourteen and sixteen, article nine, chapter twenty-two-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section four-a, all relating to the oil and gas conservation commission generally; revising definitions; reestablishing, reconstituting and continuing the oil and gas conservation commission; requiring that the appointed commission members may not be employees of the division of environmental protection; requiring at least one commission member possess minimum educational and professional qualifications; providing that the commissioner serve on the commission; providing for termination of commission members under certain circumstances; establishing quorum requirements; authorizing and prohibiting delegation of authority and providing the circumstances therefor; establishing a termination date and requiring submission of annual reports; expanding notice requirements; revising hearing procedures; expanding minimum acreage requirements for drilling units; transferring authority from the oil and gas conservation commissioner to the oil and gas conservation commission; and continuing the effect of existing orders, determinations, and other lawful actions of the commissioner and the commission under prior enactments of this article.

Be it enacted by the Legislature of West Virginia:

That sections two, three, four, five, seven, eight, ten, eleven, twelve, fourteen and sixteen, article nine, chapter twenty-two-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article be

further amended by adding thereto a new section, designated section four-a, all to read as follows:

ARTICLE 9. OIL AND GAS CONSERVATION.

§22C-9-2. Definitions.

§22C-9-3. Application of article; exclusions.

§22C-9-4. Oil and gas conservation commissioner and commission; commission membership; qualifications of members; terms of members; vacancies on commission; meetings; compensation and expenses; appointment and qualifications of commissioner; general powers and duties.

§22C-9-4a. Termination of commission; reports.

§22C-9-5. Rules; notice requirements.

§22C-9-7. Drilling units and the pooling of interests in drilling units in connection with deep oil or gas wells.

§22C-9-8. Secondary recovery of oil; unit operations.

§22C-9-10. Hearing procedures.

§22C-9-11. Judicial review; appeal to supreme court of appeals; legal representation for commission.

§22C-9-12. Injunctive relief.

§22C-9-14. Penalties.

§22C-9-16. Rules, orders and permits remain in effect.

§22C-9-2. Definitions.

1 (a) Unless the context in which used clearly requires a
2 different meaning, as used in this article:

3 (1) "Commission" means the oil and gas
4 conservation commission and "commissioner" means the
5 oil and gas conservation commissioner as provided for in
6 section four of this article;

7 (2) "Director" means the director of the division of
8 environmental protection and "chief" means the chief of
9 the office of oil and gas;

10 (3) "Person" means any natural person, corporation,
11 partnership, receiver, trustee, executor, administrator,
12 guardian, fiduciary or other representative of any kind,
13 and includes any government or any political subdivision
14 or any agency thereof;

15 (4) "Operator" means any owner of the right to
16 develop, operate and produce oil and gas from a pool and

17 to appropriate the oil and gas produced therefrom, either
18 for such person or for such person and others; in the event
19 that there is no oil and gas lease in existence with respect
20 to the tract in question, the owner of the oil and gas rights
21 therein shall be considered as "operator" to the extent of
22 seven eighths of the oil and gas in that portion of the pool
23 underlying the tract owned by such owner, and as
24 "royalty owner" as to one-eighth interest in such oil and
25 gas; and in the event the oil is owned separately from the
26 gas, the owner of the substance being produced or sought
27 to be produced from the pool shall be considered as
28 "operator" as to such pool;

29 (5) "Royalty owner" means any owner of oil and gas
30 in place, or oil and gas rights, to the extent that such owner
31 is not an operator as defined in subdivision (4) of this
32 section;

33 (6) "Independent producer" means a producer of
34 crude oil or natural gas whose allowance for depletion is
35 determined under Section 613A of the federal Internal
36 Revenue Code in effect on the first day of July, one
37 thousand nine hundred ninety-seven;

38 (7) "Oil" means natural crude oil or petroleum and
39 other hydrocarbons, regardless of gravity, which are
40 produced at the well in liquid form by ordinary
41 production methods and which are not the result of
42 condensation of gas after it leaves the underground
43 reservoir;

44 (8) "Gas" means all natural gas and all other fluid
45 hydrocarbons not defined as oil in subdivision (7) of this
46 section;

47 (9) "Pool" means an underground accumulation of
48 petroleum or gas in a single and separate natural reservoir
49 (ordinarily a porous sandstone or limestone). It is
50 characterized by a single natural-pressure system so that
51 production of petroleum or gas from one part of the pool
52 affects the reservoir pressure throughout its extent. A pool
53 is bounded by geologic barriers in all directions, such as
54 geologic structural conditions, impermeable strata, and
55 water in the formations, so that it is effectively separated

56 from any other pools that may be presented in the same
57 district or on the same geologic structure;

58 (10) "Well" means any shaft or hole sunk, drilled,
59 bored or dug into the earth or underground strata for the
60 extraction of oil or gas;

61 (11) "Shallow well" means any well drilled and
62 completed in a formation above the top of the uppermost
63 member of the "Onondaga Group": *Provided*, That in
64 drilling a shallow well the operator may penetrate into the
65 "Onondaga Group" to a reasonable depth, not in excess
66 of twenty feet, in order to allow for logging and
67 completion operations, but in no event may the
68 "Onondaga Group" formation be otherwise produced,
69 perforated or stimulated in any manner;

70 (12) "Deep well" means any well, other than a
71 shallow well, drilled and completed in a formation at or
72 below the top of the uppermost member of the
73 "Onondaga Group";

74 (13) "Drilling unit" means the acreage on which one
75 well may be drilled;

76 (14) "Waste" means and includes:

77 (A) Physical waste, as that term is generally
78 understood in the oil and gas industry;

79 (B) The locating, drilling, equipping, operating or
80 producing of any oil or gas well in a manner that causes,
81 or tends to cause, a reduction in the quantity of oil or gas
82 ultimately recoverable from a pool under prudent and
83 proper operations, or that causes or tends to cause
84 unnecessary or excessive surface loss of oil or gas; or

85 (C) The drilling of more deep wells than are
86 reasonably required to recover efficiently and
87 economically the maximum amount of oil and gas from a
88 pool. Waste does not include gas vented or released from
89 any mine areas as defined in section two, article one,
90 chapter twenty-two-a of this code or from adjacent coal
91 seams which are the subject of a current permit issued
92 under article two of chapter twenty-two-a of this code;

93 *Provided*, That nothing in this exclusion is intended to
94 address ownership of the gas;

95 (15) "Correlative rights" means the reasonable
96 opportunity of each person entitled thereto to recover and
97 receive without waste the oil and gas in and under his tract
98 or tracts, or the equivalent thereof; and

99 (16) "Just and equitable share of production" means,
100 as to each person, an amount of oil or gas or both
101 substantially equal to the amount of recoverable oil and
102 gas in that part of a pool underlying such person's tract or
103 tracts.

104 (b) Unless the context clearly indicates otherwise, the
105 use of the word "and" and the word "or" shall be
106 interchangeable, as, for example, "oil and gas" shall
107 mean oil or gas or both.

§22C-9-3. Application of article; exclusions.

1 (a) Except as provided in subsection (b) of this
2 section, the provisions of this article shall apply to all lands
3 located in this state, however owned, including any lands
4 owned or administered by any government or any agency
5 or subdivision thereof, over which the state has jurisdiction
6 under its police power. The provisions of this article are in
7 addition to and not in derogation of or substitution for the
8 provisions of article six, chapter twenty-two of this code.

9 (b) This article shall not apply to or affect:

10 (1) Shallow wells other than those utilized in
11 secondary recovery programs as set forth in section eight
12 of this article;

13 (2) Any well commenced or completed prior to the
14 ninth day of March, one thousand nine hundred
15 seventy-two, unless such well is, after completion (whether
16 such completion is prior or subsequent to that date):

17 (A) Deepened subsequent to that date to a formation at
18 or below the top of the uppermost member of the
19 "Onondaga Group"; or

20 (B) Involved in secondary recovery operations for oil
21 under an order of the commission entered pursuant to
22 section eight of this article;

23 (3) Gas storage operations or any well employed to
24 inject gas into or withdraw gas from a gas storage reservoir
25 or any well employed for storage observation; or

26 (4) Free gas rights.

27 (c) The provisions of this article shall not be
28 construed to grant to the commissioner or the commission
29 authority or power to:

30 (1) Limit production or output, or prorate production
31 of any oil or gas well, except as provided in subdivision
32 (6), subsection (a), section seven of this article; or

33 (2) Fix prices of oil or gas.

§22C-9-4. Oil and gas conservation commissioner and commission; commission membership; qualifications of members; terms of members; vacancies on commission; meetings; compensation and expenses; appointment and qualifications of commissioner; general powers and duties.

1 (a) The "oil and gas conservation commission" shall
2 be composed of five members. The director of the
3 division of environmental protection and the chief of the
4 office of oil and gas shall be members of the commission
5 ex officio. The remaining three members of the
6 commission shall be appointed by the governor, by and
7 with the advice and consent of the Senate, and may not be
8 employees of the division of environmental protection. Of
9 the three members appointed by the governor, one shall
10 be an independent producer and at least one shall be a
11 public member not engaged in an activity under the
12 jurisdiction of the public service commission or the
13 federal energy regulatory commission. The third
14 appointee shall possess a degree from an accredited
15 college or university in petroleum engineering or geology
16 and must be a registered professional engineer with
17 particular knowledge and experience in the oil and gas

18 industry and shall serve as commissioner and as chair of
19 the commission.

20 (b) The members of the commission appointed by the
21 governor shall be appointed for overlapping terms of six
22 years each, except that the original appointments shall be
23 for terms of two, four and six years, respectively. Each
24 member appointed by the governor shall serve until the
25 members successor has been appointed and qualified.
26 Members may be appointed by the governor to serve any
27 number of terms. The members of the commission
28 appointed by the governor, before performing any duty
29 hereunder, shall take and subscribe to the oath required by
30 section 5, article IV of the constitution of West Virginia.
31 Vacancies in the membership appointed by the governor
32 shall be filled by appointment by the governor for the
33 unexpired term of the member whose office is vacant and
34 such appointment shall be made by the governor within
35 sixty days of the occurrence of such vacancy. Any
36 member appointed by the governor may be removed by
37 the governor in case of incompetency, neglect of duty,
38 gross immorality or malfeasance in office. A commission
39 member's appointment shall be terminated as a matter of
40 law if that member fails to attend three consecutive
41 meetings. The governor shall appoint a replacement
42 within thirty days of the termination.

43 (c) The commission shall meet at such times and
44 places as shall be designated by the chair. The chair may
45 call a meeting of the commission at any time, and shall
46 call a meeting of the commission upon the written request
47 of two members or upon the written request of the oil and
48 gas conservation commissioner or the chief of the office
49 of oil and gas. Notification of each meeting shall be given
50 in writing to each member by the chair at least fourteen
51 calendar days in advance of the meeting. Three members
52 of the commission, at least two of whom are appointed
53 members, shall constitute a quorum for the transaction of
54 any business.

55 (d) The commission shall pay each member the same
56 compensation as is paid to members of the Legislature for
57 their interim duties as recommended by the citizens

58 legislative compensation commission and authorized by
59 law for each day or portion thereof engaged in the
60 discharge of official duties and shall reimburse each
61 member for actual and necessary expenses incurred in the
62 discharge of official duties.

63 (e) The commission is hereby empowered and it is the
64 commission's duty to execute and carry out, administer
65 and enforce the provisions of this article in the manner
66 provided herein. Subject to the provisions of section three
67 of this article, the commission has jurisdiction and
68 authority over all persons and property necessary therefor.
69 The commission is authorized to make such investigation
70 of records and facilities as the commission deems proper.
71 In the event of a conflict between the duty to prevent waste
72 and the duty to protect correlative rights, the
73 commission's duty to prevent waste shall be paramount.

74 (f) Without limiting the commission's general
75 authority, the commission shall have specific authority to:

76 (1) Regulate the spacing of deep wells;

77 (2) Make and enforce reasonable rules and orders
78 reasonably necessary to prevent waste, protect correlative
79 rights, govern the practice and procedure before the
80 commission and otherwise administer the provisions of
81 this article;

82 (3) Issue subpoenas for the attendance of witnesses
83 and subpoenas duces tecum for the production of any
84 books, records, maps, charts, diagrams and other pertinent
85 documents, and administer oaths and affirmations to such
86 witnesses, whenever, in the judgment of the commission, it
87 is necessary to do so for the effective discharge of the
88 commission's duties under the provisions of this article;
89 and

90 (4) Serve as technical advisor regarding oil and gas to
91 the Legislature, its members and committees, to the chief
92 of office of oil and gas, to the division of environmental
93 protection and to any other agency of state government
94 having responsibility related to the oil and gas industry.

95 (g) The commission may delegate to the commission
96 staff the authority to approve or deny an application for
97 new well permits, to establish drilling units or special field
98 rules if:

99 (1) The application conforms to the rules of the
100 commission; and

101 (2) No request for hearing has been received.

102 (h) The commission may not delegate its authority to:

103 (1) Propose legislative rules;

104 (2) Approve or deny an application for new well
105 permits, to establish drilling units or special field rules if
106 the conditions set forth in subsection (g) of this section are
107 not met; or

108 (3) Approve or deny an application for the pooling of
109 interests within a drilling unit.

110 (i) Any exception to the field rules or the spacing of
111 wells which does not conform to the rules of the
112 commission, and any application for the pooling of
113 interests within a drilling unit, must be presented to and
114 heard before the commission.

§22C-9-4a. Termination of commission; reports.

1 (a) The commission is hereby continued until the first
2 day of July, two thousand one.

3 (b) On or before the thirty-first day of December, one
4 thousand nine hundred ninety-eight, and for the next two
5 consecutive years thereafter, the oil and gas conservation
6 commission shall submit a report annually to the joint
7 committee on government operations of its activities for
8 the year and any recommendations for improving the
9 function of the commission.

§22C-9-5. Rules; notice requirements.

1 (a) The commission may propose rules for legislative
2 approval in accordance with the provisions of article three,
3 chapter twenty-nine-a of this code, to implement and

4 make effective the provisions of this article and the powers
5 and authority conferred and the duties imposed upon the
6 commission under the provisions of this article.

7 (b) Notwithstanding the provisions of section two,
8 article seven, chapter twenty-nine-a of this code, any
9 notice required under the provisions of this article shall be
10 given at the direction of the commission by personal or
11 substituted service or by certified United States mail,
12 addressed, postage prepaid, to the last-known mailing
13 address, if any, of the person being served, with the
14 direction that the same be delivered to addressee only,
15 return receipt requested. In the case of providing notice
16 upon the filing of an application with the commission, the
17 commission shall cause notice to be published as a Class II
18 legal advertisement in compliance with the provisions of
19 article three, chapter fifty-nine of this code, and the
20 publication area for such publication shall be the county
21 or counties wherein any land which may be affected by
22 such order is situate.

23 In addition, the commission shall mail a copy of such
24 notice to all other persons who have specified to the
25 commission an address to which all such notices may be
26 mailed. The notice shall issue in the name of the state,
27 shall be signed by one of the commission members, shall
28 specify the style and number of the proceeding, the time
29 and place of any hearing and shall briefly state the
30 purpose of the proceeding. Each notice of a hearing must
31 be provided no fewer than twenty days preceding the
32 hearing date. Personal or substituted service and proof
33 thereof may be made by an officer authorized to serve
34 process or by an agent of the commission in the same
35 manner as is now provided by the "West Virginia Rules of
36 Civil Procedure for Trial Courts of Record" for service of
37 process in civil actions in the various courts of this state.

38 A certified copy of any pooling order entered under
39 the provisions of this article shall be presented by the
40 commission to the clerk of the county commission of each
41 county wherein all or any portion of the pooled tract is
42 located, for recordation in the record book of such county
43 in which oil and gas leases are normally recorded. The

44 recording of the order from the time noted thereon by
45 such clerk shall be notice of the order to all persons.

§22C-9-7. Drilling units and the pooling of interests in drilling units in connection with deep oil or gas wells.

1 (a) Drilling units.

2 (1) After one discovery deep well has been drilled
3 establishing a pool, an application to establish drilling
4 units may be filed with the commission by the operator of
5 such discovery deep well or by the operator of any lands
6 directly and immediately affected by the drilling of such
7 discovery deep well, or subsequent deep wells in said pool.
8 Each application shall contain such information as
9 prescribed by reasonable rules proposed by the
10 commission in accordance with the provisions of section
11 five of this article.

12 (2) Upon the filing of an application to establish
13 drilling units, the commission shall provide notice to all
14 interested parties in accordance with this subsection. If the
15 application does not conform to the existing rules of the
16 commission, then the commission shall set a hearing and
17 provide notice to all interested parties. If the application
18 conforms to the rules of the commission, the commission
19 shall provide notice of the filing of the application to all
20 interested parties. Each notice shall describe the area for
21 which a spacing order is to be entered in recognizable,
22 narrative terms; contain such other information as is
23 essential to the giving of proper notice, including the time
24 and date and place of a hearing, if any; include a
25 statement that any party has a right to a hearing before the
26 commission; and include a statement that any request for
27 hearing must be filed with the commission within fifteen
28 days of receipt of notice. If no request for hearing has
29 been received within the fifteen days following receipt of
30 the notice, the commission may proceed to process the
31 application. If a request for hearing has been received by
32 the commission, then the commission shall set a hearing
33 and provide notice to all interested parties.

34 (3) The commission shall determine the area to be
35 included in such spacing order and the acreage to be

36 contained by each drilling unit, the shape thereof, and the
37 minimum distance from the outside boundary of the unit
38 at which a deep well may be drilled thereon. The
39 commission shall consider:

40 (A) The surface topography and property lines of the
41 lands underlaid by the pool to be included in such order;

42 (B) The plan of deep well spacing then being
43 employed or proposed in such pool for such lands;

44 (C) The depth at which production from said pool has
45 been found;

46 (D) The nature and character of the producing
47 formation or formations, and whether the substance
48 produced or sought to be produced is gas or oil or both;

49 (E) The maximum area which may be drained
50 efficiently and economically by one deep well; and

51 (F) Any other available geological or scientific data
52 pertaining to said pool which may be of probative value to
53 the commission in determining the proper deep well
54 drilling units therefor.

55 If the commission determines that drilling units
56 should be established, the commission shall enter an order
57 establishing drilling units of a specified and
58 approximately uniform size and shape for each pool
59 subject to the provisions of this section.

60 (4) When it is determined that an oil or gas pool
61 underlies an area for which a spacing order is to be
62 entered, the commission shall include in such order all
63 lands determined or believed to be underlaid by such pool
64 and exclude all other lands.

65 (5) No drilling unit established by the commission
66 shall be smaller than the maximum area which can be
67 drained efficiently and economically by one deep well;
68 *Provided*, That if there is not sufficient evidence from
69 which to determine the area which can be drained
70 efficiently and economically by one deep well, the
71 commission may enter an order establishing temporary
72 drilling units for the orderly development of the pool

73 pending the obtaining of information necessary to
74 determine the ultimate spacing for such pool.

75 (6) An order establishing drilling units shall specify
76 the minimum distance from the nearest outside boundary
77 of the drilling unit at which a deep well may be drilled.
78 The minimum distance provided shall be the same in all
79 drilling units established under said order with necessary
80 exceptions for deep wells drilled or being drilled at the
81 time of the filing of the application. If the commission
82 finds that a deep well to be drilled at or more than the
83 specified minimum distance from the boundary of a
84 drilling unit would not be likely to produce in paying
85 quantities or will encounter surface conditions which
86 would substantially add to the burden or hazard of drilling
87 such deep well, or that a location within the area permitted
88 by the order is prohibited by the lawful order of any state
89 agency or court, the commission is authorized after notice
90 and hearing to make an order permitting the deep well to
91 be drilled at a location within the minimum distance
92 prescribed by the spacing order. In granting exceptions
93 to the spacing order, the commission may restrict the
94 production from any such deep well so that each person
95 entitled thereto in such drilling unit shall not produce or
96 receive more than his just and equitable share of the
97 production from such pool.

98 (7) An order establishing drilling units for a pool shall
99 cover all lands determined or believed to be underlaid by
100 such pool, and may be modified by the commission from
101 time to time, to include additional lands determined to be
102 underlaid by such pool or to exclude lands determined
103 not to be underlaid by such pool. An order establishing
104 drilling units may be modified by the commission to
105 permit the drilling of additional deep wells on a
106 reasonably uniform pattern at a uniform minimum
107 distance from the nearest unit boundary as provided
108 above. Any order modifying a prior order shall be made
109 only after application by an interested operator and notice
110 and hearing as prescribed herein for the original order:
111 *Provided*, That drilling units established by order shall not
112 exceed one hundred sixty acres for an oil well or six
113 hundred forty acres for a gas well: *Provided, however*,

114 That the commission may exceed the acreage limitation
115 by ten percent if the applicant demonstrates that the area
116 would be drained efficiently and economically by a larger
117 drilling unit.

118 (8) After the date an application to establish drilling
119 units has been filed with the commission, no additional
120 deep well shall be commenced for production from the
121 pool until the order establishing drilling units has been
122 made, unless the commencement of the deep well is
123 authorized by order of the commission.

124 (9) The commission shall, within forty-five days after
125 the filing of an application to establish drilling units for a
126 pool subject to the provisions of this section, enter an
127 order establishing such drilling units, dismiss the
128 application, or for good cause, continue the application
129 process.

130 (10) As part of the order establishing a drilling unit,
131 the commission shall prescribe just and reasonable terms
132 and conditions upon which the royalty interests in the unit
133 shall, in the absence of voluntary agreement, be deemed to
134 be integrated without the necessity of a subsequent order
135 integrating the royalty interests.

136 (11) If a hearing has been held on an application
137 submitted pursuant to this subsection, the order shall be a
138 final order. If no hearing has been held, the commission
139 shall issue a proposed order and shall provide a copy of
140 the proposed order, together with notice of the right to
141 appeal and request a hearing, to all interested parties. Any
142 party aggrieved by the proposed order may appeal the
143 proposed order to the full commission and request a
144 hearing. Notice of appeal and request for hearing shall be
145 made in accordance with section ten of this article within
146 fifteen days of entry of the order. If no appeal and
147 request for hearing has been received within fifteen days,
148 the proposed order shall become final.

149 (b) Pooling of interests in drilling units.

150 (1) When two or more separately owned tracts are
151 embraced within a drilling unit, or when there are

152 separately owned interests in all or a part of a drilling unit,
153 the interested persons may pool their tracts or interests for
154 the development and operation of the drilling unit. In the
155 absence of voluntary pooling and upon application of any
156 operator having an interest in the drilling unit, the
157 commission shall set a hearing and provide notice to all
158 interested parties. Each notice shall describe the area for
159 which an order is to be entered in recognizable, narrative
160 terms; contain such other information as is essential to the
161 giving of proper notice, including the time and date and
162 place of a hearing. After the hearing, the commission
163 shall enter an order pooling all tracts or interests in the
164 drilling unit for the development and operation thereof
165 and for sharing production therefrom. Each such pooling
166 order shall be upon terms and conditions which are just
167 and reasonable and in no event shall drilling be initiated
168 on the tract of an unleased owner without the owner's
169 written consent.

170 (2) All operations, including, but not limited to, the
171 commencement, drilling or operation of a deep well, upon
172 any portion of a drilling unit for which a pooling order
173 has been entered, shall be deemed for all purposes the
174 conduct of such operations upon each separately owned
175 tract in the drilling unit by the several owners thereof.
176 That portion of the production allocated to a separately
177 owned tract included in a drilling unit shall, when
178 produced, be deemed for all purposes to have been
179 actually produced from such tract by a deep well drilled
180 thereon.

181 (3) Any pooling order under the provisions of this
182 subsection (b) shall authorize the drilling and operation of
183 a deep well for the production of oil or gas from the
184 pooled acreage; shall designate the operator to drill and
185 operate such deep well; shall prescribe the time and
186 manner in which all owners of operating interests in the
187 pooled tracts or portions of tracts may elect to participate
188 therein; shall provide that all reasonable costs and
189 expenses of drilling, completing, equipping, operating,
190 plugging and abandoning such deep well shall be borne,
191 and all production therefrom shared, by all owners of
192 operating interests in proportion to the net oil or gas

193 acreage in the pooled tracts owned or under lease to each
194 owner; and shall make provisions for payment of all
195 reasonable costs thereof, including a reasonable charge for
196 supervision and for interest on past-due accounts, by all
197 those who elect to participate therein.

198 (4) No drilling or operation of a deep well for the
199 production of oil or gas shall be permitted upon or within
200 any tract of land unless the operator shall have first
201 obtained the written consent and easement therefor, duly
202 acknowledged and placed on record in the office of the
203 county clerk, for valuable consideration of all owners of
204 the surface of such tract of land, which consent shall
205 describe with reasonable certainty, the location upon such
206 tract, of the location of such proposed deep well, a
207 certified copy of which consent and easement shall be
208 submitted by the operator to the commission.

209 (5) Upon request, any such pooling order shall
210 provide just and equitable alternatives whereby an owner
211 of an operating interest who does not elect to participate in
212 the risk and cost of the drilling of a deep well may elect:

213 (A) Option 1. To surrender such interest or a portion
214 thereof to the participating owners on a reasonable basis
215 and for a reasonable consideration, which, if not agreed
216 upon, shall be determined by the commission; or

217 (B) Option 2. To participate in the drilling of the deep
218 well on a limited or carried basis on terms and conditions
219 which, if not agreed upon, shall be determined by the
220 commission to be just and reasonable.

221 (6) In the event a nonparticipating owner elects
222 Option 2, and an owner of any operating interest in any
223 portion of the pooled tract shall drill and operate, or pay
224 the costs of drilling, completing, equipping and operating
225 a deep well for the benefit of such nonparticipating owner
226 as provided in the pooling order, then such operating
227 owner shall be entitled to the share of production from the
228 tracts or portions thereof pooled accruing to the interest of
229 such nonparticipating owner, exclusive of any royalty or
230 overriding royalty reserved in any leases, assignments
231 thereof or agreements relating thereto, of such tracts or

232 portions thereof, or exclusive of one eighth of the
233 production attributable to all unleased tracts or portions
234 thereof, until the market value of such nonparticipating
235 owner's share of the production, exclusive of such royalty,
236 overriding royalty or one eighth of production, equals
237 double the share of such costs payable by or charged to
238 the interest of such nonparticipating owner.

239 (7) If a dispute shall arise as to the costs of drilling,
240 completing, equipping and operating a deep well, the
241 commission shall determine and apportion the costs,
242 within ninety days from the date of written notification to
243 the commission of the existence of such dispute.

244 (8) The commission shall, within forty-five days after
245 the filing of an application, enter an order, dismiss the
246 application, or for good cause, continue the application
247 process.

§22C-9-8. Secondary recovery of oil; unit operations.

1 (a) Upon the application of any operator in a pool
2 productive of oil the commission shall set a hearing and
3 provide notice to all interested parties. Each notice shall
4 describe the area for which an order is to be entered in
5 recognizable, narrative terms; contain such other
6 information as is essential to the giving of proper notice,
7 including the time and date and place of a hearing. After
8 the hearing, the commission may enter an order requiring
9 the unit operation of such pool in connection with a
10 program of secondary recovery of oil, and providing for
11 the unitization of separately owned tracts and interests
12 within such pool, but only after finding that:

13 (1) The order is reasonably necessary for the
14 prevention of waste and the drilling of unnecessary wells;

15 (2) The proposed plan of secondary recovery will
16 increase the ultimate recovery of oil from the pool to such
17 an extent that the proposed secondary recovery operation
18 will be economically feasible;

19 (3) The production of oil from the unitized pool can
20 be allocated in such a manner as to ensure the recovery by

21 all operators of their just and equitable share of such
22 production; and

23 (4) The operators of at least three fourths of the
24 acreage (calculating partial interests on a pro rata basis for
25 operator interests on any parcel owned in common) and
26 the royalty owners of at least three fourths of the acreage
27 (calculating partial interests on a pro rata basis for royalty
28 interests on any parcel owned in common) in such pool
29 have approved the plan and terms of unit operation to be
30 specified by the commission in its order, such approval to
31 be evidenced by a written contract setting forth the terms
32 of the unit operation and executed by said operators and
33 said royalty owners, and filed with the commission. The
34 order requiring such unit operation shall designate one
35 operator in the pool as unit operator and shall also make
36 provision for the proportionate allocation to all operators
37 of the costs and expenses of the unit operation, including
38 reasonable charges for supervision and interest on
39 past-due accounts, which allocation shall be in the same
40 proportion that the separately owned tracts share in the
41 production of oil from the unit. In the absence of an
42 agreement entered into by the operators and filed with the
43 commission providing for sharing the costs of capital
44 investment in wells and physical equipment, and intangible
45 drilling costs, the commission shall provide by order for
46 the sharing of such costs in the same proportion as the
47 costs and expenses of the unit operation: *Provided*, That
48 any operator who has not consented to the unitization
49 shall not be required to contribute to the costs or expenses
50 of the unit operation, or to the cost of capital investment in
51 wells and physical equipment, and intangible drilling costs,
52 except out of the proceeds from the sale of the production
53 accruing to the interest of such operator: *Provided*,
54 *however*, That no credit to the well costs shall be adjusted
55 on the basis of less than the average well costs within the
56 unitized area: *Provided further*, That no order entered
57 under the provisions of this section requiring unit
58 operation shall vary or alter any of the terms of any
59 contract entered into by operators and royalty owners
60 under the provisions of this section.

61 (5) The commission shall, within forty-five days after
62 the filing of an application to establish unit operators for a
63 pool subject to the provisions of this section, enter an
64 order establishing such unit operators, dismiss the
65 application, or for good cause, continue the application
66 process.

§22C-9-10. Hearing procedures.

1 (a) Upon receipt of a request for hearing, the
2 commission shall set a time and place for such hearing not
3 less than twenty and not more than forty-five days
4 thereafter. Any scheduled hearing may be continued by
5 the commission upon the commission's own motion or
6 for good cause shown by any party to the hearing. All
7 interested parties shall be entitled to be heard at any
8 hearing conducted under the provisions of this article.

9 (b) All of the pertinent provisions of article five,
10 chapter twenty-nine-a of this code shall apply to and
11 govern the hearing and the administrative procedures in
12 connection with and following such hearing, with like
13 effect as if the provisions of said article five were set forth
14 in extenso in this subsection.

15 (c) Any such hearing shall be conducted by the
16 commission. For the purpose of conducting any such
17 hearing, the commission shall have the power and
18 authority to issue subpoenas and subpoenas duces tecum
19 which shall be issued and served as specified in section
20 one, article five of said chapter twenty-nine-a, and all of
21 the said section one provisions dealing with subpoenas and
22 subpoenas duces tecum shall apply to subpoenas and
23 subpoenas duces tecum issued for the purpose of a
24 hearing hereunder.

25 (d) At any hearing parties may represent themselves
26 or be represented by an attorney-at-law admitted to
27 practice before any circuit court of this state. Upon
28 request by the commission, the commission shall be
29 represented at a hearing by the attorney general or the
30 attorney general's assistants without additional
31 compensation. The commission, with the written approval
32 of the attorney general, may employ special counsel to
33 represent the commission at any hearing.

34 (e) After any hearing and consideration of all of the
35 testimony, evidence and record in the case, the
36 commission shall render a decision in writing. The written
37 decision of the commission shall be accompanied by
38 findings of fact and conclusions of law as specified in
39 section three, article five, chapter twenty-nine-a of this
40 code, and a copy of such decision and accompanying
41 findings and conclusions shall be served by certified mail,
42 return receipt requested, upon all parties and their attorney
43 of record, if any.

44 The decision of the commission shall be final unless
45 reversed, vacated or modified upon judicial review thereof
46 in accordance with the provisions of section eleven of this
47 article.

**§22C-9-11. Judicial review; appeal to supreme court of
appeals; legal representation for commission.**

1 (a) Any party adversely affected by an order of the
2 commission shall be entitled to judicial review thereof. All
3 of the pertinent provisions of section four, article five,
4 chapter twenty-nine-a of this code, shall apply to and
5 govern such judicial review with like effect as if the
6 provisions of said section four were set forth in this
7 section.

8 (b) The judgment of the circuit court shall be final
9 unless reversed, vacated or modified on appeal to the
10 supreme court of appeals in accordance with the
11 provisions of section one, article six, chapter twenty-nine-a
12 of this code, except that notwithstanding the provisions of
13 said section one the petition seeking such review must be
14 filed with said supreme court of appeals within thirty days
15 from the date of entry of the judgment of the circuit
16 court.

17 (c) Legal counsel and services for the commission in
18 all appeal proceedings in any circuit court and the
19 supreme court of appeals shall be provided by the
20 attorney general or the attorney general's assistants and in
21 any circuit court by the prosecuting attorney of the
22 county as well, all without additional compensation. The
23 commission, with the written approval of the attorney
24 general, may employ special counsel to represent the
25 commission at any such appeal proceedings.

§22C-9-12. Injunctive relief.

1 (a) Whenever it appears to the commission that any
2 person has been or is violating or is about to violate any
3 provision of this article, any reasonable rule promulgated
4 by the commission hereunder or any order or final
5 decision of the commission, the commission may apply in
6 the name of the state to the circuit court of the county in
7 which the violations or any part thereof has occurred, is
8 occurring or is about to occur, or the judge thereof in
9 vacation, for an injunction against such person and any
10 other persons who have been, are or are about to be,
11 involved in any practices, acts or omissions, so in violation,
12 enjoining such person or persons from any such violation
13 or violations. Such application may be made and
14 prosecuted to conclusion whether or not any such
15 violation or violations have resulted or shall result in
16 prosecution or conviction under the provisions of section
17 fourteen of this article.

18 (b) Upon application by the commission, the circuit
19 courts of this state may by mandatory or prohibitory
20 injunction compel compliance with the provisions of this
21 article, the reasonable rules promulgated by the
22 commission hereunder and all orders and final decisions
23 of the commission. The court may issue a temporary
24 injunction in any case pending a decision on the merits of
25 any application filed. Any other section of this code to the
26 contrary notwithstanding, the state shall not be required to
27 furnish bond or other undertaking as a prerequisite to
28 obtaining mandatory, prohibitory or temporary injunctive
29 relief under the provisions of this article.

30 (c) The judgment of the circuit court upon any
31 application permitted by the provisions of this section
32 shall be final unless reversed, vacated or modified on
33 appeal to the supreme court of appeals. Any such appeal
34 shall be sought in the manner and within the time
35 provided by law for appeals from circuit courts in other
36 civil actions.

37 (d) The commission shall be represented in all such
38 proceedings by the attorney general or the attorney
39 general's assistants and in such proceedings in the circuit
40 courts by the prosecuting attorneys of the several counties

41 as well, all without additional compensation. The
42 commission, with the written approval of the attorney
43 general, may employ special counsel to represent the
44 commission in any such proceedings.

45 (e) If the commission shall refuse or fail to apply for
46 an injunction to enjoin a violation or threatened violation
47 of any provision of this article, any reasonable rule
48 promulgated by the commission hereunder or any order
49 or final decision of the commission within ten days after
50 receipt of a written request to do so by any person who is
51 or will be adversely affected by such violation or
52 threatened violation, the person making such request may
53 apply in his own behalf for an injunction to enjoin such
54 violation or threatened violation in any court in which the
55 commission might have brought suit. The commission
56 shall be made a party defendant in such application in
57 addition to the person or persons violating or threatening
58 to violate any provision of this article, any reasonable rule
59 promulgated by the commission hereunder or any order
60 or final decision of the commission. The application shall
61 proceed and injunctive relief may be granted without
62 bond or other undertaking in the same manner as if the
63 application had been made by the commission.

§22C-9-14. Penalties.

1 (a) Any person who violates any provision of this
2 article, any of the reasonable rules promulgated by the
3 commission hereunder or any order or any final decision
4 of the commission, other than a violation covered by the
5 provisions of subsection (b) of this section, shall be guilty
6 of a misdemeanor and, upon conviction thereof, shall be
7 fined not more than one thousand dollars, and each day
8 that a violation continues shall constitute a new and
9 separate violation.

10 (b) Any person who, for the purpose of evading any
11 provision of this article, any of the reasonable rules
12 promulgated by the commission hereunder or any order
13 or final decision of the commission, shall make or cause to
14 be made any false entry or statement in a report required
15 under the provisions of this article, any of the reasonable
16 rules promulgated by the commission hereunder or any
17 order or final decision of the commission, or shall make

18 or cause to be made any false entry in any record, account
19 or memorandum required under the provisions of this
20 article, any of the reasonable rules promulgated by the
21 commission hereunder or any order or any final decision
22 of the commission, or who shall omit, or cause to be
23 omitted, from any such record, account or memorandum,
24 full, true and correct entries, or shall remove from this
25 state or destroy, mutilate, alter or falsify any such record,
26 account or memorandum, shall be guilty of a
27 misdemeanor and, upon conviction thereof, shall be fined
28 not more than five thousand dollars, or imprisoned in the
29 county jail not more than six months, or both fined and
30 imprisoned.

31 (c) Any person who knowingly aids or abets any
32 other person in the violation of any provision of this
33 article, any of the reasonable rules promulgated by the
34 commission hereunder or any order of final decision of
35 the commission, shall be subject to the same penalty as
36 that prescribed in this article for the violation by such
37 other person.

§22C-9-16. Rules, orders and permits remain in effect.

1 (a) All orders, determinations, rules, permits, grants,
2 contracts, certificates, licenses, waivers, bonds,
3 authorizations and privileges which have been issued,
4 made, granted or allowed to become effective pursuant to
5 any prior enactment of this article and which are in effect
6 on the effective date of this article shall continue in effect
7 according to their terms until modified, terminated,
8 superseded, set aside or revoked pursuant to this article, by
9 a court of competent jurisdiction, or by operation of law.

10 (b) Orders and actions of the commission or
11 commissioner in the exercise of functions amended by
12 this enactment are subject to judicial review to the same
13 extent and in the same manner as if such orders and
14 actions had been by the commission or commissioner
15 exercising such functions immediately preceding the
16 enactment of this article.

CHAPTER 223

(S. B. 778—By Senators Wooton, Ball, Bowman, Dittmar, Kessler, Ross, Schoonover, Snyder, White, Buckalew, Deem and Kimble)

[Passed March 13, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirteen, article twelve, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the board of parole; parole eligibility; and procedures.

Be it enacted by the Legislature of West Virginia:

That section thirteen, 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.

§62-12-13. Powers and duties of board; eligibility for parole; procedure for granting parole.

1 (a) The board of parole, whenever it is of the opinion
2 that the best interests of the state and of the inmate will be
3 subserved thereby, and subject to the limitations
4 hereinafter provided, shall release any such inmate on
5 parole for such terms and upon such conditions as are
6 provided by this article. Any inmate of a state
7 correctional center, to be eligible for parole:

8 (1) (A) Shall have served the minimum term of his or
9 her indeterminate sentence, or shall have served one fourth
10 of his or her definite term sentence, as the case may be,
11 except that in no case shall any person who committed, or
12 attempted to commit a felony with the use, presentment or
13 brandishing of a firearm, be eligible for parole prior to
14 serving a minimum of three years of his or her sentence or
15 the maximum sentence imposed by the court, whichever is
16 less: *Provided*, That any person who committed, or
17 attempted to commit, any violation of section twelve,
18 article two, chapter sixty-one of this code, with the use,
19 presentment or brandishing of a firearm, shall not be
20 eligible for parole prior to serving a minimum of five
21 years of his or her sentence or one third of his or her

22 definite term sentence, whichever shall be the greater.
23 Nothing in this section shall apply to an accessory before
24 the fact or a principal in the second degree who has been
25 convicted as if he or she were a principal in the first
26 degree if, in the commission of or in the attempted
27 commission of the felony, only the principal in the first
28 degree used, presented or brandished a firearm. No
29 person is ineligible for parole under the provisions of this
30 subdivision because of the commission or attempted
31 commission of a felony with the use, presentment or
32 brandishing of a firearm unless such fact is clearly stated
33 and included in the indictment or presentment by which
34 such person was charged and was either: (i) Found by the
35 court at the time of trial upon a plea of guilty or nolo
36 contendere; or (ii) found by the jury, upon submitting to
37 such jury a special interrogatory for such purpose if the
38 matter was tried before a jury; or (iii) found by the court,
39 if the matter was tried by the court without a jury.

40 For the purpose of this section, the term "firearm" shall
41 mean any instrument which will, or is designed to, or may
42 readily be converted to, expel a projectile by the action of
43 an explosive, gunpowder or any other similar means.

44 (B) The amendments to this subsection adopted in the
45 year one thousand nine hundred eighty-one:

46 (i) Shall apply to all applicable offenses occurring on
47 or after the first day of August of that year;

48 (ii) Shall apply with respect to the contents of any
49 indictment or presentment returned on or after the first
50 day of August of that year irrespective of when the
51 offense occurred;

52 (iii) Shall apply with respect to the submission of a
53 special interrogatory to the jury and the finding to be
54 made thereon in any case submitted to such jury on or
55 after the first day of August of that year or to the requisite
56 findings of the court upon a plea of guilty or in any case
57 tried without a jury: *Provided*, That the state shall give
58 notice in writing of its intent to seek such finding by the
59 jury or court, as the case may be, which notice shall state
60 with particularity the grounds upon which such finding
61 shall be sought as fully as such grounds are otherwise
62 required to be stated in an indictment, unless the grounds
63 therefor are alleged in the indictment or presentment upon
64 which the matter is being tried; and

65 (iv) Shall not apply with respect to cases not affected
66 by such amendment and in such cases the prior provisions
67 of this section shall apply and be construed without
68 reference to such amendment.

69 Insofar as such amendments relate to mandatory
70 sentences restricting the eligibility for parole, all such
71 matters requiring such sentence shall be proved beyond a
72 reasonable doubt in all cases tried by the jury or the court.

73 (2) Shall not be in punitive segregation or
74 administrative segregation as a result of disciplinary
75 action;

76 (3) Shall have maintained a record of good conduct in
77 prison for a period of at least three months immediately
78 preceding the date of his or her release on parole;

79 (4) Shall have submitted to the board a written parole
80 release plan setting forth proposed plans for his or her
81 place of residence, employment and, if appropriate, his or
82 her plans regarding education and postrelease counseling
83 and treatment, said parole release plan having been
84 approved by the commissioner of corrections or his or her
85 authorized representative; and

86 (5) Shall have satisfied the board that if released on
87 parole he or she will not constitute a danger to the
88 community.

89 Except in the case of one serving a life sentence, no
90 person who has been previously twice convicted of a
91 felony may be released on parole until he or she has
92 served the minimum term provided by law for the crime
93 for which he or she was convicted. No person sentenced
94 for life may be paroled until he or she has served ten
95 years, and no person sentenced for life who has been
96 previously twice convicted of a felony may be paroled
97 until he or she has served fifteen years: *Provided*, That no
98 person convicted of first degree murder for an offense
99 committed on or after the tenth day of June, one thousand
100 nine hundred ninety-four, shall be eligible for parole until
101 he or she has served fifteen years. In the case of a person
102 sentenced to any state correctional center, it shall be the
103 duty of the board, as soon as such person becomes
104 eligible, to consider the advisability of his or her release
105 on parole. If, upon such consideration, parole be denied,
106 the board shall at least once a year reconsider and review

107 the case of every inmate so eligible, which reconsideration
108 and review shall be by at least three members of the board:
109 *Provided, however,* That the board may reconsider and
110 review parole eligibility any time within three years
111 following the denial of parole of a person serving a life
112 sentence. The board shall, at the time of denial, notify the
113 person of the month and year they may apply for
114 reconsideration and review. If parole be denied, the
115 inmate shall be promptly notified.

116 (b) Any person serving a sentence on a felony
117 conviction who becomes eligible for parole consideration
118 prior to being transferred to a state correctional center
119 may make written application for parole. The terms and
120 conditions for parole consideration established by this
121 article shall be applied to such inmates.

122 (c) The board shall, with the approval of the governor,
123 adopt rules governing the procedure in the granting of
124 parole. No provision of this article and none of the rules
125 adopted hereunder are intended or shall be construed to
126 contravene, limit or otherwise interfere with or affect the
127 authority of the governor to grant pardons and reprieves,
128 commute sentences, remit fines or otherwise exercise his
129 or her constitutional powers of executive clemency.

130 The department of corrections shall be charged with
131 the duty of supervising all probationers and parolees
132 whose supervision may have been undertaken by this state
133 by reason of any interstate compact entered into pursuant
134 to the uniform act for out-of-state parolee supervision.

135 (d) When considering an inmate of a state correctional
136 center for release on parole, the parole board shall have
137 before it an authentic copy of or report on the inmate's
138 current criminal record as provided through the West
139 Virginia state police, the United States department of
140 justice or other reliable criminal information sources and
141 written reports of the warden or superintendent of the state
142 correctional center to which such inmate is sentenced:

143 (1) On the inmate's conduct record while in custody,
144 including a detailed statement showing any and all
145 infractions of disciplinary rules by the inmate and the
146 nature and extent of discipline administered therefor;

147 (2) On improvement or other changes noted in the
148 inmate's mental and moral condition while in custody,

149 including a statement expressive of the inmate's current
150 attitude toward society in general, toward the judge who
151 sentenced him or her, toward the prosecuting attorney who
152 prosecuted him or her, toward the policeman or other
153 officer who arrested the inmate and toward the crime for
154 which he or she is under sentence and his or her previous
155 criminal record;

156 (3) On the inmate's industrial record while in custody
157 which shall include: The nature of his or her work,
158 occupation or education, the average number of hours per
159 day he or she has been employed or in class while in
160 custody and a recommendation as to the nature and kinds
161 of employment which he or she is best fitted to perform
162 and in which the inmate is most likely to succeed when he
163 or she leaves prison;

164 (4) On physical, mental and psychiatric examinations
165 of the inmate conducted, insofar as practicable, within the
166 two months next preceding parole consideration by the
167 board.

168 The board may waive the requirement of any such
169 report when not available or not applicable as to any
170 inmate considered for parole but, in every such case, shall
171 enter in the record thereof its reason for such waiver:
172 *Provided*, That in the case of an inmate who is
173 incarcerated because such inmate has been found guilty
174 of, or has pleaded guilty to a felony under the provisions
175 of section twelve, article eight, chapter sixty-one of this
176 code or under the provisions of article eight-b or eight-c,
177 chapter sixty-one of this code, the board may not waive
178 the report required by this subsection and the report shall
179 include a study and diagnosis which shall include an
180 on-going treatment plan requiring active participation in
181 sexual abuse counseling at an approved mental health
182 facility or through some other approved program:
183 *Provided, however*, That nothing disclosed by the person
184 during such study or diagnosis shall be made available to
185 any law-enforcement agency, or other party without that
186 person's consent, or admissible in any court of this state,
187 unless such information disclosed shall indicate the
188 intention or plans of the parolee to do harm to any person,
189 animal, institution, or to property. Progress reports of
190 outpatient treatment shall be made at least every six
191 months to the parole officer supervising such person. In
192 addition, in such cases, the parole board shall inform the

193 prosecuting attorney of the county in which the person
194 was convicted of the parole hearing and shall request that
195 the prosecuting attorney inform the parole board of the
196 circumstances surrounding a conviction or plea of guilty,
197 plea bargaining and other background information that
198 might be useful in its deliberations.

199 Before releasing any inmate on parole, the board of
200 parole shall arrange for the inmate to appear in person
201 before at least three members of the board and the board
202 may examine and interrogate him or her on any matters
203 pertaining to his or her parole, including reports before
204 the board made pursuant to the provisions hereof. The
205 board shall reach its own written conclusions as to the
206 desirability of releasing such inmate on parole and the
207 majority of the board members considering the release
208 shall concur in the decision. The warden or
209 superintendent shall furnish all necessary assistance and
210 cooperate to the fullest extent with the parole board. All
211 information, records and reports received by the board
212 shall be kept on permanent file.

213 The board and its designated agents shall at all times
214 have access to inmates imprisoned in any state correctional
215 center or in any city, county or regional jail in this state,
216 and shall have the power to obtain any information or aid
217 necessary to the performance of its duties from other
218 departments and agencies of the state or from any political
219 subdivision thereof.

220 The board shall, if so requested by the governor,
221 investigate and consider all applications for pardon,
222 reprieve or commutation and shall make recommendation
223 thereon to the governor.

224 Prior to making such recommendation and prior to
225 releasing any inmate on parole, the board shall notify the
226 sentencing judge and prosecuting attorney at least ten
227 days before such recommendation or parole. Any person
228 released on parole shall participate as a condition of
229 parole in the litter control program of the county to the
230 extent directed by the board, unless the board specifically
231 finds that this alternative service would be inappropriate.

CHAPTER 224

(Com. Sub. for H. B. 2274—By Mr. Speaker, Mr. Kiss, and Delegates Walters, Leach, Clements and Webb)

[Passed March 14, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section fifteen, article five-b, chapter twenty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the sale of prison-made goods; exception to prohibition for waste tire products; prohibition against sales of waste tire products at a loss; and profits to be divided equally between prison industries fund and crime victims fund.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5B. PRISON-MADE GOODS.

§28-5B-15. Sale of prison-made goods on open market prohibited; penalty; exceptions.

1 (a) Subject to the provisions of subsections (b) and (c)
2 of this section, it is unlawful to sell or offer for sale on the
3 open market of this state any articles or products
4 manufactured or produced, wholly or in part, in this or
5 any other state, by convicts or prisoners of this state, or
6 any other state, except convicts or prisoners on parole or
7 probation. This provision does not apply to the sale of
8 products made with waste tires: *Provided*, That any use of
9 waste tires shall comply with applicable laws and rules of
10 the division of environmental protection: *Provided*,
11 *however*, That any products made by inmates from waste
12 tires and sold on the open market must be competitively
13 priced with privately produced goods of the same nature
14 and may not be sold at a loss: *Provided further*, That any
15 profits earned from the sale of products made by inmates
16 from waste tires shall be distributed as follows: First, to the

17 prison industries fund to reimburse all moneys expended
18 in the collection of waste tires and the production of waste
19 tire products, including a reasonable amount to be set
20 aside for the periodic replacement of outdated, obsolete or
21 inoperable machinery or equipment used in collection or
22 production, and second, any moneys remaining shall be
23 divided equally between the prison industries fund and the
24 crime victims compensation fund established by the
25 provisions of section two, article two-a, chapter fourteen of
26 this code.

27 (b) Any person violating the provisions of this section
28 is guilty of a misdemeanor and, upon conviction, shall be
29 punished by a fine of not less than two hundred dollars
30 nor more than five thousand dollars, or by imprisonment
31 in jail not less than three months nor more than one year,
32 or by both fine and imprisonment. Each sale or offer for
33 sale shall constitute a separate offense under this section.

34 (c) Notwithstanding the provisions of subsection (a) of
35 this section, any articles or products manufactured or
36 produced, wholly or in part, by inmates of West Virginia
37 penal and correctional institutions and facilities which are
38 designed and intended to be used solely by blind and
39 handicapped persons, including, but not limited to, braille
40 books and reading materials, may be sold or offered for
41 sale or distributed on the open market by the department
42 of corrections or other state department or agency.

43 (d) Notwithstanding the provisions of subsection (a) of
44 this section, arts and crafts produced by inmates may be
45 sold to the general public by the department of
46 corrections or by other agencies or departments of state
47 government as the commissioner of corrections may
48 designate. The arts and crafts shall be sold only on a
49 consignment basis so that inmates whose arts and crafts
50 products are sold shall receive payment for the products.
51 The payments shall be deposited in the accounts or funds
52 and managed in a manner as provided by section six,
53 article five of this chapter: *Provided*, That where the state
54 department of corrections or any other agency or
55 department of state government provides any materials
56 used in the production of an arts and crafts product, the

57 fair market value of the materials may be deducted from
58 the account of the individual inmate after the sale of the
59 product.

60 (e) For purposes of this section, "arts and crafts" means
61 articles produced individually by artistic or craft skill such
62 as, but not limited to, painting, sculpture, pottery and
63 jewelry.

CHAPTER 225

(Com. Sub. for H. B. 4035—By Delegates Fleischauer, Staton, Fragale,
Dalton, Varner, Hutchins and Yeager)

[Passed March 14, 1998; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section three-z, article one, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections three, five, six, seven and eleven, article thirty-seven, chapter thirty of said code, relating to licensing massage therapists; excepting licensed massage therapists from the authority of county commissions; composition of board; duties of board to propose rules; requirements for licensure; and exemptions.

Be it enacted by the Legislature of West Virginia:

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

Chapter

7. County Commissions and Officers.
30. Professions and Occupations.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 1. COUNTY COMMISSIONS GENERALLY.**§7-1-3z. Authority of counties to govern business of massage.**

1 (a) In addition to all other powers and duties now
2 conferred by law upon county commissions, county
3 commissions, may by order duly entered of record, adopt
4 an ordinance which provides for the licensing for the
5 regulation of the business of massage when carried on
6 within the county. The ordinances may be adopted either
7 for the entire county, or for any portion or portions of the
8 county which may constitute an effective area or areas for
9 those purposes, without the necessity of adopting the
10 ordinances for any other portion of the county.
11 Notwithstanding any other provision of this section to the
12 contrary, no ordinance shall apply to or affect any
13 territory within the boundaries of any municipal
14 corporation which has adopted and has in effect an
15 ordinance which provides for the regulation of the
16 business of massage, unless and until the municipal
17 corporation provides for the regulation of the business of
18 massage by ordinance.

19 (b) The ordinance may condition the issuance of a
20 license to engage in the business of massage upon proof
21 that a massage business meets the reasonable standards set
22 by the ordinance, which may include, but need not be
23 limited to, the following areas:

24 (1) Requirement that massage personnel be at least
25 eighteen years of age;

26 (2) Sanitary conditions of the massage establishment;

27 (3) Hours of operation of the massage business; and

28 (4) Prohibition of the sale or serving of food or
29 beverage or the conducting of nonmassage business on
30 the premises of the massage business. In the event that the
31 business premises in which the massage business is
32 conducted has separate quarters used for purposes other
33 than the massage business, the prohibition of this
34 subsection applies only to the portion of the premises

35 exclusively devoted to the conduct of the massage
36 business.

37 (c) The ordinance may also provide that a license to
38 engage in the business of massage may be denied upon a
39 showing by the licensing authority of any of the
40 following:

41 (1) Proof that the massage personnel or the owners or
42 operators of a massage business have been convicted of a
43 violation of any of the provisions of article eight, eight-a,
44 eight-b or eight-c, chapter sixty-one of this code or proof
45 that massage personnel or the owners or operators of a
46 massage business have been convicted in any other state of
47 any offense which, if committed or attempted in this state,
48 would have been punishable as one of the offenses set
49 forth in this subsection;

50 (2) Proof that the massage personnel, or the owners, or
51 operators of a massage business have been convicted of
52 any felony offense involving the sale of a controlled
53 substance specified in section two hundred four, two
54 hundred six, two hundred eight, two hundred ten or two
55 hundred twelve, article two, chapter sixty-a of this code or
56 proof that the massage personnel or the owners or
57 operators of the massage business have been convicted in
58 any other state of any offense, which if committed or
59 attempted in this state, would have been punishable as one
60 or more of the offenses set forth in this subsection.

61 (d) The ordinance may require that application to
62 conduct the business of massage be made on a form
63 prescribed by the licensing authority, which may require
64 the following information:

65 (1) The name of the applicant;

66 (2) If the applicant is an unincorporated association,
67 the names and addresses of the members of its governing
68 board;

69 (3) If the applicant is a corporation, the names and
70 addresses of its officers and directors;

71 (4) The place at which the applicant will conduct its
72 operations and whether that place is owned or leased by
73 the applicant;

74 (5) The name of the owner of the place at which the
75 applicant will conduct its operation, if not the same as the
76 applicant;

77 (6) The number of members of the applicant;

78 (7) The names of all massage personnel, owners,
79 operators or other employees of the massage business;

80 (8) Any other information as the licensing authority
81 may reasonably require which may include, but need not
82 be limited to, the criminal records, if any, of each member
83 of the applicant's governing board and/or its officers and
84 directors, or any of the massage personnel, owners,
85 operators or other employees of the massage business who
86 have been convicted of any violation of any of the
87 provisions set forth in subsection (c) of this section.

88 The ordinance may require that the application be
89 verified by the applicant or by each member of the
90 governing board of the applicant if an unincorporated
91 association or, if the applicant is a corporation, by each of
92 its officers and all members of its board of directors. The
93 ordinance may also require that the application be
94 accompanied by a license fee not exceeding the sum of
95 one hundred dollars. Any license issued under the
96 provisions of this section is effective for one year and may
97 be renewed upon the same showing as required for the
98 issuance of the initial license, together with the payment of
99 fees, if any. The ordinance may require license holders to
100 notify the licensing authority of any changes in the
101 information required by the application within a
102 reasonable period after the changes occurred.

103 (e) This section does not apply to barbers or
104 beauticians licensed to practice, or to persons licensed to
105 practice in any of the health professions, or to persons
106 licensed to practice as massage therapists, under the

107 provisions of chapter thirty of this code when engaging in
108 the practice within the scope of his or her license.

109 (f) Nothing contained in this chapter precludes a
110 county commission from prohibiting a person of one sex
111 from engaging in the massage of a person of the other
112 sex.

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

ARTICLE 37. MASSAGE THERAPISTS.

§30-37-3. Board established; membership; terms.

§30-37-5. Massage therapy board fund; fees; expenses; disposition of funds.

§30-37-6. Duties of board; authorization to propose rules and fees.

§30-37-7. Requirements for licensure.

§30-37-11. Exemptions.

§30-37-3. Board established; membership; terms.

1 (a) The West Virginia massage therapy licensure
2 board consists of five members who are appointed by the
3 governor with the advice and consent of the Senate.
4 Three members of the board shall be massage therapists,
5 one member of the board shall be an osteopathic
6 physician or chiropractor who is knowledgeable of
7 modalities which are included in massage therapy, and one
8 member of the board shall be a lay person who is not a
9 massage therapist or other health care professional.

10 (b) The terms of board members shall be staggered
11 initially from the first day of July, one thousand nine
12 hundred ninety-seven. The governor shall appoint
13 initially three members for a term of one year and two
14 members for a term of two years. Subsequent
15 appointments shall be for a term of two years. Each
16 member shall serve until that member's successor is
17 appointed and qualified, unless the board member is no
18 longer competently performing the duties of office. Any
19 vacancy on the board shall be filled by the governor for
20 the balance of the unexpired term. The governor may
21 remove members of the board from office for cause.

§30-37-5. Massage therapy board fund; fees; expenses; disposition of funds.

1 (a) There is hereby continued a massage therapy
2 licensure board fund in the state treasurer's office.

3 (b) The board may set, by legislative rule, reasonable
4 fees for the issuance or renewal of licenses and its other
5 services. All funds to cover the compensation and
6 expenses of the board members shall be generated by the
7 fees set under this subsection.

8 (c) The disposition of all funds received by the board
9 shall be governed by the provisions of section ten, article
10 one, chapter thirty of this code.

§30-37-6. Duties of board; authorization to propose rules and fees.

1 The board shall propose rules for legislative approval
2 in accordance with the provisions of article three, chapter
3 twenty-nine-a of this code as are necessary to implement
4 the provisions of this article, which shall include provisions
5 regarding:

6 (a) Licensure and continuing education requirements,
7 standards of practice, professional ethics, disciplinary
8 actions, and other issues of concern;

9 (b) Personal cleanliness of massage therapists and the
10 sanitary conditions of towels, linens, creams, lotions and
11 other materials, facilities, and equipment used in the
12 practice of massage therapy; and

13 (c) All fees for licensure, renewal of licensure, and all
14 other related matters.

§30-37-7. Requirements for licensure.

1 (a) The board shall propose rules for legislative
2 approval establishing a procedure for licensing of massage
3 therapists. License requirements shall include the
4 following:

5 (1) Completion of a program of massage education at
6 a school approved by the West Virginia state college
7 system board or by a state agency in another state, the
8 District of Columbia or a United States territory which
9 approves educational programs and which meets
10 qualifications for the national certification exam
11 administered through the national certification board for
12 therapeutic massage and bodywork. This school shall
13 require a diploma from an accredited high school, or the
14 equivalent, and require completion of at least five hundred
15 hours of supervised academic instruction. The
16 requirements of this subdivision may be waived for those
17 practitioners who were practicing massage therapy prior to
18 the first day of December, one thousand nine hundred
19 ninety-four; or

20 (2) Successful completion of the national certification
21 for therapeutic massage and bodywork (NCTMB)
22 examination; except that any person who is currently
23 practicing massage therapy as of the thirtieth day of June,
24 one thousand nine hundred ninety-eight, and has
25 completed at least two hundred fifty hours of training in a
26 massage therapy educational program and is currently
27 working toward completion of a program accepted by the
28 national certification board for therapeutic massage and
29 bodywork to be eligible to take the national certification
30 exam, may be granted a two-year provisional license
31 without having successfully completed the national
32 certification for therapeutic massage and bodywork
33 examination. Any provisional license granted under this
34 exception expires in two years if the national certification
35 for therapeutic massage and bodywork examination is not
36 successfully completed within that time; and

37 (3) Payment of a reasonable fee every two years
38 required by the board which shall compensate and be
39 retained by the board for the costs of administration.

40 (b) In addition to provisions for licensure, the rules
41 shall include the following:

42 (1) Requirements for completion of continuing
43 education hours conforming to NCTMB guidelines; and

44 (2) Requirements for issuance of a reciprocal license
45 to licensees of states with requirements which may include
46 the successful completion of the NCTMB examination.

47 (c) A massage therapist who is licensed by the board
48 shall be issued a certificate and a license number. The
49 current, valid license certificate shall be publicly displayed
50 and available for inspection by the board and the public at
51 a massage therapist's work site.

§30-37-11. Exemptions.

1 Nothing in this article may be construed to prohibit or
2 otherwise limit:

3 (a) The practice of a profession by persons who are
4 licensed, certified or registered under the laws of this state
5 and who are performing services within their authorized
6 scope of practice. Persons exempted under this
7 subdivision include, but are not limited to, those licensed,
8 certified or registered to practice within the scope of any
9 branch of medicine, nursing, osteopathy, chiropractic and
10 podiatry, as well as licensed, certified or registered barbers,
11 cosmetologists, athletic trainers, physical and occupational
12 therapists; and any student enrolled in a program of
13 massage education at a school approved by the West
14 Virginia state college system board or by a state agency in
15 another state, the District of Columbia or a United States
16 territory which approves educational programs and which
17 meets qualifications for the national certification exam
18 administered through the national certification board for
19 therapeutic massage and bodywork, provided that the
20 student does not hold himself or herself out as a licensed
21 massage therapist; and

22 (b) The activities of any resort spa that has been
23 operating on a continuing basis since the first day of
24 January, one thousand nine hundred seventy-five, or any
25 employees of the resort spa. The exemption set forth in
26 this subsection does not extend to any person, corporation
27 or association providing escort services, nude dancing, or
28 other sexually oriented services not falling within the
29 scope of massage therapy as defined in this article,
30 irrespective of how long the person, corporation or
31 association has been in operation.

CHAPTER 226

(Com. Sub. for H. B. 4105—By Delegates Kuhn, Manuel, Seacrist,
Tillis, Pettit, Linch and Willison)

[Passed March 12, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article three-d, relating to the certification of crane operators; providing definitions; identifying the commencement date; distinguishing who is required to be certified; authorizing the commissioner of the division of labor to propose rules; providing that rules include the certification process, categories and renewal requirements; setting forth additional duties of the commissioner; authorizing the minimum certification requirements; permitting the commissioner to deny, suspend, revoke or reinstate certification in certain instances; requiring certified crane operators to carry proof of certification while operating a crane; allowing application for certification after revocation; requiring due process procedures be followed prior to revocation, suspension or other disciplinary action; providing for fines and criminal penalties upon conviction of operating a crane without certification; providing for fines and criminal penalties upon conviction of knowingly and intentionally operating a crane under the influence of certain substances; providing for fines and criminal penalties upon conviction of employing, permitting or directing certain crane operators; establishing a crane operator certification fund and providing procedures therefor; and, authorizing reciprocity.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3D. CRANE OPERATOR CERTIFICATION ACT.

- §21-3D-1. Definitions.
- §21-3D-2. Certification required; exemptions.
- §21-3D-3. Powers and duties of commissioner.
- §21-3D-4. Minimum certification requirements.
- §21-3D-5. Denial, suspension, revocation, or reinstatement of certification.
- §21-3D-6. Effect of accident.
- §21-3D-7. Penalties.
- §21-3D-8. Crane Operator Certification Fund; Fees; disposition of funds.
- §21-3D-9. Reciprocity.

§21-3D-1. Definitions.

1 For purposes of this article:

2 (a) "Commissioner" means the commissioner of the
3 division of labor, or his or her authorized representative.

4 (b) "Crane" means a power-operated hoisting
5 machine used in construction, demolition or excavation
6 work, which has a power-operated winch and load line and
7 a power-operated boom that moves laterally by the
8 rotation of the machine on a carrier, and which has a
9 manufacturer's rated lifting capacity of five tons or more.
10 "Crane" does not include a forklift, digger derrick truck,
11 bucket truck or any vehicle or equipment which does not
12 have a power-operated winch and load line.

13 (c) "Emergency basis" means an occurrence of an
14 event, circumstance or situation that presents an imminent
15 threat to persons or property and constitutes a serious
16 health or safety hazard.

17 (d) "Employer" means any person, firm, corporation
18 or other entity who hires or permits any individual to
19 work.

20 (e) "Employee" means any individual employed by
21 an employer and also as defined by the commissioner.

§21-3D-2. Certification required; exemptions.

1 (a) Commencing with the first day of January, two
2 thousand and notwithstanding the provisions contained in
3 subsection (b) of this section, a person may not operate a
4 crane with a lifting capacity of five tons or more without
5 certification issued under this article.

6 (b) A person is not required to obtain certification
7 under this article if the person:

8 (1) Is a member of the armed forces of the United
9 States or an employee of the United States, when such
10 member or employee is engaged in the work of a crane
11 operator exclusively 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
14 agricultural 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
17 profit on the site of real property which the person owns
18 or leases; or,

19 (5) Is under the direct supervision of a certified crane
20 operator, and,

21 (A) Who is enrolled in an industry recognized in-
22 house training course based on the American national
23 standards institute standards for crane operators and who
24 is employed by the entity that either taught the training
25 course or contracted to have the training course taught, all
26 of which is approved by the commissioner; or,

27 (B) Who is enrolled in an apprenticeship program or
28 training program for crane operators approved by the
29 United States department of labor, bureau of
30 apprenticeship and training;

31 (6) Is an employee of and operating a crane at the
32 direction of any manufacturing plant or other industrial
33 establishment, including any mill, factory, tannery, paper
34 or pulp mill, mine, colliery, breaker or mineral processing
35 operation, quarry, refinery or well, or is an employee of
36 and operating a crane at the direction of the person, firm
37 or corporation who owns or is operating such plant or
38 establishment;

39 (7) Is an employee of a public utility operating a
40 crane to perform work in connection with facilities used to
41 provide a public service under the jurisdiction of the

42 public service commission, federal energy regulatory
43 commission or federal communications commission; or,

44 (8) Is operating timbering harvesting machinery
45 associated with the production of timber and the
46 manufacturing of wood products.

§21-3D-3. Powers and duties of commissioner.

1 The commissioner shall:

2 (a) Propose rules for legislative approval in
3 accordance with the provisions of article three, chapter
4 twenty-nine-a of this code, no later than the first day of
5 July, one thousand nine hundred ninety-eight, which rules
6 at the minimum shall include provisions for:

7 (1) Certification of individuals who operate cranes in
8 the state of West Virginia, which certification process shall
9 include a written examination and a practical
10 demonstration, and shall utilize standards no less restrictive
11 than those prescribed by the American society of
12 mechanical engineers/American national standards
13 institute safety code as of the effective date of this article:
14 *Provided*, That the rule governing the practical
15 examination shall be a separate rule and shall provide for
16 the implementation of the practical examination on or
17 before the first day of January, two thousand one.

18 (2) Certification categories that shall include lattice
19 boom truck cranes; lattice boom crawler cranes; small
20 telescoping boom cranes, with a lifting capacity of at least
21 five tons but not more than seventeen and one-half tons;
22 and large telescopic boom cranes, with a lifting capacity
23 greater than seventeen and one-half tons;

24 (3) Certification renewal requirements of individuals
25 who operate cranes in the state of West Virginia, that may
26 not be more restrictive than those prescribed for the
27 individual's initial certification, but shall include a written
28 examination and a current physician's certificate at least
29 every five years;

30 (b) Prescribe application forms for original and
31 renewal certification.

32 (c) Set application fees in amounts that are reasonable
33 and necessary to defray the costs of the administration of
34 this article in an amount not to exceed seventy-five dollars
35 per year.

36 (d) Set examination fees in an amount not to exceed
37 the actual cost of the examination.

38 (e) Administer or cause to be administered the written
39 examination and practical demonstrations as required for
40 certification.

41 (f) Determine the standards for acceptable
42 performance on the written examination and practical
43 demonstration: *Provided*, That the minimum standards
44 shall be consistent with national standards and transferable
45 to other states where possible.

46 (g) If requested by an individual who fails an
47 examination, provide the person a written analysis of the
48 person's performance on the examination.

49 (h) Take other action as necessary to enforce this
50 article.

§21-3D-4. Minimum certification requirements.

- 1 (a) The commissioner shall certify an applicant who:
- 2 (1) Is at least eighteen years of age;
- 3 (2) Meets the application requirements as prescribed
4 by rule;
- 5 (3) Passes the written examination;
- 6 (4) Passes the practical demonstration: *Provided*, That
7 any person who documents at least two thousand hours of
8 on-the-job experience operating a crane during the
9 preceding four years next prior to filing for application is
10 entitled to certification without a practical demonstration
11 under this article if the person applies for certification no
12 later than the first day of January, two thousand, meets all
13 other requirements and pays applicable application and
14 examination fees;

15 (5) Presents the original, or a photographic copy, of a
16 physician's certificate that he or she is physically qualified
17 to drive a commercial motor vehicle as required by 49
18 C.F.R. §391.41 as of the effective date of this article, or an
19 equivalent physician's certificate as approved by the
20 commissioner; and,

21 (6) Pays the application and examination fees.

22 (b) Certification issued under this article is valid
23 throughout the state and is not assignable or transferable,
24 and is valid for one year from the date on which it was
25 issued.

§21-3D-5. Denial, suspension, revocation, or reinstatement of certification.

1 (a) The commissioner may deny, suspend, revoke or
2 reinstate certification.

3 (b) A violation of this article or rule adopted pursuant
4 to this article is grounds for the denial, suspension,
5 revocation or refusal to reinstate certification and permits
6 the imposition of disciplinary action: *Provided*, That no
7 disciplinary action against a crane operator may be
8 imposed without a proper prior notice as served under
9 section one, article two, chapter fifty-six of this code, and
10 an opportunity for hearing held before the commissioner
11 or his designee wherein the crane operator will be
12 provided the opportunity to present evidence in person, by
13 counsel or both and after which, if the commissioner finds
14 a violation of this article has occurred, the commissioner
15 may impose any disciplinary action permitted in this
16 article: *Provided, however*, That the provisions of
17 subsection (e) of section seven of this article have not been
18 met.

19 (c) Operation of a crane in violation of this article or
20 other provision of this code may result in the suspension
21 of certification for not less than twenty-four hours nor
22 more than one year, or revocation of certification until
23 reinstated.

24 (d) Each certified crane operator shall carry proof of
25 certification on his or her person during operation of a
26 crane.

27 (e) A person whose certification has been revoked
28 may apply for certification one year after the date of the
29 revocation.

§21-3D-6. Effect of accident.

1 (a) The commissioner may suspend or revoke the
2 certification of a person involved in an accident relating to
3 the operation of a crane by that person: *Provided*, That no
4 disciplinary action against a crane operator may be
5 imposed without a proper prior notice as served under
6 section one, article two, chapter fifty-six of this code, and
7 hearing held before the commissioner or his or her
8 designee wherein the crane operator will be provided the
9 opportunity to present evidence in person, by counsel or
10 both and after which, the commissioner finds a violation
11 of this article has occurred, the commissioner may impose
12 any disciplinary action permitted in this article: *Provided*,
13 *however*, That the provisions of subsection (e) of section
14 seven of this article have not been met.

15 (b) If the commissioner makes a finding that the
16 accident was caused by the actions or omissions of the
17 certificate holder, the commissioner may require the
18 certificate holder to retake and pass the certification
19 examination and/or demonstration before the certificate
20 holder may apply to have the certification reinstated.

§21-3D-7. Penalties.

1 (a) A person required to obtain certification under this
2 article, who operates a crane without certification, is guilty
3 of a misdemeanor and, upon conviction thereof, shall be
4 fined not less than fifty dollars nor more than five
5 hundred dollars for each violation.

6 (b) No person may knowingly or intentionally drive
7 or operate a crane while:

8 (1) Having any measurable alcohol in his or her
9 system; or,

10 (2) Under the influence of any controlled substance,
11 as defined by subdivision (d), section one hundred one,
12 article one, chapter sixty-a of this code; or

13 (3) Under the combined influence of alcohol and any
14 controlled substance or any other drug.

15 A person who violates this subsection is guilty of a
16 misdemeanor and, upon conviction thereof, shall be fined
17 not less than one hundred dollars nor more than one
18 thousand dollars. In addition to the fine, the commissioner
19 of labor shall revoke the person's certification for not less
20 than one year.

21 (c) An employer who knowingly employs, permits or
22 directs a person to operate a crane without proper
23 certification is guilty of a misdemeanor and, upon
24 conviction thereof, shall be fined not less than one
25 hundred dollars nor more than one thousand dollars for
26 each violation.

27 (d) A person, operating a crane, who fails to produce
28 the certification within twenty-four hours after request of
29 the commissioner or his or her authorized representative,
30 is guilty of a misdemeanor and, upon conviction thereof,
31 shall be fined not less than fifty dollars nor more than one
32 hundred dollars.

33 (e) If a person is convicted for an offense described in
34 this section, and does not act to appeal the conviction
35 within the time periods as hereinafter described, then the
36 person's certification may be revoked or suspended in
37 accordance with the provisions of this article, and, further:

38 (1) The clerk of the court in which a person is
39 convicted for an offense described in this section shall
40 forward to the commissioner a transcript of the judgment
41 of conviction. If the conviction is the judgment of a
42 magistrate court, the magistrate court clerk shall forward
43 the transcript when the person convicted has not requested
44 an appeal within twenty days of the sentencing for such
45 conviction. If the conviction is the judgment of a circuit
46 court, the circuit clerk shall forward the transcript when
47 the person convicted has not filed a notice of intent to file

48 a petition for appeal or writ of error within thirty days
49 after the judgment was entered; and,

50 (2) If, upon examination of the transcript of the
51 judgment of conviction, the commissioner shall determine
52 that the person was convicted for any of the offenses
53 described in this section, the commissioner shall make and
54 enter an order revoking or suspending the person's
55 certificate to operate a crane in this state. The order shall
56 contain the reasons for the revocation or suspension and
57 the revocation or suspension periods provided for by this
58 article or by rule. Further, the order shall give the
59 procedures for requesting a hearing. The person shall be
60 advised in the order that because of the receipt of a
61 transcript of the judgment of conviction by the
62 commissioner a presumption exists that the person named
63 in the transcript of the judgment of conviction is the
64 person named in the commissioner's order and such
65 constitutes sufficient evidence to support revocation or
66 suspension and that the sole purpose for the hearing held
67 under this section is for the person requesting the hearing
68 to present evidence that he or she is not the person named
69 in the transcript of the judgment of conviction. A copy of
70 the order shall be forwarded to the person by registered or
71 certified mail, return receipt requested. No revocation or
72 suspension shall become effective until ten days after
73 receipt of a copy of the order; and,

74 (3) The provisions of this subsection shall not apply if
75 an order reinstating the crane operator's certification of
76 the person has been entered by the commissioner prior to
77 the receipt of the transcript of the judgment of conviction,
78 and,

79 (4) For the purposes of this section, a person is
80 convicted when the person enters a plea of guilty or is
81 found guilty by a court or jury.

**§21-3D-8. Crane Operator Certification Fund; Fees;
disposition of funds.**

1 (a) There is hereby established a crane operator
2 certification fund in the state treasurer's office.

3 (b) The commissioner may set reasonable application
4 fees for the issuance or renewal of certificates and other
5 services associated with crane operator certification.

6 (c)(1) The commissioner shall receive and account for
7 all money that is derived pursuant to the provisions of this
8 article. The commissioner shall pay all money collected
9 into the crane operator certification fund that has been
10 established pursuant to subsection (a), section eight of this
11 article, with the exception of money received as fines. This
12 money shall be used exclusively by the commissioner for
13 purposes of administration and enforcement of his or her
14 duties pursuant to this article.

15 (2) Expenditures from the crane operator certification
16 fund shall be for the purposes set forth in this article and
17 are not authorized from collections but are to be made
18 only in accordance with appropriation by the Legislature
19 in accordance with the provisions of article three, chapter
20 twelve of this code and upon the fulfillment of the
21 provisions set forth in article two, chapter five-a of this
22 code: *Provided*, That for the fiscal year ending the
23 thirtieth day of June, one thousand nine hundred ninety-
24 nine, expenditures are authorized from collections rather
25 than pursuant to an appropriation by the Legislature.
26 Amounts collected which are found from time to time to
27 exceed the funds needed for purposes set forth in this
28 article may be transferred to other accounts or funds and
29 redesignated for other purposes by appropriation of the
30 Legislature.

§21-3D-9. Reciprocity.

1 To the extent that other states provide for the
2 certification of crane operators for similar action, the
3 commissioner, in his or her discretion, may grant
4 certification of the same or equivalent classification to
5 persons certified by other states, without examination
6 upon satisfactory proof furnished to the commissioner
7 that the qualifications for the applicants are equal to the
8 qualifications of the holders of similar certification in this
9 state, and upon payment of the required application fee.

CHAPTER 227

(H. B. 4021—By Delegates Douglas, Collins, Thompson, Given, Tucker,
Azinger and Capito)

[Passed February 23, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twelve, article one, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to public access to licensing boards.

Be it enacted by the Legislature of the West Virginia:

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

**ARTICLE 1. GENERAL PROVISIONS APPLICABLE TO ALL
STATE BOARDS OF EXAMINATION OR
REGISTRATION REFERRED TO IN CHAPTER.**

**§30-1-12. Record of proceedings; register of applicants;
certified copies of records prima facie evidence;
report to governor and Legislature; public
access.**

1 (a) The secretary of every board shall keep a record of
2 its proceedings and a register of all applicants for license
3 or registration, showing for each the date of his or her
4 application, his or her name, age, educational and other
5 qualifications, place of residence, whether an examination
6 was required, whether the applicant was rejected or a
7 certificate of license or registration granted, the date of
8 this action, the license or registration number, all renewals
9 of the license or registration, if required, and any
10 suspension or revocation thereof. The books and register
11 of the board shall be open to public inspection at all
12 reasonable times, and the books and register, or a copy of
13 any part thereof, certified by the secretary and attested by
14 the seal of the board, shall be prima facie evidence of all
15 matters recorded therein.

16 (b) On or before the first day of January of each year
17 in which the Legislature meets in regular session, the
18 board shall submit to the governor and to the Legislature a
19 report of its transactions for the preceding two years, an
20 itemized statement of its receipts and disbursements for
21 that period, a full list of the names of all persons licensed
22 or registered by it during that period, statistical reports by
23 county of practice, by specialty if appropriate to the
24 particular profession, and a list of any complaints which
25 were filed against persons licensed by the board, including
26 any action taken by the board regarding those complaints.
27 The report shall be certified by the president and the
28 secretary of the board, and a copy of the report shall be
29 filed with the secretary of state.

30 (c) To promote public access, the secretary of every
31 board shall ensure that the address and telephone number
32 of the board are included every year in the state
33 government listings of the Charleston area telephone
34 directory. Every board shall regularly evaluate the
35 feasibility of adopting additional methods of providing
36 public access, including, but not limited to, listings in
37 additional telephone directories, toll-free telephone
38 numbers, facsimile and computer-based communications.



CHAPTER 228

(S. B. 395—By Senators Bowman, Bailey and Ball)



[Passed March 4, 1998; in effect ninety days from passage. Approved by the Governor.]



AN ACT to amend chapter thirty 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 required procedure for regulation of occupations and professions.

Be it enacted by the Legislature of West Virginia:

That chapter thirty 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. PROCEDURE FOR REGULATION OF OCCUPATIONS AND PROFESSIONS.

§30-1A-1. Legislative findings.

§30-1A-2. Required application for regulation of professional or occupational group.

§30-1A-3. Analysis and evaluation of application.

§30-1A-4. Public hearing and committee recommendations.

§30-1A-5. Reapplication requirements.

§30-1A-6. Article not to be construed as limiting new legislation.

§30-1A-1. Legislative findings.

1 The Legislature finds that regulation should be
2 imposed on an occupation or profession only when
3 necessary for the protection of public health and safety.
4 The Legislature further finds that establishing a procedure
5 for reviewing the necessity of regulating an occupation or
6 profession prior to enacting laws for such regulation will
7 better enable it to evaluate the need for the regulation and
8 to determine the least restrictive regulatory alternative
9 consistent with public health and safety.

§30-1A-2. Required application for regulation of professional or occupational group.

1 (a) Any professional or occupational group or
2 organization, any individual or any other interested party
3 which proposes the regulation of any unregulated
4 professional or occupational group shall submit an
5 application for regulation to the joint standing committee
6 on government organization no later than the first day of
7 December of any year. The joint standing committee on
8 government organization may only accept an application
9 for regulation of a professional or occupational group
10 when the party submitting an application files with the
11 committee a statement of support for the proposed
12 regulation which has been signed by at least ten residents
13 or citizens of the state of West Virginia who are members

14 of the professional or occupational group for which
15 regulation is being sought.

16 (b) The completed application shall contain:

17 (1) A description of the occupational or professional
18 group proposed for regulation, including a list of
19 associations, organizations and other groups currently
20 representing the practitioners in this state, and an estimate
21 of the number of practitioners in each group;

22 (2) A definition of the problem and the reasons why
23 regulation is deemed necessary;

24 (3) The reasons why certification, registration,
25 licensure or other type of regulation is being requested
26 and why that regulatory alternative was chosen;

27 (4) A detailed statement of the fee structure
28 conforming with the statutory requirements of financial
29 autonomy as set out in subsection (c), section six, article
30 one, chapter thirty of this code;

31 (5) A detailed statement of the location and manner in
32 which the group plans to maintain records which are
33 accessible to the public as set out in section twelve, article
34 one, chapter thirty of this code;

35 (6) The benefit to the public that would result from
36 the proposed regulation; and

37 (7) The cost of the proposed regulation.

§30-1A-3. Analysis and evaluation of application.

1 (a) The joint committee on government organization
2 shall refer the completed application of the professional or
3 occupational group to the performance evaluation and
4 research division of the office of the legislative auditor.

5 (b) The performance evaluation and research division
6 of the office of the legislative auditor shall conduct an
7 analysis and evaluation of the application. The analysis
8 and evaluation shall be based upon the criteria listed in
9 subsection (c) of this section. The performance evaluation
10 and research division of the office of the legislative

11 auditor shall submit a report, and such supporting
12 materials as may be required, to the joint standing
13 committee on government organization no later than the
14 first day of July following the date the proposal is
15 submitted to the joint standing committee on government
16 organization.

17 (c) The report shall include evaluation and analysis as
18 to:

19 (1) Whether the unregulated practice of the
20 occupation or profession clearly harms or endangers the
21 health, safety or welfare of the public, and whether the
22 potential for the harm is easily recognizable and not
23 remote or dependent upon tenuous argument;

24 (2) Whether the public needs, and can reasonably be
25 expected to benefit from, an assurance of initial and
26 continuing professional or occupational competence; and

27 (3) Whether the public can be adequately protected by
28 other means in a more cost-effective manner.

§30-1A-4. Public hearing and committee recommendations.

1 (a) After receiving the required report, the joint
2 standing committee on government organization may
3 conduct public hearings to receive testimony from the
4 public, the governor or his or her designee, the group,
5 organization or individual who submitted the proposal for
6 regulation, and any other interested party.

7 (b) The joint standing committee on government
8 organization shall report its findings and
9 recommendations to the next regular session of the
10 Legislature.

11 (c) The report shall include:

12 (1) Whether regulation of each occupation or
13 profession is necessary for the public health and safety
14 and, if regulation is necessary, recommendations as to
15 what is the least restrictive type of regulation consistent
16 with the public interest; and

17 (2) Whether regulation would result in the creation of
18 a new agency or board or could be implemented more
19 efficiently through an existing agency or board.

20 (d) The report may include a recommendation that the
21 occupation or profession be regulated by any of the
22 following mechanisms, in whole or in part:

23 (1) By practice standards, which may include
24 restrictions established by statute;

25 (2) By registration, which may include inspections or
26 other enforcement provisions;

27 (3) By statutory certification, which may include
28 testing or assessment of the practitioner's credential or
29 competency;

30 (4) By supervision by a licensed practitioner, which
31 may include practice standards, registration or statutory
32 certification;

33 (5) By licensure by a new or existing agency or board,
34 which may include restrictions of the scope of practice,
35 minimum competency, education, testing, registration,
36 certification, inspection or enforcement.

§30-1A-5. Reapplication requirements.

1 If the joint standing committee on government
2 organization approves an application for regulation of a
3 professional or occupational group, but the legislation
4 incorporating its recommendations does not become law
5 in the year in which it is first introduced, the applicants for
6 regulation may introduce legislation during each of the
7 two successive regular sessions without having to make
8 reapplication.

§30-1A-6. Article not to be construed as limiting new legislation.

1 Nothing in this article shall be construed as limiting or
2 interfering with the right of any member of the
3 Legislature to introduce or of the Legislature to consider
4 any bill that would create a new state governmental
5 department or agency or amend the law with respect to an
6 existing one.

CHAPTER 229

(S. B. 233—By Senators Hunter, Ross, Craigo, Sharpe, Walker,
Minear, Helmick, Anderson, Ball, Scott and Kessler)

[Passed February 23, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section sixteen, article three, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to certain authorized physician assistants being permitted to pronounce death in accordance with rules promulgated by the board of medicine; requiring a proposed job description to be filed with application for licensure; changing requirements for temporary licensure; changing requirements of physician applying to board to supervise physician assistant; and changing the limitations on supervising physicians.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.

§30-3-16. Physician assistants; definitions; board of medicine rules; annual report; licensure; temporary license; relicensure; job description required; revocation or suspension of licensure; responsibilities of supervising physician; legal responsibility for physician assistants; reporting by health care facilities; identification; limitations on employment and duties; fees; continuing education; unlawful representation of physician assistant as a physician; criminal penalties.

1 (a) As used in this section:

2 (1) "Physician assistant" means an assistant to a
3 physician who is a graduate of an approved program of
4 instruction in primary health care or surgery, has attained
5 a baccalaureate or master's degree, has passed the national

6 certification examination and is qualified to perform
7 direct patient care services under the supervision of a
8 physician;

9 (2) "Physician assistant-midwife" means a physician
10 assistant who meets all qualifications set forth under
11 subdivision (1) of this subsection and fulfills the
12 requirements set forth in subsection (d) of this section; is
13 subject to all provisions of this section; and assists in the
14 management and care of a woman and her infant during
15 the prenatal, delivery and postnatal periods;

16 (3) "Supervising physician" means a doctor or doctors
17 of medicine or podiatry permanently licensed in this state
18 who assume legal and supervisory responsibility for the
19 work or training of any physician assistant under his or
20 her supervision;

21 (4) "Approved program" means an educational
22 program for physician assistants approved and accredited
23 by the committee on allied health education and
24 accreditation on behalf of the American medical
25 association or its successor; and

26 (5) "Health care facility" means any licensed hospital,
27 nursing home, extended care facility, state health or
28 mental institution, clinic or physician's office.

29 (b) The board shall promulgate rules pursuant to the
30 provisions of article three, chapter twenty-nine-a of this
31 code governing the extent to which physician assistants
32 may function in this state. The rules shall provide that the
33 physician assistant is limited to the performance of those
34 services for which he or she is trained and that he or she
35 performs only under the supervision and control of a
36 physician permanently licensed in this state, but that
37 supervision and control does not require the personal
38 presence of the supervising physician at the place or
39 places where services are rendered if the physician
40 assistant's normal place of employment is on the premises
41 of the supervising physician. The supervising physician
42 may send the physician assistant off the premises to
43 perform duties under his or her direction, but a separate
44 place of work for the physician assistant may not be

45 established. In promulgating the rules, the board shall
46 allow the physician assistant to perform those procedures
47 and examinations and in the case of certain authorized
48 physician assistants to prescribe at the direction of his or
49 her supervising physician in accordance with subsection
50 (1) of this section those categories of drugs submitted to it
51 in the job description required by this section. Certain
52 authorized physician assistants may pronounce death in
53 accordance with the rules proposed by the board which
54 receive legislative approval. The board shall compile and
55 publish an annual report that includes a list of currently
56 licensed physician assistants and their employers and
57 location in the state.

58 (c) The board shall license as a physician assistant any
59 person who files an application together with a proposed
60 job description and furnishes satisfactory evidence to it
61 that he or she has met the following standards:

62 (1) He or she is a graduate of an approved program of
63 instruction in primary health care or surgery;

64 (2) He or she has passed the certifying examination
65 for a primary care physician assistant administered by the
66 national commission on certification of physician
67 assistants and has maintained certification by that
68 commission so as to be currently certified;

69 (3) He or she is of good moral character; and

70 (4) He or she has attained a baccalaureate or master's
71 degree.

72 (d) The board shall license as a physician assistant-
73 midwife any person who meets the standards set forth
74 under subsection (c) of this section and, in addition
75 thereto, the following standards:

76 (1) He or she is a graduate of a school of midwifery
77 accredited by the American college of nurse-midwives;

78 (2) He or she has passed an examination approved by
79 the board;

80 (3) He or she practices midwifery under the
81 supervision of a board certified obstetrician, gynecologist

82 or a board certified family practice physician who
83 routinely practices obstetrics.

84 (e) The board may license as a physician assistant any
85 person who files an application together with a proposed
86 job description and furnishes satisfactory evidence that he
87 or she is of good moral character and meets either of the
88 following standards:

89 (1) He or she is a graduate of an approved program of
90 instruction in primary health care or surgery prior to the
91 first day of July, one thousand nine hundred ninety-four,
92 and has passed the certifying examination for a physician
93 assistant administered by the national commission on
94 certification of physician assistants and has maintained
95 certification by that commission so as to be currently
96 certified; or

97 (2) He or she had been certified by the board as a
98 physician assistant then classified as "Type B", prior to the
99 first day of July, one thousand nine hundred eighty-three.

100 Licensure of an assistant to a physician practicing the
101 specialty of ophthalmology is permitted under this
102 section: *Provided*, That a physician assistant may not
103 dispense a prescription for a refraction.

104 (f) When any graduate of an approved program
105 submits an application to the board for a physician
106 assistant license, accompanied by a job description as
107 referenced by this section, the board shall issue to that
108 applicant a temporary license allowing that applicant to
109 function as a physician assistant until the applicant
110 successfully passes the national commission on
111 certification of physician assistants' certifying
112 examination: *Provided*, That the applicant shall sit for
113 and obtain a passing score on the examination next
114 offered following graduation from the approved program.
115 No applicant shall receive a temporary license who,
116 following graduation from an approved program, has sat
117 for and not obtained a passing score on the examination.
118 A physician assistant who has not been certified by the
119 national board of medical examiners on behalf of the
120 national commission on certification of physician

121 assistants will be restricted to work under the direct
122 supervision of the supervising physician.

123 A physician assistant who has been issued a temporary
124 license shall, within thirty days of receipt of written notice
125 from the national commission on certification of
126 physician assistants of his or her performance on the
127 certifying examination, notify the board in writing of his
128 or her results. In the event of failure of that examination,
129 the temporary license shall expire and terminate
130 automatically, and the board shall so notify the physician
131 assistant in writing.

132 (g) Any physician applying to the board to supervise a
133 physician assistant shall affirm that the range of medical
134 services set forth in the physician assistant's job
135 description are consistent with the skills and training of the
136 supervising physician and the physician assistant. Before
137 a physician assistant can be employed or otherwise use his
138 or her skills, the supervising physician and the physician
139 assistant must obtain approval of the job description from
140 the board. The board may revoke or suspend any license
141 of an assistant to a physician for cause, after giving that
142 assistant an opportunity to be heard in the manner
143 provided by article five, chapter twenty-nine-a of this code
144 and as set forth in rules duly adopted by the board.

145 (h) The supervising physician is responsible for
146 observing, directing and evaluating the work, records and
147 practices of each physician assistant performing under his
148 or her supervision. He or she shall notify the board in
149 writing of any termination of his or her supervisory
150 relationship with a physician assistant within ten days of
151 the termination. The legal responsibility for any
152 physician assistant remains with the supervising physician
153 at all times, including occasions when the assistant under
154 his or her direction and supervision, aids in the care and
155 treatment of a patient in a health care facility. In his or
156 her absence, a supervising physician must designate an
157 alternate supervising physician, however, the legal
158 responsibility remains with the supervising physician at all
159 times. A health care facility is not legally responsible for

160 the actions or omissions of the physician assistant unless
161 the physician assistant is an employee of the facility.

162 (i) The acts or omissions of a physician assistant
163 employed by health care facilities providing inpatient or
164 outpatient services shall be the legal responsibility of the
165 facilities. Physician assistants employed by facilities in
166 staff positions shall be supervised by a permanently
167 licensed physician.

168 (j) A health care facility shall report in writing to the
169 board within sixty days after the completion of the
170 facility's formal disciplinary procedure, and also after the
171 commencement, and again after the conclusion, of any
172 resulting legal action, the name of any physician assistant
173 practicing in the facility whose privileges at the facility
174 have been revoked, restricted, reduced or terminated for
175 any cause including resignation, together with all pertinent
176 information relating to the action. The health care facility
177 shall also report any other formal disciplinary action taken
178 against any physician assistant by the facility relating to
179 professional ethics, medical incompetence, medical
180 malpractice, moral turpitude or drug or alcohol abuse.
181 Temporary suspension for failure to maintain records on a
182 timely basis or failure to attend staff or section meetings
183 need not be reported.

184 (k) When functioning as a physician assistant, the
185 physician assistant shall wear a name tag that identifies
186 him or her as a physician assistant. A two and one-half by
187 three and one-half inch card of identification shall be
188 furnished by the board upon licensure of the physician
189 assistant.

190 (l) A physician assistant may write or sign
191 prescriptions or transmit prescriptions by word of mouth,
192 telephone or other means of communication at the
193 direction of his or her supervising physician. The board
194 shall promulgate rules pursuant to the provisions of article
195 three, chapter twenty-nine-a of this code governing the
196 eligibility and extent to which a physician assistant may
197 prescribe at the direction of the supervising physician.
198 The rules shall include, but not be limited to, the
199 following:

200 (1) Provisions for approving a state formulary
201 classifying pharmacologic categories of drugs that may be
202 prescribed by a physician assistant:

203 (A) The following categories of drugs shall be
204 excluded from the formulary: Schedules I and II of the
205 uniform controlled substances act, anticoagulants,
206 antineoplastic, radiopharmaceuticals, general anesthetics
207 and radiographic contrast materials;

208 (B) Drugs listed under Schedule III shall be limited to
209 a seventy-two hour supply without refill;

210 (C) Categories of other drugs may be excluded as
211 determined by the board;

212 (2) All pharmacological categories of drugs to be
213 prescribed by a physician assistant shall be listed in each
214 job description submitted to the board as required in
215 subsection (g) of this section;

216 (3) The maximum dosage a physician assistant may
217 prescribe;

218 (4) A requirement that to be eligible for prescription
219 privileges, a physician assistant shall have performed
220 patient care services for a minimum of two years
221 immediately preceding the submission to the board of the
222 job description containing prescription privileges and shall
223 have successfully completed an accredited course of
224 instruction in clinical pharmacology approved by the
225 board; and

226 (5) A requirement that to maintain prescription
227 privileges, a physician assistant shall continue to maintain
228 national certification as a physician assistant, and in
229 meeting the national certification requirements shall
230 complete a minimum of ten hours of continuing
231 education in rational drug therapy in each certification
232 period. Nothing in this subsection shall be construed to
233 permit a physician assistant to independently prescribe or
234 dispense drugs.

235 (m) A supervising physician may not supervise at any
236 one time more than three full-time physician assistants or

237 their equivalent, except that a physician may supervise up
238 to four hospital-employed physician assistants. No
239 physician shall supervise more than four physician
240 assistants at any one time.

241 A physician assistant may not sign any prescription,
242 except in the case of an authorized physician assistant at
243 the direction of his or her supervising physician in
244 accordance with the provisions of subsection (l) of this
245 section. A physician assistant may not perform any
246 service that his or her supervising physician is not
247 qualified to perform. A physician assistant may not
248 perform any service that is not included in his or her job
249 description and approved by the board as provided for in
250 this section.

251 The provisions of this section do not authorize any
252 physician assistant to perform any specific function or
253 duty delegated by this code to those persons licensed as
254 chiropractors, dentists, dental hygienists, optometrists or
255 pharmacists or certified as nurse anesthetists.

256 (n) Each application for licensure submitted by a
257 licensed supervising physician under this section is to be
258 accompanied by a fee of one hundred dollars. A fee of
259 fifty dollars is to be charged for the biennial renewal of
260 the license. A fee of twenty-five dollars is to be charged
261 for any change of supervising physician.

262 (o) Beginning with the biennial renewal forms
263 completed by physician assistants and submitted to the
264 board in the year one thousand nine hundred ninety-three,
265 as a condition of renewal of physician assistant license,
266 each physician assistant shall provide written
267 documentation pursuant to rules promulgated by the
268 board in accordance with chapter twenty-nine-a of this
269 code of participation in and successful completion during
270 the preceding two-year period of a minimum of forty
271 hours of continuing education designated as Category I
272 by the American medical association, American academy
273 of physician assistants or the academy of family
274 physicians, and sixty hours of continuing education
275 designated as Category II by the association or either
276 academy. Notwithstanding any provision of this chapter

277 to the contrary, failure to timely submit the required
278 written documentation shall result in the automatic
279 suspension of any license as a physician assistant until the
280 written documentation is submitted to and approved by
281 the board.

282 (p) It is unlawful for any physician assistant to
283 represent to any person that he or she is a physician,
284 surgeon or podiatrist. Any person who violates the
285 provisions of this subsection is guilty of a felony and,
286 upon conviction thereof, shall be imprisoned in the
287 penitentiary for not less than one nor more than two years,
288 or be fined not more than two thousand dollars, or both
289 fined and imprisoned.

290 (q) All physician assistants holding valid certificates
291 issued by the board prior to the first day of July, one
292 thousand nine hundred ninety-two, shall be considered to
293 be licensed under this section.

CHAPTER 230

(Com. Sub. for H. B. 4058—By Mr. Speaker, Mr. Kiss, and Delegates Douglas,
Staton, Ashley and Trump)

[Passed March 14, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article three-a, relating to limiting disciplinary actions against certain health professionals prescribing, administering or dispensing controlled substances in the management of intractable pain.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3A. MANAGEMENT OF INTRACTABLE PAIN.

§30-3A-1. Definitions.

§30-3A-2. Limitation on disciplinary sanctions or criminal punishment related to management of intractable pain.

§30-3A-3. Acts subject to discipline or prosecution.

§30-3A-4. Construction of article.

§30-3A-1. Definitions.

1 For the purposes of this article, the words or terms
2 defined in this section have the meanings ascribed to
3 them. These definitions are applicable unless a different
4 meaning clearly appears from the context.

5 (1) An “accepted guideline” is a care or practice
6 guideline for pain management developed by a nationally
7 recognized clinical or professional association, or a
8 specialty society or government-sponsored agency that
9 has developed practice or care guidelines based on
10 original research or on review of existing research and
11 expert opinion. Guidelines established primarily for
12 purposes of coverage, payment or reimbursement do not
13 qualify as accepted practice or care guidelines when
14 offered to limit treatment options otherwise covered by the
15 provisions of this article.

16 (2) “Board” or “licensing board” means the West
17 Virginia board of medicine, the West Virginia board of
18 osteopathy, the West Virginia board of registered nurses or
19 the West Virginia board of pharmacy.

20 (3) “Intractable pain” means a state of pain having a
21 cause that cannot be removed. Intractable pain exists if an
22 effective relief or cure of the cause of the pain: (1) Is not
23 possible; or (2) has not been found after reasonable
24 efforts. Intractable pain may be temporary or chronic.

25 (4) “Nurse” means a registered nurse licensed in the
26 state of West Virginia pursuant to the provisions of article
27 seven of this chapter.

28 (5) “Pain-relieving controlled substance” includes,
29 but is not limited to, an opioid or other drug classified as a
30 schedule II controlled substance and recognized as
31 effective for pain relief, and excludes any drug that has no

32 accepted medical use in the United States or lacks
33 accepted safety for use in treatment under medical
34 supervision, including, but not limited to, any drug
35 classified as a schedule I controlled substance.

36 (6) "Pharmacist" means a registered pharmacist
37 licensed in the state of West Virginia pursuant to the
38 provisions of article five of this chapter.

39 (7) "Physician" means a physician licensed in the
40 state of West Virginia pursuant to the provisions of article
41 three or article fourteen of this chapter.

**§30-3A-2. Limitation on disciplinary sanctions or criminal
punishment related to management of
intractable pain.**

1 (a) A physician shall not be subject to disciplinary
2 sanctions by a licensing board or criminal punishment by
3 the state for prescribing, administering or dispensing pain-
4 relieving controlled substances for the purpose of
5 alleviating or controlling intractable pain when:

6 (1) In a case of intractable pain involving a dying
7 patient, the physician discharges his or her professional
8 obligation to relieve the dying patient's intractable pain
9 and promote the dignity and autonomy of the dying
10 patient, even though the dosage exceeds the average
11 dosage of a pain-relieving controlled substance; or

12 (2) In the case of intractable pain involving a patient
13 who is not dying, the physician discharges his or her
14 professional obligation to relieve the patient's intractable
15 pain, even though the dosage exceeds the average dosage
16 of a pain-relieving controlled substance, if the physician
17 can demonstrate by reference to an accepted guideline
18 that his or her practice substantially complied with that
19 accepted guideline. Evidence of substantial compliance
20 with an accepted guideline may be rebutted only by the
21 testimony of a clinical expert. Evidence of
22 noncompliance with an accepted guideline is not sufficient
23 alone to support disciplinary or criminal action.

24 (b) A registered nurse shall not be subject to
25 disciplinary sanctions by a licensing board or criminal
26 punishment by the state for administering pain-relieving
27 controlled substances to alleviate or control intractable

28 pain, if administered in accordance with the orders of a
29 licensed physician.

30 (c) A registered pharmacist shall not be subject to
31 disciplinary sanctions by a licensing board or criminal
32 punishment by the state for dispensing a prescription for a
33 pain-relieving controlled substance to alleviate or control
34 intractable pain, if dispensed in accordance with the orders
35 of a licensed physician.

36 (d) For purposes of this section, the term "disciplinary
37 sanctions" includes both remedial and punitive sanctions
38 imposed on a licensee by a licensing board, arising from
39 either formal or informal proceedings.

40 (e) The provisions of this section shall apply to the
41 treatment of all patients for intractable pain, regardless of
42 the patient's prior or current chemical dependency or
43 addiction. The board may develop and issue policies or
44 guidelines establishing standards and procedures for the
45 application of this article to the care and treatment of
46 persons who are chemically dependent or addicted.

§30-3A-3. Acts subject to discipline or prosecution.

1 (a) Nothing in this article shall prohibit disciplinary
2 action or criminal prosecution of a physician for:

3 (1) Failing to maintain complete, accurate, and current
4 records documenting the physical examination and
5 medical history of the patient, the basis for the clinical
6 diagnosis of the patient, and the treatment plan for the
7 patient;

8 (2) Writing a false or fictitious prescription for a
9 controlled substance scheduled in article two, chapter
10 sixty-a of this code; or

11 (3) Prescribing, administering, or dispensing a
12 controlled substance in violation of the provisions of the
13 federal Comprehensive Drug Abuse Prevention and
14 Control Act of 1970, 21 U.S.C. §§801, *et seq.* or chapter
15 sixty-a of this code; or

16 (4) Diverting controlled substances prescribed for a
17 patient to the physician's own personal use.

18 (b) Nothing in this article shall prohibit disciplinary
19 action or criminal prosecution of a nurse or pharmacist
20 for:

21 (1) Administering or dispensing a controlled sub-
22 stance in violation of the provisions of the federal
23 Comprehensive Drug Abuse Prevention and Control Act
24 of 1970, 21 U.S.C. §§801, *et seq.* or chapter sixty-a of this
25 code; or

26 (2) Diverting controlled substances prescribed for a
27 patient to the nurse's or pharmacist's own personal use.

§30-3A-4. Construction of article.

1 This article may not be construed to legalize, condone,
2 authorize or approve mercy killing or assisted suicide.

CHAPTER 231

(Com. Sub. for S. B. 468—By Senators Bowman,
McKenzie, Kessler and Ball)

[Passed March 14, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, four, six and eleven, article nine, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto two new sections, designated sections fourteen and fifteen, all relating to accountants; adding and revising definitions; revising and clarifying requirements for licensure; authorizing part ownership of accounting corporations and other entities by persons other than accountants; requiring supervision of persons other than accountants by persons appropriately licensed; requiring certificates of authorizations; requiring notification of change in identities of partners, officers, shareholders, members, managers, supervisory personnel or changes in number or location of offices; requiring equity ownership in accounting corporations and other entities by licensed persons other than accountants who perform services or sell products requiring licensure other than under this article; allowing commissions, referral fees and contingency fees; requiring fee arrangements to be in

writing; requiring rules; and providing for a termination date.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 9. ACCOUNTANTS.

§30-9-2. Definitions.

§30-9-4. Certification; applicability of article to previous holders of certificates.

§30-9-6. Practice of public accounting restricted to licensees; prohibited acts.

§30-9-11. Accounting corporations.

§30-9-14. Commissions, referral fees and contingent fees.

§30-9-15. Termination date.

§30-9-2. Definitions.

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

3 (a) "Assurance" means any act or action, whether
4 written or oral, expressing an opinion or conclusion about
5 the reliability of a financial statement or about its
6 conformity with any financial accounting principles or
7 standards.

8 (b) "Board" means the state board of accountancy,
9 known as the "West Virginia board of accountancy",
10 continued by the provisions of this article and established
11 under prior law.

12 (c) "Certificate" means a certificate as a certified public
13 accountant issued by the board pursuant to this article or
14 corresponding provisions of prior law or a corresponding
15 certificate as a certified public accountant issued after
16 examination under the laws of any other state.

17 (d) "Commission" means compensation, except a
18 referral fee, for recommending or referring any product
19 or service to be supplied by another person.

20 (e) "Contingent fee" means a fee established for the
21 performance of any service pursuant to an arrangement in
22 which no fee will be charged unless a specified finding or
23 result is attained, or in which the amount of the fee is
24 otherwise dependent upon the finding or result of such
25 service. A fee fixed by a court, taxing authority or other
26 public authority is not a contingent fee.

27 (f) "Financial statement" means a writing or other
28 presentation, including accompanying notes, which
29 presents, in whole or in part, historical or prospective
30 financial position, results of operations or changes in
31 financial position of any person, corporation, partnership
32 or other entity.

33 (g) "License" means a license to practice public
34 accounting issued annually under the provisions of this
35 article.

36 (h) "Licensee" means a person holding a license to
37 practice public accounting issued under the provisions of
38 this article, including those persons who were duly
39 registered to practice public accounting under prior law,
40 and "nonlicensee" means all other persons.

41 (i) "Practice of public accountancy" or "public
42 accounting" means: (1) The giving of an assurance, in a
43 report or otherwise, whether expressly or implicitly; or (2)
44 in the case of a person holding himself out as a certificate
45 holder, the performance of or offering to perform any
46 service involving the use of accounting or auditing skills,
47 including, but not limited to, management advisory or
48 consulting services, the preparation of tax returns, the
49 rendering of tax services, the keeping of books of account
50 and related accounting records and the preparation of
51 financial statements without the expression of an
52 assurance: *Provided*, That an employee giving assurances

53 to or performing such services for an employer shall not
54 be deemed to be practicing public accountancy.

55 (j) "Registered" or "registrant" refers to or means a
56 person registered, but not certified, by the board under
57 prior law as a public accountant before the first day of
58 January, one thousand nine hundred sixty-seven, and
59 "registration" means such registration.

60 (k) "Referral fee" means compensation for
61 recommending or referring any service of a licensee to
62 any person.

63 (l) "Report" or "reports" when used with reference to
64 financial statements, means an opinion or disclaimer of
65 opinion or other form of language or representation
66 which states or implies any form of assurance or denial of
67 assurance.

68 (m) "State" means any state of the United States, the
69 District of Columbia, Puerto Rico, the U.S. Virgin Islands
70 or Guam.

71 As used in this article, the singular and plural and the
72 masculine and feminine are interchangeable unless the
73 context clearly indicates otherwise.

**§30-9-4. Certification; applicability of article to previous
holders of certificates.**

1 (a) The board shall grant a certificate to any applicant
2 who, at the time of making application:

3 (1) Is over the age of eighteen years;

4 (2) Is of good moral character;

5 (3) Is, at the time of taking the examination provided
6 for in subdivision (5) of this subsection, a resident of this
7 state or employed in this state on a full-time basis:
8 *Provided*, That the board may provide by rule for
9 exceptions to this requirement;

10 (4) Has satisfied the following educational
11 requirements, which must be met before an applicant is

12 eligible to apply for the examination provided for in
13 subdivision (5) of this subsection:

14 (A) For applicants making their initial application for
15 the examination prior to the fifteenth day of February, two
16 thousand, a baccalaureate degree or its equivalent
17 conferred by a college or university acceptable to the
18 board, with an accounting concentration or equivalent as
19 the board may determine by rule to be appropriate; or

20 (B) For applicants making their initial application for
21 the examination on or after the fifteenth day of February,
22 two thousand, at least one hundred fifty semester hours of
23 college education including a baccalaureate or higher
24 degree conferred by an accredited college or university
25 acceptable to the board, the total educational program to
26 include an accounting concentration or equivalent as the
27 board may determine by rule to be appropriate;

28 (5) Has completed satisfactorily an examination to be
29 given by the board at least twice each year in accounting
30 theory, accounting practice, auditing, commercial law or
31 such other appropriate subjects as determined by the
32 board by rule. The board shall prescribe by rule for the
33 retention of credit for the satisfactory completion of a
34 portion of such examination in future examinations.

35 (b) The board may, in its discretion, in lieu of the
36 examination provided for in this section, issue a certificate
37 to any person who possesses the other qualifications stated
38 in this section, and who is the holder of a certificate issued
39 under the laws of any state which extends similar
40 privileges to certified public accountants of this state
41 provided the requirements for such certificates in the state
42 which has granted the certificate to such person are, in the
43 opinion of the board, equivalent to those herein required;
44 or who is the holder of a certificate, or the equivalent
45 thereof, granted under the authority of a foreign nation, if
46 the requirements for such certificates in the foreign nation,
47 are, in the opinion of the board, equivalent to those herein
48 required.

49 (c) Persons who, on the effective date of this article,
50 hold certificates theretofore issued by the board are not
51 required to obtain additional certificates under this article,
52 but are otherwise subject to all provisions of this article;
53 and such certificates theretofore issued shall, for all
54 purposes, be considered certificates issued under this
55 article and subject to the provisions hereof.

**§30-9-6. Practice of public accounting restricted to licensees;
prohibited acts.**

1 (a) A person who does not hold a valid license issued
2 by the board may not claim to hold one; nor may he or
3 she practice or offer to practice public accountancy or
4 public accounting; nor may he or she make any other
5 claim of licensure or approval related to the preparation of
6 financial statements or expression of assurances thereon
7 which is false or misleading.

8 (b) Except as set forth in this subsection, a person who
9 does not hold a valid certificate issued by the board may
10 not claim to hold one or describe himself as or assume
11 any of the following titles or designations: Certified
12 public accountant, CPA, public accountant, PA, certified
13 accountant, CA, chartered accountant, licensed accountant,
14 LA, registered accountant, RA, independent auditor,
15 auditor, or similar designation: *Provided*, That registrants
16 under prior law may use the titles public accountant or
17 PA.

18 Partnerships practicing accountancy in this state may
19 use the aforesaid designations, or practice as such, only if
20 all the members thereof who practice in this state are so
21 licensed: *Provided*, That nothing in this section may be
22 construed to prevent a person not licensed under this
23 article from owning an equity interest in an accounting
24 partnership, or rendering a compatible professional service
25 that the person is otherwise legally authorized to render, so
26 long as the nonlicensee owner does not practice public
27 accounting in this state or exercise voting rights with
28 respect to any question related to the practice of
29 accounting: *Provided, however*, That ownership of the

30 accounting partnership is held at least sixty percent by
31 individuals duly licensed under this article.

32 (c) A person who does not hold a valid license issued
33 by the board may not claim to have used "generally
34 accepted accounting principles", "generally accepted
35 accounting standards", "public accountancy standards",
36 "public accountancy principles", "generally accepted
37 auditing principles" or "generally accepted auditing
38 standards", in connection with his or her preparation of
39 any financial statement; nor may he or she use any of
40 these terms in describing any complete or partial variation
41 from such standards or principles or to imply complete or
42 partial conformity with such standards or principles.

43 (d) A person who does not hold a valid license issued
44 by the board may not use the words "audit", "audit report",
45 "independent audit", "attest", "attestation", "examine",
46 "examination", "opinion" or "review" in a report on a
47 financial statement.

48 (e) A person who does not hold a valid license issued
49 by the board may neither state nor imply that he or she is
50 tested, competent, qualified or proficient in financial
51 standards established by: (1) The American institute of
52 certified public accountants or any agency thereof; (2) the
53 governmental accounting standards board or any agency
54 thereof; (3) the securities and exchange commission or
55 any agency thereof; (4) the financial accounting standards
56 board; or (5) any successor entity to an entity named in
57 this subsection.

58 (f) No person who holds a valid license issued by the
59 board may engage in the practice of public accounting
60 under a professional or firm name or designation that
61 contains a name or term other than past or present
62 partners, officers or shareholders of the firm or of a
63 predecessor firm, engaged in the practice of accounting;
64 nor may any such person engage in the practice of public
65 accounting under a professional or firm name which is
66 deceptive or misleading.

30-9-11. Accounting corporations.

1 (a) One or more individuals licensed within this state
2 pursuant to this article may organize and become a
3 shareholder or shareholders of an accounting corporation
4 domiciled within this state, and may organize for this
5 purpose together with individuals duly licensed or
6 otherwise legally authorized to provide compatible
7 professional services. The practice of or offer to practice
8 public accounting through a corporation domiciled in this
9 state is permitted: *Provided*, That the person or persons in
10 direct control or having personal supervision of the
11 practice and all personnel who act in behalf of the
12 corporation in the practice of public accounting are
13 individually licensed under this article; that ownership of
14 the corporation is held at least sixty percent by individuals
15 duly licensed under this article; that all nonlicensee owners
16 are active participants in the accounting corporation; and
17 that the corporation has been issued a certificate of
18 authorization by the board. As used in this section,
19 "ownership" includes both the financial interests and
20 voting rights of all partners, officers, shareholders,
21 members or managers of the corporation.

22 (b) The board shall, on or before the first day of July,
23 one thousand nine hundred ninety-eight, propose rules for
24 legislative approval in accordance with chapter twenty-
25 nine-a of this code, establishing a procedure to assure the
26 issuance of certificates of authorization only upon a
27 determination that a corporation meets the requirements
28 of this section.

29 (c) An accounting corporation may render public
30 accounting services only through officers, employees and
31 agents who are themselves duly licensed within this state.
32 The term "employee" or "agent", as used in this section,
33 does not include secretaries, clerks, typists or other
34 individuals who are not usually and ordinarily considered
35 by custom and practice to be rendering accounting
36 services for which a license is required.

37 (d) This section does not modify the law as it relates to
38 the relationship between a person furnishing accounting
39 services and his or her client, nor does it modify the law as
40 it relates to liability arising out of such a professional

41 service relationship. Except for permitting an accounting
42 corporation, this section is not intended to modify any
43 legal requirement or court rule relating to ethical
44 standards of conduct required of persons providing public
45 accounting services.

46 (e) When not inconsistent with this section, the
47 organization and procedures of accounting corporations
48 shall conform to the requirements of article one, chapter
49 thirty-one of this code.

50 (f) Upon determination that a corporation meets the
51 requirements of this section, the board shall notify the
52 secretary of state that a certificate of authorization has
53 been issued to the person or persons making the
54 application. When the secretary of state receives this
55 notification from the board, he or she shall attach the
56 authorization to the corporation application and, upon
57 compliance with the applicable provisions of chapter
58 thirty-one of this code, the secretary of state may issue to
59 the incorporators a certificate of incorporation for the
60 accounting corporation, which then may engage in the
61 practice of public accounting through persons duly
62 licensed under this article.

63 (g) The corporate name of an accounting corporation
64 shall contain the last name or names of one or more of its
65 shareholders who are licensees under the provisions of this
66 article: *Provided*, That if the rules of the board so permit,
67 the corporate name may contain or include the name or
68 names of former shareholders or of persons who were
69 associated with a predecessor partnership or other
70 organization. The corporate name shall also contain the
71 words "accounting corporation", or the abbreviation "A.C."
72 The use of the word "company", "corporation" or
73 "incorporated", or any other words or abbreviations in the
74 name of an accounting corporation organized under this
75 article which indicate that the corporation is a corporation,
76 other than the words "accounting corporation" or the
77 abbreviation "A.C.", is specifically prohibited.

78 (h) Nothing in this section shall be construed to
79 prohibit the employment of a person duly licensed under
80 this article to practice public accounting as an employee

81 of a corporation other than an accounting corporation, or
82 to have an ownership interest of a corporation other than
83 an accounting corporation. A corporation other than an
84 accounting corporation may use a nondeceptive trade
85 name including words such as, by way of illustration,
86 "computer services", "financial services" or "general
87 business services", but may not use the designation
88 "accounting corporation" or the abbreviation "A.C.", may
89 not represent that the corporation is engaged in the
90 practice of public accounting, and may not engage in or
91 offer to engage in any act prohibited under section six of
92 this article: *Provided*, That a corporation other than an
93 accounting corporation may represent that named
94 individuals duly licensed under this article are employees
95 or members of the corporation.

96 (i) Any corporation holding a certificate under this
97 article shall notify the board, in writing, within thirty days
98 after its occurrence, of any change in the identities of
99 partners, officers, shareholders, members, managers whose
100 principal place of business is in this state, or licensed
101 person or persons in control or having supervision of the
102 practice of public accounting; or any change in the
103 number or location of offices within this state.

104 (j) The provisions of this section are not applicable to
105 article thirteen, chapter thirty-one-b of this code related to
106 professional limited liability companies and rules of the
107 board promulgated thereunder.

108 (k) A license issued under the provisions of this article
109 may not be construed to permit a licensee to perform a
110 service or sell a product which is not a traditional
111 accounting service when the activity requires a separate
112 license under federal law or other provision of this code
113 and the licensee does not hold the separate license. The
114 provisions of this article may not be construed to permit a
115 person, by reason of licensure under the provisions of this
116 article or by employment by or ownership in an
117 accounting firm, to practice law, to appraise real estate, to
118 act as a real estate broker or salesperson, or to act as a
119 stockbroker or insurance agent, broker or solicitor, when

120 the person is not separately licensed to engage in that
121 activity.

122 (l) Notwithstanding the provisions of subsection (j) of
123 this section, an accounting corporation may perform a
124 service or sell a product which is not a traditional
125 accounting service and which requires a separate license
126 under federal law or other provision of this code, when an
127 owner of an equity interest in the corporation holds a valid
128 license as required for the activity, and supervises and is
129 responsible for the licensed activity, to the extent
130 permitted by applicable law relating to licensure of the
131 separate activity.

§30-9-14. Commissions, referral fees and contingent fees.

1 (a) (1) A licensee may not, for a commission or
2 referral fee, recommend or refer to a client any product or
3 service or refer any product or service to be supplied by a
4 client, or perform for a contingent fee any professional
5 services for or receive referral fees, commissions or
6 contingent fees from a client for whom the licensee or any
7 firm with which the licensee works or associates or any
8 firm in which the licensee owns an interest performs for
9 that client:

10 (A) An audit or review of a financial statement;

11 (B) A compilation of a financial statement when the
12 licensee expects, or reasonably might expect, that a third
13 party will use the financial statement and the licensee's
14 compilation report does not disclose a lack of
15 independence; or

16 (C) An examination of prospective financial
17 information.

18 (2) The prohibition in subdivision (1) of this
19 subsection applies only during the period in which the
20 licensee is engaged to perform any of the services listed
21 therein and the period covered by any historical financial
22 statements involved in any such listed services.

23 (b) A licensee may not for a contingent fee:

24 (1) Prepare an original or amended tax return or claim
25 for a tax refund; or

26 (2) Serve as an expert witness.

27 (c) To the extent permitted by reasonable rules of the
28 board proposed to the Legislature pursuant to the
29 provisions of article three, chapter twenty-nine-a of this
30 code, a licensee may for a contingent fee represent a client
31 before a taxing authority within the scope of practice of
32 public accounting: *Provided*, That this provision may not
33 be construed either to limit or to expand the scope of
34 practice of public accounting, and may not be construed
35 to permit the unauthorized practice of law.

36 (d) All agreements or arrangements in which a
37 licensee is to be paid a commission, referral fee or
38 contingent fee shall be in writing, shall state the method by
39 which the fee is to be determined, shall be signed by both
40 the licensee and the client, and shall be delivered to the
41 client before the performance of any services or the
42 delivery of any product to which the commission, referral
43 fee or contingent fee relates. A contingent fee agreement
44 shall state the method of calculation of the fee, including
45 the percentage or percentages which shall accrue to the
46 licensee in the event of all foreseeable outcomes, the
47 expenses to be deducted from any recovery, collection or
48 other amount on which the fee may be based, and whether
49 the expenses are to be deducted before or after the
50 contingent fee is calculated.

51 (e) The board shall, on or before the first day of July,
52 one thousand nine hundred ninety-eight, propose rules for
53 legislative approval in accordance with chapter twenty-
54 nine-a of this code, establishing a procedure to assure that
55 all fees charged by and paid to licensees are reasonable.

§30-9-15. Termination date.

1 The West Virginia board of accountancy shall
2 terminate on the first day of July, two thousand one,
3 pursuant to the provisions of article ten, chapter four of
4 this code.

CHAPTER 232

(Com. Sub. for H. B. 2656—By Delegates Overington, Anderson, Fragale,
Proudfoot, Border and Davis)

[Passed March 9, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article ten-a, relating to creation of the position of certified animal euthanasia technician; under the control of the state board of veterinary medicine; provision for controlled substance permits issued by the state board of pharmacy and drug enforcement administration identification numbers all of which issued to humane societies or animal shelters incorporated and organized under the laws of this state; institutional recognition by the federal internal revenue service as a tax exempt or governmental organization; the certified animal euthanasia technician education program, requiring passage of written and practical examinations; areas in which applicants are tested; background checks; board to approve registration; annual renewal required; limitations of authority; responsibility; loss of certification; disciplinary authority; and board to propose legislative rules.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10A. ANIMAL EUTHANASIA TECHNICIANS.

§30-10A-1. Definitions.

§30-10A-2. Certification required and requirements for certification.

§30-10A-3. Certified animal euthanasia technicians program; application for certification; and written and practical skills examinations.

§30-10A-4. Scope of practice.

§30-10A-5. Annual renewal of certification required.

§30-10A-6. Recordkeeping.

§30-10A-7. Limitations of authority; responsibility; loss of certification; and board's disciplinary authority.

§30-10A-8. Drug selection.

§30-10A-9. Responsibilities of individual boards, coordination between boards, rule-making authority.

§30-10A-1. Definitions.

1 (a) "Board" means the West Virginia board of
2 veterinary medicine established under article ten of this
3 chapter.

4 (b) "Animal euthanasia technician" means a person
5 who is certified by the board to euthanize animals
6 assigned to the care of a legally operated humane society,
7 animal shelter or animal control facility within this state.

§30-10A-2. Certification required and requirements for certification.

1 (a) No person may perform the duties of an animal
2 euthanasia technician at a humane society, animal shelter
3 or animal control facility unless he or she is certified by
4 the board. A person who has completed the certified
5 animal euthanasia technicians program sponsored by the
6 board shall complete and submit an application for
7 certification to the board at least thirty days prior to the
8 date the next written examination is scheduled. The
9 application shall be accompanied by the required
10 application fee and examination fee set by the board by
11 legislative rule.

12 (b) Prior to being certified, an applicant shall complete
13 the certified animal euthanasia technicians program
14 sponsored by the board and pass the written and practical
15 skills examinations required under this section. The board
16 shall certify a person as an animal euthanasia technician
17 who has completed the program, passed the examinations
18 and met other requirements established by the board by
19 legislative rule.

§30-10A-3. Certified animal euthanasia technicians program; application for certification; and written and practical skills examinations.

1 (a) The board shall sponsor a certified animal
2 euthanasia technicians program. The board shall design
3 this program to teach applicants for certification
4 recordkeeping and the legal, safety and practical
5 information needed to become a certified animal
6 euthanasia technician.

7 (b) (1) The board shall administer a written
8 examination to an applicant for certification. The written
9 examination shall test the applicant's knowledge of the
10 following:

11 (A) Animal restraint;

12 (B) Drug enforcement agency regulations;

13 (C) Record-keeping requirements for controlled
14 substances;

15 (D) Handling, inventory and secure and proper
16 storage of euthanasia drugs and solutions;

17 (E) The certification process;

18 (F) Legal requirements;

19 (G) Stress management;

20 (H) Sodium pentobarbital usage; and

21 (I) Other subject areas specified by the board in a
22 legislative rule.

23 (2) The applicant shall pass the written examination
24 with a minimum correct score as determined by the board
25 by legislative rule in order to be eligible to take the
26 practical skills examination provided for in subsection (d)
27 of this section.

28 (c) In addition to the written examination provided for
29 under subsection (b) of this section, the board shall
30 administer a practical skills examination to an applicant
31 who has successfully passed the written examination. The
32 board shall conduct the examination in a manner that tests
33 an applicant's ability to properly restrain an animal,
34 measure a correct dosage of euthanasia solution, locate an
35 injection site and perform an injection. In order to pass

36 the practical skills examination, an applicant shall exhibit
37 to the board that he or she can locate an injection site and
38 perform an injection and also perform euthanasia
39 correctly and humanely.

40 (d) An applicant who successfully passes the written
41 examination and the practical skills examination required
42 by this section shall sign a form authorizing the board to
43 make inquiries through the United States department of
44 justice, or any other legal jurisdiction or entity, for the
45 purposes of determining the character and reputation of
46 the applicant and other matters relating to the certification
47 of the applicant.

§30-10A-4. Scope of practice.

1 (a) A certified animal euthanasia technician may
2 euthanize animals assigned to the care of a legally
3 operated humane society, animal shelter or animal control
4 facility within this state. A certified animal euthanasia
5 technician shall practice euthanasia under the authority of
6 a licensed veterinarian as defined in article ten of this
7 chapter or a county humane officer as defined in article
ten, chapter seven of this code within the limitations
imposed by this article and rules promulgated by the
board under this article.

11 (b) For the purposes of this article, controlled
12 substance permits issued by the state board of pharmacy
13 and the federal drug enforcement administration shall be
14 issued to a municipal or county run animal control
15 facility, or a humane society or animal shelter
16 incorporated and organized under the laws of the state,
17 with one or more duly appointed agents. The humane
18 society or animal shelter shall possess a tax exempt
19 charitable or tax exempt governmental determination
20 under the Internal Revenue Code of 1986, as amended.

21 (c) A certified animal euthanasia technician may not
22 practice or offer to practice his or her profession outside
23 the direct authority of the humane society, animal shelter
24 or animal control facility which employs him or her or
25 otherwise contracts for his or her services. A certified
26 animal euthanasia technician is not qualified and may not

27 indicate that he or she is qualified to act in any capacity
28 relative to animals beyond his or her specified and
29 regulated authority to euthanize animals at the instruction
30 of the humane society, animal shelter or animal control
31 facility by which he or she is employed and under the
32 supervision of a humane officer or licensed veterinarian.

§30-10A-5. Annual renewal of certification required.

1 (a) A certified animal euthanasia technician shall
2 renew his or her certification annually. The board shall
3 mail certification renewal applications to all certified
4 animal euthanasia technicians at their last known business
5 address on or about the first day of December of each
6 year. The certified animal euthanasia technician shall
7 complete and return the renewal application to the board
8 no later than the thirty-first day of December, with the
9 required fee. The certified animal euthanasia technician
10 shall sign the renewal application and list the physical
11 location of the primary facility where he or she provides
12 euthanasia services.

13 (b) The annual renewal fee is twenty-five dollars if
14 received by the board by the thirty-first day of December
15 for the next calendar year, and thirty-five dollars if
16 received by the board after the thirty-first day of
17 December.

18 (c) The board may revoke the certification of an
19 animal euthanasia technician who fails to submit his or her
20 renewal application as required under subsection (a) of
21 this section.

22 (d) A certified animal euthanasia technician who no
23 longer provides euthanasia services under the provisions
24 of this article shall notify the board that he or she is no
25 longer providing services.

§30-10A-6. Recordkeeping.

1 A humane society, animal shelter or animal control
2 facility which was issued a controlled substances permit by
3 the board of pharmacy and an identification number by
4 the federal drug enforcement administration is responsible
5 for insuring that certified animal euthanasia technicians in

6 its employ maintain proper records regarding the
7 inventory, storage and administration of controlled
8 substances. The proper completion and retention of these
9 records is the joint responsibility of the humane society,
10 animal shelter or animal control facility and the certified
11 animal euthanasia technician. The humane society, animal
12 shelter or animal control facility and the certified animal
13 euthanasia technicians are subject to inspection and audit
14 by the board, the West Virginia board of pharmacy and
15 any other appropriate state or federal agency with
16 authority regarding the recordkeeping, inventory, storage
17 and administration of controlled substances used under
18 authority of this article.

**§30-10A-7. Limitations of authority; responsibility; loss of
certification; and board's disciplinary
authority.**

1 (a) A certified euthanasia technician may not practice
2 euthanasia at any humane society, animal shelter or animal
3 control facility which does not possess a current state
4 controlled substance permit issued by the board of
5 pharmacy and a current drug enforcement administration
6 identification number issued by the drug enforcement
7 administration.

8 (b) A certified animal euthanasia technician shall
9 comply with the provisions of this article and any rules
10 promulgated by the board under the authority of this
11 article.

12 (c) The board shall immediately revoke the
13 certification of an animal euthanasia technician if he or
14 she:

15 (1) Is convicted of a felony;

16 (2) Is guilty of cruelty to animals; or

17 (3) Is guilty of any other act or omission which the
18 board prescribes by legislative rule in accordance with
19 article three, chapter twenty-nine-a of this code.

20 (d) The board of veterinary medicine may take
21 disciplinary action against a certified animal euthanasia
22 technician who is guilty of misconduct. The board may

23 take disciplinary actions which may include, but are not
24 limited to, the levying of fines or the suspension or
25 revocation of the animal euthanasia technician's
26 certification. Any disciplinary action by the board may
27 not infringe upon the authority of any law-enforcement
28 department or agency.

29 (e) If the board suspends or revokes the certification
30 of an animal euthanasia technician under the provisions of
31 this section, it is the sole responsibility of the humane
32 society, animal shelter or animal control facility to replace
33 him or her with a certified animal euthanasia technician.

§30-10A-8. Drug selection.

1 (a) In the event that sodium pentobarbital is no longer
2 approved as the euthanasia "drug of choice" for animals
3 by either state or federal mandate, the board shall
4 determine the replacement "drug of choice" for sodium
5 pentobarbital for use by certified animal euthanasia
6 technicians by legislative rule. The replacement "drug of
7 choice" shall be administered, controlled, stored and
8 secured by a humane society, animal shelter or animal
9 control facility which meets the qualifications in section
10 one of this article in accordance with legislative rules
11 promulgated by the board.

12 (b) The board may replace sodium pentobarbital as
13 the "drug of choice" at any time by legislative rule
14 promulgated pursuant to article three, chapter twenty-
15 nine-a of this code. The determined "drug of choice"
16 for animal euthanasia as specified by the board shall be
17 used by animal euthanasia technicians certified under the
18 provisions of this article.

§30-10A-9. Responsibilities of individual boards, coordination between boards, rule-making authority.

1 The board is responsible for the implementation and
2 enforcement of this article. After consultation with the
3 board of pharmacy, the board shall propose legislative
4 rules for promulgation in accordance with the provisions
5 of article three, chapter twenty-nine-a of this code to
6 implement the provisions of this article.

CHAPTER 233

(H. B. 4605—By Delegates Compton and Campbell)

[Passed March 12, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections four, six, seven, nine-a, nine-b, ten and twelve, article fourteen, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to board of osteopathy; permitting license, registration, examination and other such fees to be set by board rules; and penalty increase for misdemeanor violation.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 14. OSTEOPATHIC PHYSICIANS AND SURGEONS.

§30-14-4. Application for examination.

§30-14-6. Issuance of license without examination; fee.

§30-14-7. Reciprocal endorsement fee.

§30-14-9a. Osteopathic medical corporations — Application for registration; fee; notice to secretary of state of issuance of certificate; action by secretary of state.

§30-14-9b. Same — Rights and limitations generally; biennial registration; fee; when practice to cease; admissibility and effect of certificate signed by board; penalty.

§30-14-10. Annual renewal of license; fee; refresher training a prerequisite; effect of failure to renew; reinstatement.

§30-14-12. Offenses; penalties.

§30-14-4. Application for examination.

- 1 Each applicant for examination by the board, with the
- 2 exception of assistants to osteopathic physicians and

3 surgeons, as hereinafter provided, shall submit an
4 application therefor on forms prepared and furnished by
5 the board, accompanied by evidence verified by oath and
6 satisfactory to the board, establishing that the applicant has
7 satisfied the following requirements: (a) That the
8 applicant is eighteen years of age or over; (b) that the
9 applicant is of good moral character; (c) that the applicant
10 has graduated from an approved osteopathic college; (d)
11 that the applicant has submitted a letter of verification
12 from an AOA approved hospital stating that he has been
13 approved for an AOA approved internship or that the
14 applicant is currently in an AOA approved internship, if
15 internship has not already been completed; and (e) that
16 the applicant has paid to the board a reasonable fee, the
17 amount of such reasonable fee to be set by the board
18 rules.

§30-14-6. Issuance of license without examination; fee.

1 The board may at its discretion issue a license without
2 examination to an applicant who has been licensed by the
3 national board of examiners for osteopathic physicians
4 and surgeons, and to an applicant who has been licensed
5 by examination in any country, state, territory, province or
6 the District of Columbia, provided the requirements for
7 licensure in the country, state, territory, province or the
8 District of Columbia in which the applicant is licensed, are
9 deemed by the board to have been equivalent to
10 requirements for licensure in this state at the date such
11 license was issued. The board may also at its discretion
12 issue a license without examination to an osteopathic
13 physician and surgeon who is a graduate of an approved
14 osteopathic college and who has passed the examination
15 for admission into the medical corps of any of the armed
16 services of the United States or the United States public
17 health service. But no license shall be issued under the
18 provisions of this section until the person applying
19 therefor shall have paid to the board a reasonable fee, the
20 amount of such reasonable fee to be set by the board
21 rules, and any other fees applicable to investigation.

§30-14-7. Reciprocal endorsement fee.

1 For the issuance of any reciprocal endorsement, the
2 board shall collect a reasonable fee, the amount of such
3 reasonable fee to be set by the board rules.

§30-14-9a. Osteopathic medical corporations — Application for registration; fee; notice to secretary of state of issuance of certificate; action by secretary of state.

1 When one or more osteopathic physicians or surgeons
2 duly licensed to practice osteopathic medicine in the state
3 of West Virginia wish to form an osteopathic medical
4 corporation, such osteopathic physician or surgeon, or
5 osteopathic physicians or surgeons, shall file a written
6 application with the board on a form prescribed by the
7 board, and shall furnish proof satisfactory to the board
8 that the signer or all of the signers of such application is
9 or are a duly licensed osteopathic physician or surgeon or
10 osteopathic physicians or surgeons. A reasonable fee, the
11 amount of such reasonable fee to be set by the board
12 rules, shall accompany each such application, no part of
13 which shall be returnable.

14 If the board finds that the signer or all of the signers
15 of such application are duly licensed, the board shall
16 notify the secretary of state that a certificate of
17 authorization has been issued to the individual or
18 individuals signing such application.

19 When the secretary of state receives notification from
20 the board that a certain individual or individuals has or
21 have been issued a certificate of authorization, he or she
22 shall attach such authorization to the corporation
23 application and upon compliance by the corporation with
24 chapter thirty-one of this code shall notify the
25 incorporators that such corporation, through a duly
26 licensed osteopathic physician or surgeon or duly licensed
27 osteopathic physicians and surgeons, may engage in the
28 practice of osteopathic medicine and surgery.

§30-14-9b. Same — Rights and limitations generally; biennial registration; fee; when practice to cease; admissibility and effect of certificate signed by board; penalty.

1 (a) An osteopathic medical corporation may practice
2 osteopathic medicine and surgery only through individual
3 osteopathic physicians and surgeons duly licensed to
4 practice osteopathic medicine or surgery in the state of
5 West Virginia, but such osteopathic physicians and
6 surgeons may be employees rather than shareholders of
7 such corporation, and nothing herein contained shall be
8 construed to require a license for or other legal
9 authorization of any individual employed by such
10 corporation to perform services for which no license or
11 other legal authorization is otherwise required. Nothing
12 contained in sections five and nine-a and this section of
13 this article is meant or intended to change in any way the
14 rights, duties, privileges, responsibilities and liabilities
15 incident to the osteopathic physician-patient relationship
16 nor is it meant or intended to change in any way the
17 personal character of the osteopathic physician-patient
18 relationship. A corporation holding such certificate of
19 authorization shall register biennially, on or before the
20 thirtieth day of June, on a form prescribed by the board,
21 and shall pay an annual reasonable registration fee, the
22 amount of such reasonable fee to be set by the board
23 rules.

24 (b) An osteopathic medical corporation holding a
25 certificate of authorization shall cease to engage in the
26 practice of osteopathic medicine and surgery upon being
27 notified by the board that any of its shareholders is no
28 longer a duly licensed osteopathic physician or surgeon,
29 or when any shares of such corporation have been sold or
30 disposed of to a person who is not a duly licensed
31 osteopathic physician or surgeon: *Provided*, That the
32 personal representative of a deceased shareholder shall
33 have a period, not to exceed twelve months from the date
34 of such shareholder's death, to dispose of such shares; but
35 nothing contained herein shall be construed as affecting

36 the existence of such corporation or its right to continue
37 to operate for all lawful purposes other than the practice
38 of osteopathic medicine and surgery.

39 (c) No corporation shall practice osteopathic medicine
40 or surgery, or any of its branches, or hold itself out as
41 being capable of doing so, without a certificate from the
42 board; nor shall any corporation practice osteopathic
43 medicine or surgery or any of its branches, or hold itself
44 out as being capable of doing so, after its certificate has
45 been revoked, or if suspended, during the term of such
46 suspension. A certificate signed by the secretary of the
47 board to which is affixed the official seal of the board to
48 the effect that it appears from the records of the board that
49 no such certificate to practice osteopathic medicine or
50 surgery or any of its branches in the state has been issued
51 to any such corporation specified therein or that such
52 certificate has been revoked or suspended shall be
53 admissible in evidence in all courts of this state and shall
54 be prima facie evidence of the facts stated therein.

55 (d) Any officer, shareholder or employee of such
56 corporation who participates in a violation of any
57 provision of this section shall be guilty of a misdemeanor
58 and, upon conviction, shall be fined not exceeding one
59 thousand dollars.

**§30-14-10. Annual renewal of license; fee; refresher training
a prerequisite; effect of failure to renew;
reinstatement.**

1 All holders of certificates of license to practice as
2 osteopathic physicians and surgeons in this state shall
3 renew them biennially on or before the first day of July,
4 by the payment of a reasonable renewal fee, the amount of
5 such reasonable fee to be set by the board rules to the
6 secretary of the board. The secretary of the board shall
7 notify each certificate holder by mail of the necessity of
8 renewing his or her certificate at least thirty days prior to
9 the first day of July of each year.

10 As a prerequisite to renewal of a certificate of license
11 issued by the board, each holder of such a certificate shall
12 furnish biennially to the secretary of the board satisfactory

13 evidence of having completed thirty-two hours of
14 educational refresher course training, of which the total
15 amount of hours must be AOA approved, and fifty
16 percent of the required thirty-two hours shall be category
17 (1).

18 The failure to renew a certificate of license shall
19 operate as an automatic suspension of the rights and
20 privileges granted by its issuance.

21 A certificate of license suspended by a failure to make
22 a biennial renewal thereof may be reinstated by the board
23 upon compliance of the certificate holder with the
24 following requirements: (a) Presentation to the board of
25 satisfactory evidence of educational refresher training of
26 quantity and standard approved by the board for the
27 previous two years; (b) payment of all fees for the
28 previous two years that would have been paid had the
29 certificate holder maintained his or her certificate in good
30 standing; and (c) payment to the board of a reasonable
31 reinstatement fee, the amount of such reasonable fee to be
32 set by the board rules.

§30-14-12. Offenses; penalties.

1 Each of the following acts shall constitute a
2 misdemeanor, punishable upon conviction by a fine of not
3 less than one thousand nor more than ten thousand
4 dollars:

5 (a) The practice or attempting to practice as an
6 osteopathic physician and surgeon without a license or
7 permit;

8 (b) The obtaining of or an attempt to obtain a license
9 or permit to practice in the profession for money or any
10 other thing of value, by fraudulent misrepresentation;

11 (c) The making of any willfully false oath or
12 affirmation whenever an oath or affirmation is required by
13 this article;

14 (d) Advertising, practicing or attempting to practice
15 under a name other than one's own.

CHAPTER 234

(Com. Sub. for H. B. 4601—By Delegates Beane, Johnson, Trump, Fantasia, Ennis, Facemyer and L. White)

[Passed March 14, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact article sixteen, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating generally to revising the law regulating the practice of chiropractic; legislative purpose and policy; licensure and exceptions to licensure; revising definitions; composition of and appointment to board; removal from board; training program for new board members; compensation; powers and duties of board; legislative rules; licensure requirements and application; examination and certificates of license; disqualification from practice; licensing of foreign graduates; licensure by endorsement; temporary and restricted licensure; licensing chiropractors from other states; fees; disciplinary actions; confidentiality of disciplinary proceedings; providing for civil and criminal penalties; determination and treatment of impairment; qualified immunity; enforcement of article; renewal and reinstatement; continuing education; reporting of felony convictions to board; minimum educational requirements for spinal manipulation; use of procedures and instruments; chiropractic assistants; expert testimony; use of physiotherapeutic and electrodiagnostic devices; specialty practice; setting forth certain illegal acts and providing criminal penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 16. CHIROPRACTORS.

- §30-16-1. Purpose and legislative intent.
- §30-16-2. License required; exceptions.
- §30-16-3. Definitions.

- §30-16-4. West Virginia board of chiropractic; establishment and composition.
- §30-16-5. Powers and duties of the board.
- §30-16-6. Application for license; requirements for licensure.
- §30-16-7. Examination; certificates of license.
- §30-16-8. Licensing of foreign graduates.
- §30-16-9. Licensure by endorsement; temporary licensure; restricted licensure.
- §30-16-10. Licensing chiropractors from other states; fee.
- §30-16-11. Disciplinary actions.
- §30-16-12. Impaired chiropractors.
- §30-16-13. Protected action, immunity and communication.
- §30-16-14. Enforcement.
- §30-16-15. Annual renewal; failure to renew; reinstatement.
- §30-16-16. Initiation of suspension or revocation proceedings allowed and required; reporting of information to board pertaining to professional malpractice and professional incompetence required; penalties.
- §30-16-17. Who may practice chiropractic; title of chiropractor; minimum education required for spinal manipulation.
- §30-16-18. Scope of practice; chiropractic assistants; expert testimony.
- §30-16-19. Duty of chiropractor to observe health rules; reports of health officer and local registrar of vital statistics.
- §30-16-20. Use of physiotherapeutic devices; electrodiagnostic devices; specialty practice.
- §30-16-21. Chiropractic corporations.
- §30-16-22. Offenses; penalties.

§30-16-1. Purpose and legislative intent.

1 It is declared to be a policy of this state that the
2 practice of chiropractic is a privilege granted to qualified
3 persons and that, in order to safeguard the public health,
4 safety and welfare, protect the public from the
5 unprofessional, improper, incompetent and unlawful
6 practice of chiropractic, it is necessary to provide
7 regulatory authority over persons practicing chiropractic.
8 The primary responsibility and obligation of the West
9 Virginia board of chiropractic is to protect the public.

§30-16-2. License required; exceptions.

1 (a) No person may practice or offer to practice, in this
2 state, chiropractic without a license issued by the West
3 Virginia board of chiropractic. A certificate or license
4 issued under the laws of this state, authorizing its holder to

5 practice chiropractic, before the effective date of this
6 article is not affected by the enactment of this article,
7 except that the holder of a certificate of license issued
8 prior to the effective date of this article is subject to all the
9 provisions of this article respecting the requirements and
10 obligations prescribed for the continuance in force of the
11 certificate of license.

12 (b) This article does not prohibit:

13 (1) Students from engaging in training in a
14 chiropractic school accredited by the counsel on
15 chiropractic education or its successor;

16 (2) Licensed chiropractors from providing service in
17 cases of emergency where no fee or other consideration is
18 contemplated, charged or received;

19 (3) Commissioned chiropractic officers of the armed
20 forces of the United States and chiropractic officers of the
21 United States public health service or the veterans'
22 administration of the United States from discharging their
23 official duties, except:

24 (A) Those officers who hold chiropractic licenses in
25 the state are subject to the provisions of this article; and

26 (B) Those officers shall be fully licensed to practice
27 chiropractic in one or more jurisdictions of the United
28 States;

29 (4) Individuals from practicing the tenets of a religion
30 or administering to the sick or suffering by mental or
31 spiritual means in accord with the tenets. This provision
32 does not exempt these individuals from the public health
33 laws of the state or federal government; or

34 (5) A person from administering a lawful domestic or
35 family remedy to a member of his or her own family.

§30-16-3. Definitions.

1 The following words, unless the context clearly
2 indicates otherwise, have the meaning ascribed to them in
3 this section:

4 (1) "Board" means the West Virginia board of
5 chiropractic;

6 (2) "Chiropractor" means a practitioner of
7 chiropractic;

8 (3) "Chiropractic services" means those health care
9 services provided within the scope of chiropractic practice
10 as defined by this article and by chiropractors licensed by
11 the board;

12 (4) "Chiropractic" is the science and art which utilizes
13 the inherent recuperative powers of the body and the
14 relationship between the neuromusculoskeletal structures
15 and functions of the body, particularly of the spinal
16 column and the nervous system, in the restoration and
17 maintenance of health. The use of the designation doctor
18 of chiropractic, chiropractor, chiropractic physician or
19 D.C., is the practice of chiropractic.

20 The practice of chiropractic also includes the
21 examination and assessment of members of the public that
22 are not patients of the examining chiropractor. Further,
23 the practice of chiropractic includes the review of
24 information relating to the duration and necessity of
25 chiropractic care that affects the course of care, the
26 treatment plan or payment and reimbursement concerning
27 chiropractic patients residing within the state of West
28 Virginia.

29 The practices and procedures which may be employed
30 by doctors of chiropractic are based on the academic and
31 clinical training received in and through chiropractic
32 colleges accredited by the council of chiropractic
33 education or its successors and as determined by the
34 board. These include the use of diagnostic, analytical and
35 therapeutic procedures specifically including the
36 adjustment and manipulation of the articulations and
37 adjacent tissues of the human body, particularly of the
38 spinal column, including the treatment of intersegmental
39 disorders. Patient care and management is conducted with
40 due regard for environmental and nutritional factors, as
41 well as first aid, hygiene, sanitation, rehabilitation and
42 physiological therapeutic procedures designed to assist in

43 the restoration and maintenance of neurological integrity
44 and homeostatic balance;

45 (5) "Spinal manipulation" and "spinal adjustment" are
46 interchangeable terms that identify a method of skillful
47 and beneficial treatment where a person uses direct thrust
48 or leverage to move a joint of the patient's spine beyond
49 its normal range of motion, but without exceeding the
50 limits of anatomical integrity.

**§30-16-4. West Virginia board of chiropractic; establishment
and composition.**

1 (a) The board known as the "West Virginia board of
2 chiropractic" is continued. It is composed of the director
3 of health, ex officio, three licensed chiropractors and one
4 person to represent the interest of the public. All shall be
5 appointed by the governor, by and with the advice and
6 consent of the Senate from a list of three names
7 recommended by the West Virginia chiropractic society,
8 incorporated. Each chiropractic member of the board
9 shall have been a resident of and engaged in the active
10 practice of chiropractic in the state for a period of at least
11 five years preceding his or her appointment.

12 (b) On the first day of July, one thousand nine
13 hundred ninety-eight, there shall be appointed, as
14 provided in this section, one chiropractic member for a
15 three-year term. As existing chiropractic board members'
16 terms expire, newly appointed chiropractic board
17 members shall be appointed for a term of office of three
18 years. No member may serve more than two full
19 consecutive three-year terms. When a vacancy in the
20 membership of the board occurs for any cause other than
21 the expiration of a term, the governor shall appoint from a
22 list of three names recommended by West Virginia
23 chiropractic society, incorporated, a successor as a
24 member of the board to fill the unexpired portion of the
25 term of office of the member whose office has been
26 vacated.

27 (c) The governor may remove any member of the
28 board in case of incompetency, neglect of duty, gross
29 immorality or malfeasance in office.

30 (d) The board shall conduct a training program to be
31 held annually to familiarize new board members with their
32 duties.

33 (e) Each member of the board shall receive an amount
34 not to exceed the same compensation as is paid to
35 members of the Legislature for their interim duties as
36 recommended by the citizens legislative compensation
37 commission and authorized by law for each day or
38 substantial portion thereof that he or she is engaged in the
39 work of the board or of its committees, and shall be
40 reimbursed for all actual and necessary expenses incurred
41 in carrying out his or her duties.

§30-16-5. Powers and duties of the board.

1 (a) The board shall:

2 (1) Administer, coordinate and enforce the provisions
3 of this article, evaluate the qualifications of applicants,
4 supervise the examination of applicants, issue or deny
5 original or endorsement licenses;

6 (2) Investigate allegations of violations of this article
7 and impose penalties if violations of this article have
8 occurred;

9 (3) Propose rules for legislative approval in
10 accordance with the provisions of article three, chapter
11 twenty-nine-a of this code, which shall after adoption
12 govern and control the professional conduct of every
13 person who holds a license to practice chiropractic in this
14 state, and which shall include, but not be limited to, rules
15 that:

16 (A) Delineate qualifications for licensure, including
17 qualifications for practice in specialties;

18 (B) Specify requirements for the renewal of licensure;

19 (C) Set forth procedures for licensure of
20 chiropractors;

21 (D) Establish a fee schedule for the amount and
22 payment of all fees and charges;

- 23 (E) Establish standards of professional conduct;
- 24 (F) Establish procedures for disciplinary actions and
25 complaint resolutions; and
- 26 (G) Provide for duties of board members;
- 27 (4) Evaluate the professional education and training of
28 applicants for licensure and licensure renewal;
- 29 (5) Evaluate the previous professional performance of
30 applicants for licensure and licensure renewal;
- 31 (6) Accept or deny applications for license renewal;
- 32 (7) Establish appropriate fees and charges to support
33 the active and effective pursuit of its legal responsibilities;
- 34 (8) Employ personnel as determined by its needs and
35 budget;
- 36 (9) Request legal advice and assistance, as needed,
37 from the attorney general;
- 38 (10) Enter into contracts necessary to carry out its
39 responsibilities under this article, including contracts for
40 professional services that may include investigation,
41 financing or legal services;
- 42 (11) Develop and adopt a budget; and
- 43 (12) Communicate disciplinary actions to relevant
44 state and federal authorities and to other state chiropractic
45 licensing authorities.

§30-16-6. Application for license; requirements for licensure.

- 1 (a) Any person wanting to practice chiropractic in this
2 state shall apply to the board for license to practice and
3 shall provide the board and attest to the following
4 information and documentation in a manner required by
5 the board:
- 6 (1) His or her full name, and any other name ever
7 used, current address, social security number and date and
8 place of birth;

9 (2) A recent signed photograph and sample of
10 handwriting;

11 (3) Originals of all documents and credentials
12 required by the board or notarized photocopies of other
13 verification acceptable to the board;

14 (4) A list of all jurisdictions, United States or foreign,
15 in which the applicant is licensed or has applied for
16 licensure to practice chiropractic or is authorized or has
17 applied for authorization to practice chiropractic;

18 (5) A list of all jurisdictions, United States or foreign,
19 in which the applicant has been denied licensure or
20 authorization to practice chiropractic or has voluntarily
21 surrendered a license or an authorization to practice
22 chiropractic;

23 (6) A list of all sanctions, judgments, awards,
24 settlements or convictions against the applicant in any
25 jurisdiction, United States or foreign, that would constitute
26 grounds for disciplinary action under this article or the
27 board's rules;

28 (7) A detailed educational history, including places,
29 institutions, dates and program descriptions, of all his or
30 her education beginning with secondary schooling
31 including all college, preprofessional, professional and
32 professional graduate education; and

33 (8) Any other information or documentation the
34 board may later determine necessary and as adopted by
35 reasonable rules in accordance with the provisions of
36 article three, chapter twenty-nine-a of this code.

37 (b) Each applicant shall establish to the board that the
38 applicant:

39 (1) Is eighteen years of age or older;

40 (2) Is of good moral character;

41 (3) Is a graduate of an accredited high school giving a
42 four-year course or has an education equivalent to the
43 same;

44 (4) Has attended for at least two academic years,
45 consisting of no less than sixty semester hours, an
46 accredited academic college or university and that after
47 the first day of July, two thousand five, the applicant has
48 obtained a bachelor's degree consisting of no less than one
49 hundred twenty-eight semester hours from an accredited
50 academic college or university, with a minimum of sixty
51 hours in basic sciences mandated by the council on
52 chiropractic education;

53 (5) Is a holder of the degree of doctor of chiropractic
54 from and a graduate of a chiropractic college or school
55 located in the United States, its territories or possessions
56 which was approved by the council on chiropractic
57 education or its successor at the time the degree was
58 conferred or that the applicant is the holder of a degree of
59 doctor of chiropractic from college of a foreign country
60 that the board determines is acceptable as set forth in
61 section eight;

62 (6) Has passed the national board of chiropractic
63 licensing examination Parts I, II, III and IV, satisfactory to
64 the board and any other examination, test or procedure
65 determined necessary by the board;

66 (7) Has demonstrated familiarity with the statutes and
67 rules of the jurisdiction relating to the practice of
68 chiropractic and acknowledges in writing that he or she
69 has read and understands this article and the current rules
70 relating to the practice of chiropractic in West Virginia;

71 (8) Is physically, mentally and professionally capable
72 of practicing chiropractic in a manner acceptable to the
73 board and submits to a physical, mental or professional
74 competency examination or a drug dependency
75 evaluation considered necessary by the board; and

76 (9) Has paid all fees and completed and attested to the
77 accuracy of all application and information forms
78 required by the board.

79 (c) The applicant is responsible for verifying to the
80 satisfaction of the board, the validity of all credentials
81 required for his or her chiropractic licensure. The board

82 shall review and verify chiropractic credentials and screen
83 applicant records through recognized national
84 chiropractic physician information services and data
85 banks.

§30-16-7. Examination; certificates of license.

1 (a) No person may receive a license to practice
2 chiropractic unless he or she successfully completes the
3 national board of chiropractic examination Parts I, II, III
4 and IV and an oral examination administered by the
5 board covering jurisprudence. Examinations shall be
6 conducted at least two times throughout the calendar year
7 and the board shall issue certificates of license to all
8 applicants who successfully pass the examinations. No
9 license may be issued under this section until the person
10 applying has paid to the board the prescribed fee.

11 (b) All applicants are required to attain a minimum
12 passing score in each national board Parts I, II, III and IV
13 examinations. All applicants are required to secure an
14 average grade of seventy percent on the oral examination.
15 If an applicant does not successfully complete the oral
16 examination, he or she may retake the oral examination.
17 If a satisfactory score is not achieved on the second
18 attempt, the applicant shall take and successfully complete
19 a national special purposes examination for chiropractic
20 examination before sitting for another oral examination.

21 (c) Any individual found by the board to have
22 engaged in conduct that subverts or attempts to subvert the
23 chiropractic licensing examination process is, at the
24 discretion of the board, subject to having the scores on the
25 licensing examination withheld or declared invalid, being
26 disqualified from the practice of chiropractic or subjected
27 to other appropriate sanctions. The federation of
28 chiropractic licensing boards shall be informed of all such
29 actions. The board shall provide notification to all
30 applicants of the prohibitions on conduct that subverts or
31 attempts to subvert the licensing examination process and
32 of the sanctions imposed for the conduct. A copy of the
33 notification attesting that he or she has read and
34 understood the notification shall be signed by the
35 applicant and filed with his or her application.

§30-16-8. Licensing of foreign graduates.

1 (a) Any person wanting to practice chiropractic in this
2 state who is a graduate of a chiropractic school located
3 outside the United States, its territories or possessions, shall
4 establish to the board that the applicant:

5 (1) Possesses a degree of doctor of chiropractic or a
6 board approved equivalent based upon satisfactory
7 completion of educational programs acceptable to the
8 board;

9 (2) Is eligible by virtue of his or her chiropractic
10 education and training for unrestricted licensure or
11 authorization to practice chiropractic in the country in
12 which he or she received that education and training;

13 (3) Has successfully completed all required parts of
14 the examination conducted by the national board of
15 chiropractic;

16 (4) Has a demonstrated command of the English
17 language; and

18 (5) Has satisfied all applicable requirements of the
19 United States immigration and naturalization service.

20 (b) All credentials, diplomas and other required
21 documentation in a foreign language submitted to the
22 board by or on behalf of an applicant, shall be
23 accompanied by notarized English translations acceptable
24 to the board.

**§30-16-9. Licensure by endorsement; temporary licensure;
restricted licensure.**

1 (a) The board is authorized, in its discretion, to issue a
2 license by endorsement to an applicant who:

3 (1) Has complied with all current chiropractic
4 licensing requirements except for the oral examination;

5 (2) Has passed a chiropractic licensing examination
6 given in English in another state, the District of Columbia
7 or a territory or possession of the United States, that the

8 board determines is equivalent to its own current
9 examination requirements;

10 (3) Has a valid current chiropractic license in another
11 state, the District of Columbia or a territory or possession
12 of the United States without any past or current
13 disciplinary action taken upon that license; and

14 (4) Successfully completes an oral examination
15 administered by the board covering jurisprudence and
16 clinical competency.

17 (b) No license may be issued under the provisions of
18 this section until the person applying has paid to the board
19 the prescribed fee.

20 (c) The board is authorized, in its discretion, to issue a
21 temporary license to visiting chiropractic physicians and
22 visiting professors for the treatment of individuals
23 involved with special events to applicants demonstrably
24 qualified for a full and unrestricted chiropractic license
25 under the requirements of this article and that hold a
26 current valid license in another state, territory or
27 possession of the United States or the District of Columbia
28 without any past or current disciplinary actions against
29 that license. A temporary license may not be issued under
30 the provisions of this section until the person applying has
31 paid to the board the prescribed fee.

32 (d) The board is authorized to issue conditional,
33 restricted or otherwise circumscribed licenses for a limited
34 and specific period of time as it determines necessary.

§30-16-10. Licensing chiropractors from other states; fee.

1 Persons licensed to practice chiropractic under the
2 laws of any other state, territory or the District of
3 Columbia having requirements equivalent to those of this
4 article, and extending like privileges to practitioners of this
5 state, may in the discretion of the board be licensed to
6 practice in this state without examination. No license may
7 be issued under the provisions of this section until the
8 person applying has completed satisfactorily an oral
9 examination and has paid the fee required by the board.

§30-16-11. Disciplinary actions.

1 (a) The board may take disciplinary action against any
2 licensee or certificate holder holding a license or
3 certificate issued under this article after giving reasonable
4 notice and an opportunity to be heard pursuant to the
5 provisions of section one, article five, chapter twenty-nine-
6 a of this code, when it finds that any person has engaged
7 in conduct in violation of the rules adopted by the board,
8 including, but not limited to, the following:

9 (1) Fraud or misrepresentation in applying for or
10 procuring a chiropractic license or in connection with
11 applying for or procuring periodic renewal of a
12 chiropractic license;

13 (2) Cheating on or attempting to subvert the
14 chiropractic licensing examination or examinations;

15 (3) Being found guilty of a crime in any jurisdiction,
16 which offense is a felony, involves moral turpitude or
17 directly relates to the practice of chiropractic. Any plea of
18 nolo contendere is a conviction for the purposes of this
19 subdivision;

20 (4) Conduct likely to deceive, defraud or harm the
21 public;

22 (5) Making a false or misleading statement regarding
23 his or her skill or the efficiency or value of the
24 chiropractic treatment;

25 (6) Representing to a patient that an incurable
26 condition, sickness, disease or injury can be cured;

27 (7) Willfully or negligently violating the
28 confidentiality between chiropractic physician and patient
29 except as required by law;

30 (8) Negligence in the practice of chiropractic as
31 determined by the board;

32 (9) Being found mentally incompetent or insane by
33 any court of competent jurisdiction;

- 34 (10) Being physically or mentally unable to engage
35 safely in the practice of chiropractic;
- 36 (11) Practice or other behavior that demonstrates an
37 incapacity or incompetence to practice chiropractic;
- 38 (12) Use of any false, fraudulent or deceptive
39 statement in any document connected with the practice of
40 chiropractic;
- 41 (13) Practicing chiropractic under a false or assumed
42 name;
- 43 (14) Aiding or abetting the practice of chiropractic by
44 an unlicensed, incompetent or impaired person;
- 45 (15) Allowing another person or organization to use
46 his or her license to practice chiropractic;
- 47 (16) Commission of any act of sexual abuse, sexual
48 misconduct or sexual exploitation related to the licensee's
49 practice of chiropractic;
- 50 (17) Being addicted or habituated to a drug or
51 intoxicant;
- 52 (18) Obtaining any fee by fraud, deceit or
53 misrepresentation;
- 54 (19) Employing abusive billing practices;
- 55 (20) Directly or indirectly giving or receiving any fee,
56 commission, rebate or other compensation for
57 professional services not actually rendered: *Provided*, That
58 this prohibition does not preclude the legal functioning of
59 lawful professional partnerships, corporations or
60 associations;
- 61 (21) Disciplinary action of another state or jurisdiction
62 against a license or other authorization to practice
63 chiropractic based upon acts or conduct by the licensee
64 similar to acts or conduct that constitute grounds for
65 action as defined in this section, a certified copy of the
66 record of the action taken by the other state or jurisdiction
67 being conclusive evidence thereof;

68 (22) Failure to report to the board within thirty days
69 of any adverse action, disciplinary action, sanctions or
70 punishment taken against him or her by another state
71 licensing board or licensing jurisdiction, United States or
72 foreign, by a peer review body, health care institution,
73 professional or chiropractic society or association,
74 governmental agency, law-enforcement agency or court
75 for acts or conduct similar to acts or conduct that
76 constitute grounds for action as defined in this section;

77 (23) Failure to report to the board within thirty days
78 of the surrender of a license or other authorization to
79 practice chiropractic in another state or jurisdiction or
80 surrender of membership on any chiropractic staff or in
81 any chiropractic or professional association or society
82 while under disciplinary investigation by any of those
83 authorities or bodies for acts or conduct similar to acts or
84 conduct that constitute grounds for action as defined in
85 this section;

86 (24) Any adverse judgment, award or settlement
87 against the licensee resulting from a chiropractic liability
88 claim related to acts or conduct similar to acts or conduct
89 that constitute grounds for action as defined in this
90 section;

91 (25) Failure to report to the board within thirty days
92 any adverse judgment, settlement or award arising from a
93 chiropractic liability claim related to acts or conduct
94 similar to acts or conduct that constitute grounds for
95 action as defined in this section;

96 (26) Failure to transfer or release pertinent and
97 necessary chiropractic records to another physician in a
98 timely fashion when legally requested to do so by the
99 subject patient or by a legally designated representative of
100 the subject patient;

101 (27) Improper management of chiropractic patient
102 records;

103 (28) Failure to furnish the board, its investigators or
104 representatives, information legally requested by the
105 board;

106 (29) Failure to cooperate with a lawful investigation
107 conducted by the board; or

108 (30) Violation of any provision of this article or the
109 rules of the board or of an action, stipulation or agreement
110 with the board.

111 (b) Upon a finding of a violation by a chiropractor of
112 one or more of the grounds for discipline contained in
113 subsection (a) of this section, the board may impose one
114 or more of the following penalties:

115 (1) Revocation of the chiropractic license;

116 (2) Suspension of the chiropractic license;

117 (3) Probation;

118 (4) Stipulations, limitations, restrictions and conditions
119 relating to practice;

120 (5) Reprimand;

121 (6) Monetary redress to another party;

122 (7) A period of free public or charity service;

123 (8) Satisfactory completion of an educational, training
124 or treatment program, or a combination of programs;

125 (9) Imposition of an administrative penalty, not to
126 exceed one thousand dollars per day per violation; or

127 (10) Payment of administrative costs for the
128 disciplinary action, including, but not limited to, attorney
129 fees, investigation expenses, hearing examiner fees, witness
130 fees and cost of monitoring compliance with the board's
131 orders.

132 (c) The board may issue a confidential letter of
133 concern to a licensee when, though evidence does not
134 warrant formal proceedings, the board has noted
135 indications of possible misconduct of a licensee that could
136 lead to serious consequences and formal action. In the
137 letter of concern, the board is also authorized at its
138 discretion to request clarifying information from the
139 licensee.

140 (d) The board may require professional competency,
141 physical, mental or chemical dependency examinations of
142 any applicant or licensee including withdrawal and
143 laboratory examination of bodily fluids.

144 (e) In every disciplinary case considered by the board
145 pursuant to this article, whether initiated by the board or
146 upon complaint or information from any person or
147 organization, the board shall make a preliminary
148 determination whether probable cause exists to
149 substantiate charges due to any reasons set forth in this
150 section. If probable cause is not found in the complaint,
151 all proceedings relating to the complaint and the response
152 of the licensee or his or her representative shall be held
153 confidential and may not be made available to the public
154 or to any other state or federal agency or court. If
155 probable cause is found to exist, all proceedings on the
156 charges shall be open to the public, who are entitled to all
157 reports, records and nondeliberative materials introduced
158 at the hearing, including the record of any final action
159 taken: *Provided*, That any medical records pertaining to
160 the person who has not waived his or her right to the
161 confidentiality of the records are not open to the public.
162 For purposes of the hearing, the board has the power to
163 subpoena witnesses, documents or any other tangible
164 evidence. The board may, in its discretion, meet in an
165 informal conference with the accused licensee who seeks
166 or agrees to the conference. Disciplinary action taken
167 against a licensee as a result of the informal conference
168 and agreed to in writing by the board and the accused
169 licensee is binding and a matter of public record. The
170 holding of an informal conference does not preclude an
171 open formal hearing if the board determines it is
172 necessary.

173 (f) If the board determines that the evidence in its
174 possession indicates that a chiropractor's continuation in
175 practice or unrestricted practice constitutes an immediate
176 threat to the public health and safety or when a licensee is
177 convicted of a felony, whether or not related to the
178 practice of chiropractic, the board may seek an injunction
179 in the circuit court of proper jurisdiction for immediate

180 relief implementing any of the board's authority provided
181 in this article.

182 (g) All disciplinary actions taken by the board shall be
183 reported to the federation of licensing boards, appropriate
184 federal agencies and any other state boards with which the
185 disciplined licensee may also be registered or licensed and
186 all the actions, including related findings of fact and
187 conclusions of law, are matters of public record.
188 Voluntary surrender of and voluntary limitations on a
189 chiropractic license of any person are also matters of
190 public record and shall also be reported to the appropriate
191 agencies.

§30-16-12. Impaired chiropractors.

1 (a) As contained in this section the term impairment is
2 defined as the inability of a licensee to practice
3 chiropractic with reasonable skill and safety by reason of:

4 (1) Mental illness;

5 (2) Physical illness, including, but not limited to,
6 physical deterioration that adversely affects cognitive,
7 motor or perceptive skills; or

8 (3) Habitual or excessive use or abuse of drugs
9 defined in law as controlled substances, of alcohol or other
10 substances that impair ability.

11 (b) The board may after a probable cause
12 determination and hearing require a licensee or applicant
13 to submit to a mental or physical examination or a
14 chemical dependency evaluation by physicians designated
15 by the board. The results of the examination or
16 evaluation are admissible at any hearing before the board
17 despite any claim of privilege under contrary rule or
18 statute. Every person who receives a license to practice
19 chiropractic or files an application for a license to practice
20 chiropractic thereby consents to submit to a mental or
21 physical examination or a chemical dependency
22 evaluation and has waived all objections to the
23 admissibility of the results in any hearing before the
24 board. If a licensee or applicant fails to submit to an
25 examination or evaluation when properly directed to do so

26 by the board, the board may enter a final order upon
27 proper notice, hearing and proof of their refusal.

28 (c) Upon the determination by the board after
29 examination and hearing that a licensee is impaired the
30 board shall take one or more of the following actions:

31 (1) Direct the licensee to submit to care, counseling or
32 treatment acceptable to the board;

33 (2) Suspend, limit or restrict the chiropractic license
34 for the duration of the impairment; or

35 (3) Revoke the chiropractic license.

36 (d) Any licensee or applicant prohibited from
37 practicing chiropractic under this section, shall at
38 reasonable intervals be afforded an opportunity to
39 demonstrate to the satisfaction of the board that he or she
40 can assume or begin the practice of chiropractic with
41 reasonable skill and safety.

§30-16-13. Protected action, immunity and communication.

1 (a) There is no monetary liability on the part of, and
2 no cause of action for damages arising against, any
3 current or former member, officer, administrator, peer
4 review committee member, staff member, committee
5 member, examiner, representative, agent, employee,
6 consultant, witness or any other person serving or having
7 served the board, either as a part of the board's operation
8 or as an individual, as a result of any act, omission,
9 proceeding, conduct or decision related to his or her
10 duties undertaken or performed in good faith and within
11 the scope of the function of the board.

12 (b) A current or former member, officer,
13 administrator, staff member, committee member,
14 examiner, representative, agent, employee, consultant or
15 any other person serving or having served the board may
16 request the state to defend him or her against any claim or
17 action arising out of any act, omission, proceeding,
18 conduct or decision related to his or her duties undertaken
19 or performed in good faith and within the scope of the
20 function of the board.

21 (c) Every communication made by or on behalf of
22 any person, institution, agency or organization to the
23 board or to any person designated by the board relating to
24 an investigation or the initiation of an investigation,
25 whether by way of report, complaint or statement, is
26 privileged. No action or proceeding, civil or criminal, is
27 permitted against the person, institution, agency or
28 organization by whom or on whose behalf the
29 communication was made in good faith.

§30-16-14. Enforcement.

1 (a) The board shall enforce the provisions of this
2 article and the rules adopted under this article. If any
3 person refuses to obey any decision or order of the board,
4 the board or, upon the request of the board, the attorney
5 general or the appropriate prosecuting attorney, may file
6 an action for the enforcement of the decision or order,
7 including injunctive relief, in the circuit court of the
8 county of residence of the person. After due hearing, the
9 court shall order the enforcement of the decision or order,
10 or any part thereof, if legally and properly made by the
11 board and where appropriate, injunctive relief. The board
12 is authorized to issue a cease and desist order to restrain
13 any person or any corporation or association and its
14 officers and directors from violating the provisions of this
15 article.

16 (b) Each of the following acts is a misdemeanor,
17 punishable upon conviction by a fine of not less than five
18 hundred dollars nor more than maximum allowed by
19 state law, or by confinement in a county or regional jail
20 for not less than thirty days nor more than one year, or
21 both, in the discretion of the court:

22 (1) The obtaining of or attempt to obtain a license by
23 the use of fraud, deceit or willful misrepresentation;

24 (2) The practice or attempting to practice as a
25 chiropractor without a license granted under the
26 provisions of this article, or practicing or attempting to
27 practice while the license is suspended or after the license
28 has been revoked;

29 (3) The use of any title to induce belief that the use of
30 the title is engaged in the practice of chiropractic, if the
31 use of the title has not fully complied with the provisions
32 of this article;

33 (4) The buying, selling or fraudulent procurement of
34 any diploma of, or license to practice chiropractic; and

35 (5) The violation of any provision of this article
36 regulating the practice of chiropractors.

37 (c) Each day any person violates a provision of this
38 article is a separate and distinct offense.

§30-16-15. Annual renewal; failure to renew; reinstatement.

1 (a) All holders of certificates of license to practice
2 chiropractic in this state shall renew them annually on or
3 before the first day of July of each year by:

4 (1) Paying the board an annual renewal fee in an
5 amount determined by the board;

6 (2) Returning the renewal application form with all
7 required information complete and accurate; and

8 (3) Presenting to the board evidence of completion of
9 at least eighteen hours of continuing education each year
10 of which up to six hours may be mandated in special
11 subjects by the board.

12 (b) The board shall propose rules for legislative
13 approval in accordance with the provisions of article three,
14 chapter twenty-nine-a of this code, establishing all
15 additional continuing education requirements and all
16 criteria for fulfillment of the continuing education
17 requirements.

18 (c) The board shall notify each certificate holder by
19 mail, at least thirty days prior to the first day of July of
20 each year, of the necessity of renewing his or her
21 certificate. Failure to renew a certificate of license to
22 practice chiropractic operates as an automatic suspension
23 of the rights and privileges granted by its issuance.

24 (d) A certificate or license suspended by a failure to
25 make the required annual renewal may be reinstated by
26 the board, except as provided in subsection (e) of this
27 section, upon:

28 (1) Presentation of evidence of completion of the
29 required hours of continuing education for each year the
30 license has been suspended; and

31 (2) Payment of all fees that would have been paid if
32 the certificate holder had maintained the certificate in
33 good standing and the payment to the board of a
34 reinstatement fee in an amount to be determined by the
35 board.

36 (e) No certificate may be reinstated after a lapse of two
37 years. After a lapse of two years, a license may be issued
38 only after the former certificate holder, subsequent to the
39 lapse, has fulfilled all other requirements of licensure as
40 set forth in section six of this article and has passed the
41 national special purposes examination for chiropractic
42 examination.

**§30-16-16. Initiation of suspension or revocation proceedings
allowed and required; reporting of information
to board pertaining to professional malprac-
tice and professional incompetence required;
penalties.**

1 (a) The board may independently initiate suspension
2 or revocation proceedings as well as initiate suspension or
3 revocation proceedings based on information received
4 from any person. The board shall initiate investigations as
5 to professional incompetence or other reasons for which a
6 licensed chiropractor may be adjudged unqualified if the
7 board receives notice that five or more judgments or
8 settlements arising from professional liability have been
9 rendered or made against the chiropractor.

10 (b) Upon request of the board, any peer review
11 committee in this state shall report any information that
12 may relate to the practice or performance of any
13 chiropractor known to that peer review committee. Copies
14 of the requests for information from a peer review

15 committee may be provided to the subject chiropractor if,
16 in the discretion of the board, the provision of the copies
17 does not jeopardize the board's investigation. In the event
18 that copies are provided, the subject chiropractor is
19 allowed fifteen days to comment on the requested
20 information and the comments shall be considered by the
21 board.

22 (c) After the completion of a hospital's formal
23 disciplinary procedure and after any resulting legal action,
24 the chief executive officer of the hospital shall report in
25 writing to the board within sixty days the name of any
26 chiropractor who is a member of the staff or any other
27 chiropractor practicing in the hospital whose hospital
28 privileges have been revoked, restricted, reduced or
29 terminated for any cause, including resignation, together
30 with all pertinent information relating to the action. The
31 chief executive officer shall also report any other formal
32 disciplinary action taken against any chiropractor by the
33 hospital upon the recommendation of its professional staff
34 relating to professional ethics, medical incompetence,
35 medical malpractice, moral turpitude or drug or alcohol
36 abuse. Temporary suspension for failure to maintain
37 records on a timely basis or failure to attend staff or
38 section meetings need not be reported.

39 (d) Any professional society in this state comprised
40 primarily of chiropractors which takes any form of
41 disciplinary action against a member relating to
42 professional ethics, professional incompetence,
43 professional malpractice, moral turpitude or drug or
44 alcohol abuse, shall report in writing to the board within
45 sixty days of a final decision the name of the member,
46 together with all pertinent information relating to the
47 action.

48 (e) Every person, partnership, corporation, association,
49 insurance company, professional society or other
50 organization providing professional liability insurance to a
51 chiropractor in this state shall submit to the board the
52 following information within thirty days from any
53 judgment, dismissal or settlement of a civil action or of
54 any claim involving the insured:

- 55 (1) The date of any judgment, dismissal or settlement;
- 56 (2) Whether any appeal has been taken on the
57 judgment, and if so, by which party;
- 58 (3) The amount of any settlement or judgment against
59 the insured; and
- 60 (4) Other information the board requires.
- 61 (f) Within thirty days after a person known to be a
62 chiropractor licensed or otherwise lawfully practicing
63 chiropractic in this state or applying to be so licensed is
64 convicted of a felony under the laws of this state involving
65 alcohol or drugs in any way, including any controlled
66 substance under state or federal law, the clerk of the court
67 of record in which the conviction was entered shall
68 forward to the board a certified true and correct abstract
69 of the record of the convicting court. The abstract shall
70 include the name and address of the chiropractor or
71 applicant, the nature of the offense committed and the
72 final judgment and sentence of the court.
- 73 (g) Upon a determination of the board that there is
74 probable cause to believe that any person, partnership,
75 corporation, association, insurance company, professional
76 society or other organization has failed or refused to make
77 a report required by this subsection, the board shall
78 provide written notice to the alleged violator stating the
79 nature of the alleged violation and the time and place at
80 which the alleged violator shall appear to show good cause
81 why a civil penalty should not be imposed. The hearing
82 shall be conducted in accordance with the provisions of
83 article five, chapter twenty-nine-a of this code. After
84 reviewing the record of the hearing, if the board
85 determines that a violation of this subsection has occurred,
86 the board shall assess a civil penalty of not less than one
87 thousand dollars nor more than ten thousand dollars
88 against the violator. Anyone so assessed shall be notified
89 of the assessment in writing and the notice shall specify
90 the reasons for the assessment. If the violator fails to pay
91 the amount of the assessment to the board within thirty
92 days, the attorney general may institute a civil action in the
93 circuit court of Kanawha County to recover the amount of

94 the assessment. In any such civil action, the court's review
95 of the board's action shall be conducted in accordance
96 with the provisions of section four, article five, chapter
97 twenty-nine-a of this code.

98 (h) Any person may report to the board relevant facts
99 about the conduct of any chiropractor in this state which
100 in the opinion of the person amounts to professional
101 malpractice or professional incompetence.

102 (i) The board shall provide forms for filing reports
103 pursuant to this section. Reports submitted in other forms
104 including verbal report shall be accepted by the board.

105 (j) The filing of a report with the board pursuant to
106 any provision of this article, any investigation by the
107 board or any disposition of a case by the board does not
108 preclude any action by a hospital, other health care facility
109 or professional society comprised primarily of
110 chiropractors to suspend, restrict or revoke the privileges
111 or membership of the chiropractor.

**§30-16-17. Who may practice chiropractic; title of
chiropractor; minimum education required
for spinal manipulation.**

1 (a) No person licensed under chapter thirty of this
2 code may perform or authorize a spinal manipulation or
3 spinal adjustment without having first received a minimum
4 of four hundred hours of classroom instruction in spinal
5 manipulation or spinal adjustment and a minimum of
6 eight hundred hours of supervised clinical training at a
7 facility where spinal manipulation or spinal adjustment is a
8 primary method of treatment. Violation of this section is
9 an unlawful practice of chiropractic and is grounds for the
10 offending health care provider's licensing board to
11 suspend, revoke or refuse to renew provider's license or
12 take any other disciplinary action allowed by law.

13 (b) Every chiropractor who has complied with the
14 provisions of this article is entitled to practice chiropractic
15 in this state. The title of chiropractor shall be doctor of
16 chiropractic and is designated by the letters "D.C." The

17 titles "D.C.," doctor of chiropractic, chiropractor,
18 chiropractic physician are interpreted as the same.

§30-16-18. Scope of practice; chiropractic assistants; expert testimony.

1 (a) Any chiropractor who has complied with the
2 provisions of this article may use any instrument or
3 procedure, for the purpose of diagnosis and analysis of
4 disease or abnormalities: *Provided*, That the person is
5 trained to perform the procedures and use the instruments
6 through a chiropractic college approved by the counsel on
7 chiropractic education or its successor. Any chiropractor
8 properly qualified under this article may engage in the use
9 of physiotherapeutic devices, physiotherapeutic modalities,
10 physical therapy and physical therapy techniques.
11 Licensed chiropractors may also employ properly trained
12 chiropractic assistants to perform duties under supervision
13 that are generally conducted by chiropractic assistants
14 which are not otherwise prohibited by the board. The
15 board shall propose and promulgate rules in accordance
16 with the provisions governing legislative rules, contained
17 in article three, chapter twenty-nine-a of this code
18 governing chiropractic assistants, including, but not
19 limited to, minimum qualification, scope of practice, and
20 supervision requirements. A licensed chiropractor may not
21 engage in conduct outside this scope and beyond his or
22 her training and knowledge.

23 (b) A doctor of chiropractic duly licensed under this
24 article is presumed to be competent to testify before the
25 circuit courts of this state or in any other state
26 administrative proceeding as an expert witness.

§30-16-19. Duty of chiropractor to observe health rules; reports of health officer and local registrar of vital statistics.

1 Doctors of chiropractic shall observe and are subject
2 to all state and municipal rules in regard to the control of
3 infectious diseases, and to any and all other matters
4 pertaining to public health. They shall report to the
5 public health officer in the manner required by law. It is

6 the duty of each doctor of chiropractic in this state to
7 report to the registrar of vital statistics of his or her
8 magisterial district, within ten days of its occurrence, any
9 death which may come under his or her supervision, with a
10 certificate of the cause of death and correlative facts as
11 may be at that time required by the division of health.

§30-16-20. Use of physiotherapeutic devices; electrodiagnostic devices; specialty practice.

1 (a) No chiropractor may use any physiotherapeutic
2 devices or electrodiagnostic devices in practice until he or
3 she has certified to the board that he or she has completed
4 at least the minimum classroom hours required for
5 certification in the use of these procedures in classes
6 sponsored by or conducted by a chiropractic college
7 approved by the council of chiropractic education or its
8 successor.

9 (b) Electrodiagnostic devices include, but are not
10 limited to, the following: Videofluoroscopy and
11 diagnostic ultrasound, including needle and surface
12 electromyography, nerve conduction velocity studies,
13 somatosensory testing and neuromuscular junction testing.
14 The board may designate other devices as
15 electrodiagnostic devices covered by this section by rule.

16 (c) As contained in this section, the term "specialty"
17 includes, but is not limited to, orthopedics, neurology,
18 chiropractic sports physician, radiology, pediatrics,
19 nutrition, rehabilitation, acupuncture, chiropractic internist,
20 behavioral health, diagnostic imaging and
21 physiotherapeutics. No chiropractor is permitted to
22 practice in a specialty in the chiropractic field or hold
23 himself or herself out as being a specialist in the
24 chiropractic field until the licensee has successfully
25 completed a certified program in that specialty at a
26 chiropractic college approved by the council on
27 chiropractic education or its successor and approved by
28 the board. The program shall consist of a minimum
29 number of hours to be determined by the board.

30 Successful completion of the final certification exam is
31 required.

§30-16-21. Chiropractic corporations.

1 (a) One or more individuals, each of whom is licensed
2 to practice chiropractic within this state may organize and
3 become a shareholder or shareholders of a chiropractic
4 corporation. Individuals who may be practicing
5 chiropractic as an organization created otherwise than
6 pursuant to the provisions of this section may incorporate
7 under and pursuant to this section. This section is not
8 intended to amend the statutory or common law as it
9 relates to associations or partnerships, except to allow
10 partnerships of chiropractors to organize as a chiropractic
11 corporation.

12 (b) A chiropractic corporation may render
13 professional service only through officers, employees and
14 agents who are themselves duly licensed to render
15 chiropractic service within this state. The term "employee"
16 or "agent" as used in this section, does not include
17 secretaries, clerks, typists, paraprofessional personnel or
18 other individuals who are not usually and ordinarily
19 considered by custom and practice to be rendering
20 chiropractic services for which a license is required.

21 (c) This section does not modify the law as it relates to
22 the relationship between a person furnishing chiropractic
23 services and his or her client, nor does it modify the law as
24 it relates to liability arising out of the professional service
25 relationship. Except for permitting chiropractic
26 corporations this section is not intended to modify any
27 legal requirement or court rule relating to ethical
28 standards of conduct required of persons providing
29 chiropractic services.

30 (d) A chiropractic corporation may issue its capital
31 stock only to persons who are duly licensed by the board.

32 (e) When not inconsistent with this section, the
33 organization and procedures of chiropractic corporations

34 shall conform to the requirements of article one, chapter
35 thirty-one of this code.

§30-16-22. Offenses; penalties.

1 (a) Each of the following acts shall constitute a
2 misdemeanor, punishable upon conviction by a fine of not
3 less than one hundred dollars nor more than five hundred
4 dollars, or by imprisonment in the county jail for not less
5 than thirty days nor more than one year, or both, in the
6 discretion of the court, and each day any person shall so
7 violate any provisions of this article shall constitute a
8 separate and distinct offense:

9 (1) The obtaining of or attempt to obtain a license by
10 the use of fraud, deceit or willful misrepresentation;

11 (2) The practice, or attempting to practice, as a
12 chiropractor without a license granted under the
13 provisions of this article, or practicing or attempting to
14 practice while said license is suspended, or after said
15 license has been revoked;

16 (3) The use of any title to induce belief that the user
17 of said title is engaged in the practice of chiropractic, if
18 the user of said title has not fully complied with the
19 provisions of this article;

20 (4) The buying, selling or fraudulent procurement of
21 any diploma of, or license to practice, chiropractic;

22 (5) The violation of any provision of this article
23 regulating the practice of chiropractors.

24 (b) A person shall not engage in the practice of
25 chiropractic or hold himself or herself out as qualified to
26 practice chiropractic or use any title, word or abbreviation
27 to indicate to or induce others to believe that he or she is
28 licensed to chiropractic in this state unless he or she is
29 actually licensed under the provisions of this article. Any
30 person who violates the provisions of this subsection is
31 guilty of a misdemeanor and, upon conviction thereof,
32 shall be fined not more than one thousand dollars, or
33 imprisoned in the county jail not more than three months,
34 or both fined and imprisoned.

CHAPTER 235

(Com. Sub. for S. B. 382—By Senator Schoonover)

[Passed March 14, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article eighteen, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to allowing an applicant to count experience and service as a magistrate towards eligibility for a private investigator's license; and prohibiting one serving as a magistrate from being employed as a private investigator.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 18. PRIVATE INVESTIGATIVE AND SECURITY SERVICES.

§30-18-2. Eligibility requirements for license to conduct the private investigation business.

- 1 (a) In order to be eligible for any license to conduct
- 2 the private investigation business, an applicant shall:
 - 3 (1) Be at least eighteen years of age;
 - 4 (2) Be a citizen of the United States or an alien who is
 - 5 legally residing within the United States;
 - 6 (3) Not have had any previous license to conduct a
 - 7 private investigation business or to conduct a security
 - 8 guard business revoked or any application for any such
 - 9 licenses or registrations denied by the appropriate
 - 10 governmental authority in this or any other state or
 - 11 territory;

12 (4) Not have been declared incompetent by reason of
13 mental defect or disease by any court of competent
14 jurisdiction unless a court has subsequently determined
15 that the applicant's competency has been restored;

16 (5) Not suffer from habitual drunkenness or from
17 narcotics addiction or dependence;

18 (6) Be of good moral character;

19 (7) Have a minimum of two years of experience,
20 education or training in any one of the following areas, or
21 some combination thereof:

22 (A) Course work that is relevant to the private
23 investigation business at an accredited college or
24 university;

25 (B) Employment as a member of any United States
26 government investigative agency, employment as a
27 member of a state or local law-enforcement agency or
28 service as a sheriff;

29 (C) Employment by a licensed private investigative or
30 detective agency for the purpose of conducting the private
31 investigation business;

32 (D) Service as a magistrate in this state; or

33 (E) Any other substantially equivalent training or
34 experience;

35 (8) Not have been convicted of a felony in this state or
36 any other state or territory;

37 (9) Not have been convicted of any of the following:

38 (A) Illegally using, carrying or possessing a pistol or
39 other dangerous weapon;

40 (B) Making or possessing burglar's instruments;

41 (C) Buying or receiving stolen property;

42 (D) Entering a building unlawfully;

43 (E) Aiding an inmate's escape from prison;

- 44 (F) Possessing or distributing illicit drugs;
- 45 (G) Any misdemeanor involving moral turpitude or
46 for which dishonesty of character is a necessary element;
47 and
- 48 (10) Not have violated any provision of section eight
49 of this article.
- 50 The provisions of this section shall not prevent the
51 issuance of a license to any person who, subsequent to his
52 or her conviction, shall have received an executive pardon
53 therefor, removing this disability.
- 54 (b) Any person who qualifies for a private
55 investigator's license shall also be qualified to conduct
56 security guard business upon notifying the secretary of
57 state in writing that the person will be conducting such
58 business.
- 59 (c) No person may be employed as a licensed private
60 investigator while serving as magistrate.

CHAPTER 236

(S. B. 727—By Senators Anderson, Schoonover, Helmick, Ross and Oliverio)

[Passed March 13, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section fourteen, article twenty-seven, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to abolishing transfer of funds from barbers and cosmetologists fund to the general revenue fund; and clarifying that the fund is subject to legislative appropriation.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 27. BOARD OF BARBERS AND COSMETOLOGISTS.**§30-27-14. Collections and expenditures; disposition of funds.**

1 All money collected under the provisions of this
2 article shall be deposited in the state treasury as provided
3 by law, and shall be credited to the board of barbers and
4 beauticians in a special fund that has been known as the
5 "barbers and beauticians special fund" and is hereby
6 continued and shall be designated the "barbers and
7 cosmetologists fund". All money in such fund shall be
8 expended only for the administration and enforcement of
9 the provisions of this article and are not authorized from
10 collections but are to be made only in accordance with
11 appropriation by the Legislature and in accordance with
12 the provisions of article three, chapter twelve of this code
13 and upon the fulfillment of the provisions set forth in
14 article two, chapter five-a of this code: *Provided*, That for
15 the fiscal year ending the thirtieth day of June, one
16 thousand nine hundred ninety-eight, expenditures are
17 authorized from collections rather than pursuant to an
18 appropriation by the Legislature. Amounts collected
19 which are found from time to time to exceed the funds
20 needed for purposes set forth in this article may be
21 transferred to other accounts or funds and redesignated
22 for other purposes by appropriation of the Legislature.

CHAPTER 237

(H. B. 4618—By Mr. Speaker, Mr. Kiss, and Delegates Leach,
Miller, Compton, Michael, Douglas and Pettit)

[Passed March 14, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections five, seven and eight,
article thirty-one, chapter thirty of the code of West Virginia,
one thousand nine hundred thirty-one, as amended, all
relating to the board of examiners in counseling; authorizing
the board to establish a schedule of fees by legislative rule.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 31. LICENSED PROFESSIONAL COUNSELORS.

§30-31-5. Powers and duties of board; disposition of board funds.

§30-31-7. Qualifications of applicants for license; application fee.

§30-31-8. Issuance of license; renewal of license; renewal fee; information required in application for renewal.

§30-31-5. Powers and duties of board; disposition of board funds.

1 (a) In addition to the duties set forth elsewhere in this
2 article, the board shall:

3 (1) Issue, renew, deny, suspend or revoke licenses to
4 engage in the practice of counseling and place a licensed
5 counselor on probation in accordance with the provisions
6 of this article and, in accordance with the administrative
7 procedures hereinafter provided, may review, affirm,
8 reverse, vacate or modify its order with respect to any such
9 denial, suspension or revocation;

10 (2) Promulgate reasonable rules pursuant to article
11 three, chapter twenty-nine-a of this code, implementing
12 the provisions of this article and the powers and duties
13 conferred upon the board hereby including, but not
14 limited to, rules setting forth:

15 (A) Any and all specific master's and doctoral degree
16 programs considered to be equivalent to a master's or
17 doctoral degree program in counseling for purposes of
18 licensure under subdivision (4), subsection (a), section
19 seven of this article;

20 (B) The nature of supervised professional experience
21 approved by the board for the purposes of licensure under
22 subdivision (4), subsection (a), section seven of this article;

23 (C) A code of ethics for licensed counselors patterned
24 after the codes of ethics of related professional groups;

25 (D) Forms for license applications and license renewal
26 applications; and

27 (E) A reasonable and appropriate schedule of fees;

28 (3) Keep accurate and complete records of its
29 proceedings, certify the same as may be appropriate and
30 submit an annual report to the governor and the
31 Legislature in such form as the governor may require;

32 (4) Adopt an official seal to be affixed to all licenses
33 issued by the board;

34 (5) Appoint an examiner to determine the eligibility
35 of applicants for a license to engage in the practice of
36 counseling;

37 (6) Employ, direct, discharge and define the duties of
38 any and all professional, clerical or other personnel
39 necessary to effectuate the provisions of this article;

40 (7) Take any other actions as may be reasonably
41 necessary to effectuate the provisions of this article; and

42 (8) Accept gifts, grants and donations from any source
43 for the purposes of or incidental to this article.

44 (b) All moneys paid to the board shall be accepted by
45 a person designated by the board and deposited by him or
46 her with the treasurer of the state and credited to an
47 account to be known as the "Board of Examiners in
48 Counseling Fund." The compensation and expenses of
49 members of the board and all other costs and expenses
50 incurred by the board in the administration of this article
51 shall be paid from the fund, and no part of the state's
52 general revenue fund may be expended for such purpose.

§30-31-7. Qualifications of applicants for license; application fee.

1 (a) To be eligible for a license to engage in the
2 practice of counseling, an applicant must:

3 (1) Be a legal resident of the state of West Virginia;

4 (2) Satisfy the board that he or she is of good moral
5 character and merits the public trust, as evidenced:

6 (A) If the applicant has never been convicted of a
7 felony or a crime involving moral turpitude, by submitting
8 letters of recommendation from three persons not related
9 to the applicant and a sworn statement from the applicant
10 stating that he or she has never been convicted of a felony
11 or a crime involving moral turpitude; or

12 (B) If the applicant has been convicted of a felony or
13 a crime involving moral turpitude, it is a rebuttable
14 presumption that the applicant is unfit for licensure unless
15 he or she submits competent evidence of sufficient
16 rehabilitation and present fitness to perform the duties of a
17 licensed professional counselor as may be established by
18 the production of: (i) Documentary evidence including a
19 copy of the relevant release or discharge order, evidence
20 showing compliance with all conditions of probation or
21 parole, evidence showing that at least one year has elapsed
22 since release or discharge without subsequent conviction,
23 and letters of reference from three persons who have been
24 in contact with the applicant since his or her release or
25 discharge; and (ii) Any collateral evidence and testimony
26 as may be requested by the board which shows the nature
27 and seriousness of the crime, the circumstances relative to
28 the crime or crimes committed and any mitigating
29 circumstances or social conditions surrounding the crime
30 or crimes and any other evidence necessary for the board
31 to judge present fitness for licensure or whether licensure
32 will enhance the likelihood that the applicant will commit
33 the same or similar offenses;

34 (3) Not be an alcohol or drug abuser as these terms
35 are defined in section eleven, article one-a, chapter twenty-
36 seven of this code;

37 (4) Have earned a master's degree in an accredited
38 counseling program or in a field closely related to an
39 accredited counseling program as determined by the
40 board, or have received training equivalent to such degree
41 as may be determined by the board, and have at least two
42 years of supervised professional experience in counseling
43 of such a nature as shall be designated by the board,

44 including at least one year's experience after earning an
45 aforementioned master's degree or equivalent; or have
46 earned a doctorate degree in an accredited counseling
47 program or in a field closely related to an accredited
48 counseling program as determined by the board, or have
49 received training equivalent to such degree as may be
50 determined by the board, and have at least one year of
51 supervised professional experience in counseling of such a
52 nature as shall be designated by the board after earning an
53 aforementioned doctorate degree or equivalent; and

54 (5) Have passed a standardized national certification
55 examination in counseling approved by the board.

56 (b) The following persons are eligible for a license to
57 engage in the practice of counseling without having
58 passed a standardized national certification examination in
59 counseling:

60 (1) Any person who meets the qualifications set forth
61 in subdivisions (1) through (4), subsection (a) of this
62 section, and who makes an application to the board for a
63 license before the first day of July, one thousand nine
64 hundred eighty-seven;

65 (2) Any person who:

66 (A) Is a resident of or employed in this state on the
67 effective date of this article;

68 (B) Makes an application for a license within twelve
69 months after the date all initial appointees to the board
70 commence serving their terms;

71 (C) Meets the qualifications set forth in subdivisions
72 (1) through (3), subsection (a) of this section; and

73 (D) Was in the practice of counseling for two years of
74 the five calendar years next preceding the effective date of
75 this article; or

76 (3) Any person who holds a license or certificate to
77 engage in the practice of counseling issued by any other
78 state, the qualifications for which license or certificate are

79 determined by the board to be at least as great as those
80 provided in this article.

81 (c) Every applicant must submit an application for a
82 license to practice counseling to the secretary of the board
83 in such manner, on such forms and containing such
84 information as the board may prescribe and pay to the
85 board a nonrefundable application fee as established by
86 the board.

**§30-31-8. Issuance of license; renewal of license; renewal
fee; information required in application for re-
newal.**

1 (a) Whenever the board finds that an applicant meets
2 all of the qualifications of this article for a license to
3 engage in the practice of counseling, it shall forthwith
4 issue a license to the applicant. The board shall deny a
5 license to any applicant who does not meet all of the
6 qualifications.

7 (b) Every license to engage in the practice of
8 counseling must be renewed biennially during the month
9 of July. To renew a license, a licensed professional
10 counselor must submit an application for renewal to the
11 secretary of the board on such forms as the board may
12 prescribe and pay to the board a renewal fee as established
13 by the board. Any license which is not so renewed shall
14 automatically lapse. Any license which has lapsed may be
15 renewed within two years of its expiration date by
16 payment to the board of the appropriate renewal fee for
17 each period or part thereof during which the license was
18 not renewed.

19 (c) Each application to renew a license shall contain or
20 be accompanied by evidence of continued professional
21 development in the practice of counseling as determined
22 by the board by rule promulgated in accordance with the
23 provisions of chapter twenty-nine-a of this code and any
24 such other reasonable information as the board may
25 consider appropriate.

CHAPTER 238

(H. B. 4537—By Mr. Speaker, Mr. Kiss, and Delegates Martin,
Jenkins, Michael, Staton, Varner and Hubbard)

[Passed March 14, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections fourteen and eighteen, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to providing members of the public employees retirement system a period of time to purchase prior credited service which was forfeited due to the employee having left covered service; requiring repayment of any amounts withdrawn with interest thereon; establishing the manner of repayment and setting forth a time period during which repayment may be made; providing that a legislative employee may receive three months service credit for each thirty-day session worked prior to one thousand nine hundred seventy-one; extending the date for a legislative employee to purchase retroactive service credit; clarifying that a legislative employee is entitled to the service credit provided regardless when the service occurred; clarifying that regular session legislative employment for seven consecutive years may be served in either or both houses of the Legislature; clarifying that service credit awarded for legislative employment pursuant to this section shall be used not only for the purpose of calculating that member's retirement annuity but also for determining eligibility as it relates to credited service; providing that any legislative employee may request a recalculation of credited service to comply with the provisions of this section; and providing that the service credit requirements of this section shall be applied retroactively to all periods of legislative employment prior to the passage of this section, including any periods of legislative employment occurring before the seven consecutive calendar year employment referenced in this section.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.

§5-10-14. Service credit; retroactive provisions.

§5-10-18. Termination of membership; reentry.

§5-10-14. Service credit; retroactive provisions.

1 (a) The board of trustees shall credit each member
2 with the prior service and contributing service to which he
3 or she is entitled based upon such rules as the board of
4 trustees shall from time to time adopt and based upon the
5 following:

6 (1) Ten or more days of service rendered by a
7 member in any calendar month shall be credited as a
8 month of service: *Provided*, That for employees of the
9 state Legislature whose term of employment is otherwise
10 classified as temporary and who are employed to perform
11 services required by the Legislature for its regular sessions
12 or during the interim between regular sessions and who
13 have been or are so employed during regular sessions or
14 during the interim between regular sessions in seven
15 consecutive calendar years, service credit of one month
16 shall be awarded for each ten days employed in the
17 interim between regular sessions, which interim days shall
18 be cumulatively calculated so that any ten days, regardless
19 of calendar month or year, shall be calculated toward any
20 award of one month of service credit;

21 (2) Ten or more months of service credit earned in
22 any calendar year shall be credited as a year of service;

23 (3) No more than one year of service may be credited
24 to any member for all service rendered by him or her in
25 any calendar year; and

26 (4) Service may be credited to a member who was
27 employed by a political subdivision if his or her
28 employment occurred within a period of thirty years

29 immediately preceding the date the political subdivision
30 became a participating public employer.

31 (b) The board of trustees shall grant service credit to
32 employees of boards of health, the clerk of the House of
33 Delegates and the clerk of the state Senate, or to any
34 former and present member of the state teachers
35 retirement system who have been contributing members
36 for more than three years, for service previously credited
37 by the state teachers retirement system and shall require
38 the transfer of the member's contributions to the system
39 and shall also require a deposit, with interest, of any
40 withdrawals of contributions any time prior to the
41 member's retirement. Repayment of withdrawals shall be
42 as directed by the board of trustees.

43 (c) Court reporters who are acting in an official
44 capacity, although paid by funds other than the county
45 commission or state auditor, may receive prior service
46 credit for time served in that capacity.

47 (d) Employees of the state Legislature whose terms of
48 employment are otherwise classified as temporary and
49 who are employed to perform services required by the
50 Legislature for its regular sessions or during the interim
51 between regular sessions shall receive service credit for the
52 time served in that capacity in accordance with the
53 following. Employees of the state Legislature whose term
54 of employment is otherwise classified as temporary and
55 who are employed to perform services required by the
56 Legislature for its regular sessions or during the interim
57 between regular sessions and who have been or are
58 employed during regular sessions or during the interim
59 between regular sessions in seven consecutive calendar
60 years, as certified by the clerk of the houses in which the
61 employee served, shall receive service credit of six months
62 for all regular sessions served as certified by the clerk of
63 the houses in which the employee served, or shall receive
64 service credit of three months for each regular thirty-day
65 session served prior to one thousand nine hundred
66 seventy-one, as certified by the clerk of the houses in
67 which the employee served, and shall receive service credit
68 of one month for each ten days served during the interim

69 between regular sessions, which interim days shall be
70 cumulatively calculated so that any ten days, regardless of
71 calendar month or year, shall be calculated toward any
72 award of one month of service credit. Service credit
73 awarded for legislative employment pursuant to this
74 section shall be used for the purpose of calculating that
75 member's retirement annuity, pursuant to section twenty-
76 two of this article, and determining eligibility as it relates
77 to credited service, notwithstanding any other provision of
78 this section. Certification of employment for a complete
79 legislative session and for days of interim sessions shall be
80 determined by the clerk of the houses in which the
81 employee served, based upon employment records.
82 Service of fifty-five days of a regular session constitutes a
83 presumption of service for a complete legislative session,
84 and service of twenty-seven days of a thirty-day regular
85 session occurring prior to one thousand nine hundred
86 seventy-one constitutes a presumption of service for a
87 complete legislative session. Once a legislative employee
88 has been employed during regular sessions for seven
89 consecutive years or has become a full-time employee of
90 the Legislature, that employee shall receive the service
91 credit provided in this section for all regular and interim
92 sessions worked by that employee, as certified by the clerk
93 of the houses in which the employee served, regardless of
94 when the session or interim legislative employment
95 occurred: *Provided*, That regular session legislative
96 employment for seven consecutive years may be served in
97 either or both houses of the Legislature.

98 Any employee may purchase retroactive service credit
99 for periods of employment in which contributions were
100 not deducted from the employee's pay. In the purchase of
101 service credit for employment prior to the year one
102 thousand nine hundred eighty-nine in any department,
103 including the Legislature, which operated from the general
104 revenue fund and which was not expressly excluded from
105 budget appropriations in which blanket appropriations
106 were made for the state's share of public employees'
107 retirement coverage in the years prior to the year one
108 thousand nine hundred eighty-nine, the employee shall
109 pay the employee's share. Other employees shall pay the

110 state's share and the employee's share to purchase
111 retroactive service credit. Where an employee purchases
112 service credit for employment which occurred after the
113 year one thousand nine hundred eighty-eight, that
114 employee shall pay for the employee's share and the
115 employer shall pay its share for the purchase of retroactive
116 service credit: *Provided*, That no legislative employee
117 may be required to pay any interest or penalty upon the
118 purchase of retroactive service credit in accordance with
119 the provisions of this section where the employee was not
120 eligible to become a member during the years he or she is
121 purchasing retroactive credit for or had the employee
122 attempted to contribute to the system during the years he
123 or she is purchasing retroactive service credit for and such
124 contributions would have been refused by the board:
125 *Provided, however*, That a legislative employee
126 purchasing retroactive credit under this section does so
127 within twenty-four months of becoming a member of the
128 system or no later than the last day of December, two
129 thousand two, whichever occurs last: *Provided further*,
130 That once a legislative employee becomes a member of
131 the retirement system, he or she may purchase retroactive
132 service credit for any time he or she was employed by the
133 Legislature and did not receive service credit. Any service
134 credit purchased shall be credited as six months for each
135 sixty-day session worked and three months for each
136 thirty-day session worked, and credit for interim sessions
137 as provided in this subsection: *And provided further*, That
138 this legislative service credit shall also be used for months
139 of service in order to meet the sixty-month requirement
140 for the payments of a member's retirement annuity: *And*
141 *provided further*, That no legislative employee may be
142 required to pay for any service credit beyond the actual
143 time he or she worked regardless of the service credit
144 which is credited to him or her pursuant to this section:
145 *And provided further*, That any legislative employee may
146 request a recalculation of his or her credited service to
147 comply with the provisions of this section at any time.

148 (e) Notwithstanding any provision to the contrary, the
149 seven consecutive calendar years requirement and the
150 service credit requirements set forth in this section shall be

151 applied retroactively to all periods of legislative
152 employment prior to the passage of this section, including
153 any periods of legislative employment occurring before
154 the seven consecutive calendar years referenced in this
155 section.

§5-10-18. Termination of membership; reentry.

1 (a) When a member of the retirement system retires or
2 dies, he or she ceases to be a member. When a member
3 leaves the employ of a participating public employer for
4 any other reason, he or she ceases to be a member and
5 forfeits service credited to him or her at that time. If he or
6 she becomes reemployed by a participating public
7 employer he or she shall be reinstated as a member of the
8 retirement system and his or her credited service last
9 forfeited by him or her shall be restored to his or her
10 credit: *Provided*, That he or she must be reemployed for
11 a period of one year or longer to have the service restored:
12 *Provided, however*, That he or she returns to the
13 members' deposit fund the amount, if any, he or she
14 withdrew from the fund, together with regular interest on
15 the withdrawn amount from the date of withdrawal to the
16 date of repayment, and that the repayment begins within
17 two years of the return to employment and that the full
18 amount is repaid within five years of the return to
19 employment.

20 (b) Effective on the first day of July, one thousand
21 nine hundred ninety-seven, and continuing through the
22 first day of July, one thousand nine hundred ninety-eight,
23 any employee of the Prestera center for mental health
24 services, valley comprehensive mental health center,
25 Westbrook health services and eastern panhandle mental
26 health center who is a member of the retirement system
27 may elect to withdraw from membership without forfeiting
28 service credited to him or her.

29 (c) The Prestera center for mental health services,
30 valley comprehensive mental health center, Westbrook
31 health services and eastern panhandle mental health center,
32 and their successors in interest, shall provide for their
33 employees a pension plan in lieu of the public employees
34 retirement system on or before the first day of July, one
35 thousand nine hundred ninety-seven, and continuing

36 thereafter during the existence of the named mental health
37 centers and their successors in interest.

38 (d) The administrative bodies of the Pretera center for
39 mental health services, valley comprehensive mental health
40 center, Westbrook health services and eastern panhandle
41 mental health center shall, on or before the first day of
42 May, one thousand nine hundred ninety-seven, give
43 written notice to each employee who is a member of the
44 public employees retirement system of the option to
45 withdraw from or remain in the system. The notice shall
46 include a copy of this section and a statement explaining
47 the member's options regarding membership. The notice
48 shall include a statement in plain language giving a full
49 explanation and actuarial projection figures in support of
50 the explanation regarding the individual member's
51 current account balance, vested and nonvested, and his or
52 her projected return upon remaining in the public
53 employees retirement system until retirement, disability or
54 death, in comparison with the projected return upon
55 withdrawing from the public employees retirement system
56 and joining a private pension plan provided by the
57 community mental health center and remaining therein
58 until retirement, disability or death. The administrative
59 bodies shall keep in their respective records a permanent
60 record of each employee's signature confirming receipt
61 of the notice.

62 (e) Effective the first day of March, one thousand nine
63 hundred ninety-eight, and ending the thirty-first day of
64 December, two thousand two, any member may purchase
65 credited service previously forfeited by him or her and
66 such credited service shall be restored to his or her credit:
67 *Provided*, That he or she returns to the members' deposit
68 fund the amount, if any, he or she withdrew from the fund,
69 together with interest on the withdrawn amount from the
70 date of withdrawal to the date of repayment at a rate to be
71 determined by the board. The repayment under this
72 section may be made by lump sum or repaid over a period
73 of time not to exceed sixty months. Where the member
74 elects to repay the required amount other than by lump
75 sum, the member is required to pay interest at the rate
76 determined by the board until all sums are fully repaid.

CHAPTER 239

(H. B. 4227—By Delegates Jenkins, Hubbard and Michael)

[Passed March 14, 1998; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section forty-one, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections two, three and five, article ten-b of said chapter; to further amend said article by adding thereto a new section, designated section ten; and to amend article ten-d of said chapter by adding thereto a new section, designated section seven, all relating to the West Virginia Public Employees Retirement Act; providing that the interest rate calculation be performed on a calender year basis; incorporating federal tax law limitations on the maximum compensation that can be taken into account for the purpose of determining retirement benefits and contributions to retirement plans; and incorporating federal requirements that all assets of government deferred pension plans be held in trust for the benefit of members and their beneficiaries.

Be it enacted by the Legislature of West Virginia:

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

Article

10. West Virginia Public Employees Retirement Act.

10B. Government Employees Deferred Compensation Plans.

10D. Consolidated Public Retirement Board.

ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.

§5-10-41. Allowance of regular interest on balances in funds.

1 The board of trustees shall, at the end of each calendar
2 year, allow and credit regular interest on the balance at the
3 beginning of the said fiscal year in each member's
4 individual account in the members deposit fund, and on
5 the mean balances in the employers accumulation fund
6 and the retirement reserve fund. The interest so allowed
7 and credited shall be charged to the income fund.

**ARTICLE 10B. GOVERNMENT EMPLOYEES DEFERRED COM-
PENSATION PLANS.**

§5-10B-2. Definitions.

§5-10B-3. Contracts for deferred compensation plans — Approval of plans
— Approval of companies providing investments.

§5-10B-5. Investment of funds.

§5-10B-10. Deferred compensation plan funds held in trust.

§5-10B-2. Definitions.

1 Unless the context in which used clearly indicates a
2 different meaning, as used in this article:

3 (a) "Board" means the consolidated public retirement
4 board provided for in article ten of this chapter.

5 (b) "Deferred compensation plan" means a trust
6 whereby the state of West Virginia, as the public employer,
7 or a public employer agrees with an employee for the
8 voluntary reduction in employee compensation for the
9 payment of benefits by the state employer or the public
10 employer to the employee at a later date pursuant to this
11 article and the federal laws and regulations relating to
12 eligible state deferred compensation plans as described in
13 Section 457 of the Internal Revenue Code.

14 (c) "Employee" means any person, whether
15 appointed, elected, or under contract, providing services
16 for the state employer or public employer, for which
17 compensation is paid.

18 (d) "Public employer" means counties, municipalities
19 or political subdivisions of such governmental bodies
20 which meet the definition of "state" as described in
21 Internal Revenue Code Section 457 (d) (1), but which do
22 not meet the definition of "state employer" as used in this
23 article.

24 (e) "State employer" means the state of West Virginia
25 and any state agency or instrumentality of the state.

§5-10B-3. Contracts for deferred compensation plans — Approval of plans — Approval of companies providing investments.

1 The state employer or any public employer may, by
2 contract, agree with any of its employees to defer and hold
3 in trust any portion of that employee's compensation and
4 may subsequently purchase or acquire from any company
5 licensed to do business in the state of West Virginia fixed
6 or variable annuities, insurance, endowment, or savings
7 account for the purpose of carrying out the objectives of
8 the deferred compensation plan as described in this article.

§5-10B-5. Investment of funds.

1 Notwithstanding any other provision of law to the
2 contrary, the board as well as the appropriate local officer,
3 board or committee, designated as responsible for
4 implementing a deferred compensation plan, is hereby
5 authorized to invest compensation held pursuant to any
6 such deferred compensation plan in fixed and variable
7 annuities, mutual funds, insurance, endowment or savings
8 accounts from any company duly authorized to contract
9 such business in the state.

§5-10B-10. Deferred compensation plan funds held in trust.

1 Notwithstanding anything herein to the contrary, as of
2 the first day of January, one thousand nine hundred
3 ninety-eight, all assets and income of all deferred
4 compensation plans created or administered pursuant to
5 this article shall be held in trust for the exclusive benefit of
6 participants and their beneficiaries.

ARTICLE 10D. CONSOLIDATED PUBLIC RETIREMENT BOARD.

§5-10D-7. Compensation limitations; effective dates.

1 Effective for plan years beginning after the thirty-first
2 day of December, one thousand nine hundred ninety-five,
3 the annual compensation of a participant taken into
4 account in determining benefits or contributions under
5 any of the public retirement plans administered by the
6 board and which are qualified plans under section 401(a)
7 of the Internal Revenue Code may not exceed one
8 hundred fifty thousand dollars. This provision shall apply
9 notwithstanding any other provision to the contrary in this
10 code and not withstanding any provisions of any
11 legislative rule.

CHAPTER 240

(Com. Sub. for H. B. 2415—By Mr. Speaker, Mr. Kiss, and
Delegates Jenkins, Heck, Ashley, Varner, Pettit and Staton)

[Passed March 14, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article ten-d, chapter five of the code of West Virginia, one thousand nine hundred thirty-one; to amend chapter seven of said code by adding thereto two new articles, designated article fourteen-d and fourteen-e; and to amend and reenact section seventeen, article three, chapter seventeen-a, all relating to retirement, death and disability benefits for deputy sheriffs; providing that the consolidated retirement board administer the new retirement system; providing definitions for the article; creating the deputy sheriff's retirement system; stating that the article is to be liberally construed; allowing the board to promulgate rules for the administration of the fund; establishing membership qualifications; creating a trust fund for investment of contributions; establishing member and employer contribution amount; providing for transfer of assets; providing credited service through member's use, as an option, of accrued annual or sick leave days; establishing value of assets for transfer; requiring a test case; providing safeguards to the public employees retirement system; establishing for the commencement of benefits; establishing benefits for normal, early and late retirement; establishing annuity options; providing for refunds to members upon certain conditions; providing for disability retirements; allowing deputies with a prior disability to become member of plan; benefits for surviving spouses; benefits for dependents; establishing death benefits; prohibiting double benefits; authorizing loans to members; authorizing sheriffs to become member of plan; establishing fraudulent practices and criminal penalties therefor; and providing military service credits; providing effective date and benefit beginning dates; providing limitation on county liability; setting forth legislative findings and purposes; establishing statewide uniform fees for certain reports generated by

sheriff's offices and dedicating those fees; requiring sheriffs to issue motor vehicle registration renewals; and providing that one-half of the fee charged by sheriffs for issuing motor vehicle registration renewals be dedicated to the deputy sheriff retirement fund.

Be it enacted by the Legislature of West Virginia:

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

Chapter

5. General Powers and Authority of the Governor, Secretary of State and Attorney General; Board of Public Works; Miscellaneous Agencies, Commissions, Offices, Programs, Etc.

7. County Commissions and Officers.

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

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

ARTICLE 10D. CONSOLIDATED PUBLIC RETIREMENT BOARD.

§5-10D-1. Consolidated public retirement board created; transition; members; vacancies.

1 (a) There is hereby continued a consolidated public
2 retirement board to administer all public retirement plans
3 in this state. It shall administer the public employees
4 retirement system established in article ten of this chapter;
5 the teachers retirement system established in article seven-
6 a, chapter eighteen of this code; the teachers' defined
7 contribution retirement system created by article seven-b,
8 chapter eighteen of this code; the death, disability and
9 retirement fund of the department of public safety created

10 by article two, chapter fifteen of this code; the death,
11 disability and retirement fund for deputy sheriffs created
12 by article fourteen-d, chapter seven of this code; and the
13 judges' retirement system created under article nine,
14 chapter fifty-one of this code.

15 (b) The consolidated public retirement board shall
16 begin administration of the death, disability and retirement
17 fund for deputy sheriffs established in article fourteen-d,
18 chapter seven of this code on the first day of July, one
19 thousand nine hundred ninety-eight.

20 (c) The membership of the consolidated public
21 retirement board consists of:

22 (1) The governor or his or her designee;

23 (2) The state treasurer or his or her designee;

24 (3) The state auditor or his or her designee;

25 (4) The secretary of the department of administration
26 or his or her designee;

27 (5) Four residents of the state, who are not members,
28 retirants or beneficiaries of any of the public retirement
29 systems, to be appointed by the governor, with the advice
30 and consent of the Senate; and

31 (6) A member, annuitant or retirant of the public
32 employees retirement system who is or was a state
33 employee; a member, annuitant or retirant of the public
34 employees retirement system who is not or was not a state
35 employee; a member, annuitant or retirant of the teachers'
36 retirement system; a member, annuitant or retirant of the
37 department of public safety death, disability and
38 retirement fund; a member, annuitant or retirant of the
39 deputy sheriff's death, disability and retirement fund; and
40 a member, annuitant or retirant of the teachers' defined
41 contribution retirement system, all to be appointed by the
42 governor, with the advice and consent of the Senate.

43 (d) The appointed members of the board shall serve
44 five-year terms. The governor shall appoint the member
45 representing the deputy sheriff's death, disability and
46 retirement fund by the first day of July, one thousand nine

47 hundred ninety-eight to a five-year term. A member
48 appointed pursuant to subdivision (5), subsection (c) of
49 this section ceases to be a member of the board if he or
50 she ceases to be a member of the represented system. If a
51 vacancy occurs in the appointed membership, the
52 governor, within sixty days, shall fill the vacancy by
53 appointment for the unexpired term. No more than five
54 appointees shall be of the same political party.

55 (e) The consolidated public retirement board has all
56 the powers, duties, responsibilities and liabilities of the
57 public employees retirement system established pursuant
58 to article ten, of this chapter; the teachers retirement
59 system established pursuant to article seven-a, chapter
60 eighteen of this code; the teachers' defined contribution
61 system established pursuant to article seven-b, chapter
62 eighteen of this code; the death, disability and retirement
63 fund of the department of public safety created pursuant
64 to article two, chapter fifteen of this code; the death,
65 disability and retirement fund for deputy sheriffs created
66 pursuant to article fourteen-d, chapter seven of this code;
67 and the judges' retirement system created pursuant to
68 article nine, chapter fifty-one of this code and their
69 appropriate governing boards. The consolidated public
70 retirement board may propose for promulgation all rules
71 necessary to effectuate its powers, duties and
72 responsibilities pursuant to article three, chapter twenty-
73 nine-a of this code: *Provided*, That the board may adopt
74 any or all of the rules, previously promulgated, of a
75 retirement system which it administers.

76 (f) Effective on the first day of July, one thousand
77 nine hundred ninety-six, the consolidated public
78 retirement board shall, within two business days of receipt,
79 transfer all funds received by the consolidated public
80 retirement board for the benefit of the retirement systems
81 within the consolidated pension plan as defined in section
82 three-c, article six-b, chapter forty-four of this code,
83 including, but not limited to, all employer and employee
84 contributions, to the West Virginia investment
85 management board: *Provided*, That the employer and
86 employee contributions of the teachers' defined
87 contribution system, established in section three, article

88 seven-b, chapter eighteen of this code, and voluntary
 89 deferred compensation funds invested by the West
 90 Virginia consolidated public retirement board pursuant to
 91 section five, article ten-b of this chapter, may not be
 92 transferred to the West Virginia investment management
 93 board.

94 (g) The consolidated public retirement board shall be
 95 a trustee for all public retirement plans, except with regard
 96 to the investment of funds: *Provided*, That the
 97 consolidated public retirement board shall be a trustee
 98 with regard to the investments of the teachers' defined
 99 contribution system, and voluntary deferred compensation
 100 funds invested pursuant to section five, article ten-b of this
 101 chapter.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

Article

14D. Deputy Sheriff Retirement Act.

**14E. Establishment of Certain Fees; Dedication of Fee to
 Deputy Sheriff Retirement System.**

ARTICLE 14D. DEPUTY SHERIFF RETIREMENT ACT.

- §7-14D-1. Short title.
- §7-14D-2. Definitions.
- §7-14D-2a. Meaning of terms.
- §7-14D-3. Creation and administration of West Virginia deputy sheriff's retirement system.
- §7-14D-4. Article to be liberally construed; supplements federal social security.
- §7-14D-5. Members.
- §7-14D-6. Creation of fund; investments.
- §7-14D-7. Members' contributions; employer contributions.
- §7-14D-8. Transfer from public employees retirement system.
- §7-14D-8a. Notice requirements; test case.
- §7-14D-9. Retirement; commencement of benefits.
- §7-14D-10. Retirement credited service through member's use, as option, of accrued annual or sick leave days.
- §7-14D-11. Retirement benefits.
- §7-14D-12. Annuity options.
- §7-14D-13. Refunds to certain members upon discharge or resignation; deferred retirement.
- §7-14D-14. Awards and benefits for disability — Duty related.
- §7-14D-15. Same — Due to other causes.

- §7-14D-16. Same — Physical examinations; termination of disability.
- §7-14D-17. Prior disability.
- §7-14D-18. Awards and benefits to surviving spouse — When member dies in performance of duty, etc.
- §7-14D-19. Same — When member dies from nonservice-connected causes.
- §7-14D-20. Additional death benefits and scholarships — Dependent children.
- §7-14D-21. Burial benefit.
- §7-14D-22. Double death benefits prohibited.
- §7-14D-23. Loans to members.
- §7-14D-24. Service as sheriff.
- §7-14D-25. Exemption from taxation, garnishment and other process.
- §7-14D-26. Fraud; penalties; and repayment.
- §7-14D-27. Credit toward retirement for member's prior military service; credit toward retirement when member has joined armed forces in time of armed conflict.
- §7-14D-28. Pro rata reduction of annuities.
- §7-14D-29. Effective date; report to joint committee on government and finance; special starting date for benefits.
- §7-14D-30. Limitation of county liability.

§7-14D-1. Short title.

- 1 This article is known and may be cited as the "West
- 2 Virginia Deputy Sheriff Retirement System Act".

§7-14D-2. Definitions.

- 1 As used in this article, unless a federal law or
- 2 regulation or the context clearly requires a different
- 3 meaning:

- 4 (a) "Accrued benefit" means on behalf of any
- 5 member two and one-quarter percent of the member's
- 6 final average salary multiplied by the member's years of
- 7 credited service. A member's accrued benefit may not
- 8 exceed the limits of section 415 of the Internal Revenue
- 9 Code.

- 10 (b) "Accumulated contributions" means the sum of
- 11 all amounts deducted from the compensation of a
- 12 member, or paid on his or her behalf pursuant to article
- 13 ten-c, chapter five of this code, either pursuant to section
- 14 seven of this article or section twenty-nine, article ten,
- 15 chapter five of this code as a result of covered

16 employment together with regular interest on the deducted
17 amounts.

18 (c) "Active military duty" means full-time active duty
19 with any branch of the armed forces of the United States,
20 including service with the national guard or reserve
21 military forces when the member has been called to active
22 full-time duty and has received no compensation during
23 the period of that duty from any board on other than the
24 armed forces.

25 (d) "Actuarial equivalent" means a benefit of equal
26 value computed upon the basis of the mortality table and
27 interest rates as the consolidated public retirement board
28 may adopt from time to time.

29 (e) "Annual compensation" means the wages paid to
30 the member during covered employment within the
31 meaning of section 3401(a) of the Internal Revenue Code
32 but determined without regard to any rules that limit the
33 remuneration included in wages based upon the nature or
34 location of employment or services performed during the
35 plan year plus amounts excluded under section 414(h)(2)
36 of the Internal Revenue Code and less reimbursements or
37 other expense allowances, cash or noncash fringe benefits
38 or both, deferred compensation and welfare benefits.
39 Annual compensation for determining benefits during any
40 determination period may not exceed one hundred fifty
41 thousand dollars as adjusted for cost of living in
42 accordance with section 401(a)(17)(B) of the Internal
43 Revenue Code.

44 (f) "Annual leave service" means accrued annual
45 leave.

46 (g) "Annuity starting date" means the first day of the
47 first period for which an amount is received as an annuity
48 by reason of retirement.

49 (h) "Base salary" means a member's cash
50 compensation exclusive of overtime from covered
51 employment during the last twelve months of
52 employment. Until a member has worked twelve months,
53 annualized base salary is used as base salary.

54 (i) "Board" means the consolidated public retirement
55 board created pursuant to article ten-d, chapter five of this
56 code.

57 (j) "County commission" has the meaning ascribed
58 to it in section one, article one, chapter seven of this code.

59 (k) "Covered employment" means either: (1)
60 Employment as a deputy sheriff and the active
61 performance of the duties required of a deputy sheriff; or
62 (2) the period of time which active duties are not
63 performed but disability benefits are received under
64 section thirteen or fourteen of this article.

65 (l) "Credited service" means the sum of a member's
66 years of service, military service, disability service and
67 annual leave service.

68 (m) "Deputy sheriff" means an individual employed
69 as a county law-enforcement deputy sheriff in this state
70 and as defined by section two, article fourteen, chapter
71 seven of this code.

72 (n) "Dependent child" means:

73 (1) An unmarried person under age eighteen who is
74 either:

75 (A) A natural child of the member;

76 (B) A legally adopted child of the member;

77 (C) A child who at the time of the member's death was
78 living with the member while the member was an adopting
79 parent during any period of probation; or

80 (D) A stepchild of the member residing in the
81 member's household at the time of the member's death.

82 (2) Any unmarried child under age twenty-three: (A)
83 Who is enrolled as a full-time student in an accredited
84 college or university; (B) who was claimed as a dependent
85 by the member for federal income tax purposes at the
86 time of member's death; and (C) whose relationship with
87 the member is described in subparagraph (A), (B) or (C),
88 paragraph (1) of this subdivision.

89 (o) "Dependent parent" means the father or mother
90 of the member who was claimed as a dependent by the
91 member for federal income tax purposes at the time of the
92 member's death.

93 (p) "Disability service" means service received by a
94 member, expressed in whole years, fractions thereof or
95 both, equal to one half of the whole years, fractions
96 thereof, or both, during which time a member receives
97 disability benefits under section thirteen or fourteen of
98 this article.

99 (q) "Early retirement age" means age forty or over
100 and completion of twenty years of service.

101 (r) "Effective date" means the first day of July, one
102 thousand nine hundred ninety-eight.

103 (s) "Final average salary" means the average of the
104 highest annual compensation received for covered
105 employment by the member during any five consecutive
106 plan years within the member's last ten years of service.
107 If the member did not have annual compensation for the
108 five full plan years preceding the member's attainment of
109 normal retirement age and during that period the member
110 received disability benefits under section thirteen or
111 fourteen of this article then "final average salary" means
112 the average of the monthly salary determined paid to the
113 member during that period as determined under section
114 seventeen of this article multiplied by twelve.

115 (t) "Fund" means the West Virginia deputy sheriff
116 retirement fund created pursuant to section six of this
117 article.

118 (u) "Hour of service" means:

119 (1) Each hour for which a member is paid or entitled
120 to payment for covered employment during which time
121 active duties are performed. These hours shall be credited
122 to the member for the plan year in which the duties are
123 performed; and

124 (2) Each hour for which a member is paid or entitled
125 to payment for covered employment during a plan year

126 but where no duties are performed due to vacation,
127 holiday, illness, incapacity including disability, layoff, jury
128 duty, military duty, leave of absence, or any combination
129 thereof, and without regard to whether the employment
130 relationship has terminated. Hours under this paragraph
131 shall be calculated and credited pursuant to West Virginia
132 department of labor regulations. A member will not be
133 credited with any hours of service for any period of time
134 he or she is receiving benefits under section fourteen or
135 fifteen of this article; and

136 (3) Each hour for which back pay is either awarded or
137 agreed to be paid by the employing county commission,
138 irrespective of mitigation of damages. The same hours of
139 service shall not be credited both under paragraph (1) or
140 (2) of this subdivision, and under this paragraph. Hours
141 under this paragraph shall be credited to the member for
142 the plan year or years to which the award or agreement
143 pertains, rather than the plan year in which the award,
144 agreement or payment is made.

145 (v) "Member" means a person first hired as a deputy
146 sheriff after the effective date of this article, as defined in
147 subsection (r) of this section, or a deputy sheriff first hired
148 prior to the effective date and who elects to become a
149 member pursuant to section five or section seventeen of
150 this article. A member shall remain a member until the
151 benefits to which he or she is entitled under this article are
152 paid or forfeited.

153 (w) "Monthly salary" means the portion of a
154 member's annual compensation which is paid to him or
155 her per month.

156 (x) "Normal form" means a monthly annuity which
157 is one twelfth of the amount of the member's accrued
158 benefit which is payable for the member's life. If the
159 member dies before the sum of the payments he or she
160 receives equals his or her accumulated contributions on
161 the annuity starting date, the named beneficiary shall
162 receive in one lump sum the difference between the
163 accumulated contributions at the annuity starting date and
164 the total of the retirement income payments made to the
165 member.

166 (y) "Normal retirement age" means the first to occur
167 of the following:

168 (1) Attainment of age fifty years and the completion
169 of twenty or more years of service;

170 (2) While still in covered employment, attainment of at
171 least age fifty years, and when the sum of current age plus
172 years of service equals or exceeds seventy years;

173 (3) While still in covered employment, attainment of at
174 least age sixty years, and completion of five years of
175 service; or

176 (4) Attainment of age sixty-two years and completion
177 of five or more years of service.

178 (z) "Partially disabled" means a member's inability
179 to engage in the duties of deputy sheriff by reason of any
180 medically determinable physical or mental impairment
181 that can be expected to result in death or that has lasted or
182 can be expected to last for a continuous period of not less
183 than twelve months. A member may be determined
184 partially disabled for the purposes of this article and
185 maintain the ability to engage in other gainful
186 employment which exists within the state but which ability
187 would not enable him or her to earn an amount at least
188 equal to two thirds of the annual compensation earned by
189 all active members of this plan during the plan year
190 ending as of the most recent thirtieth day of June, as of
191 which plan data has been assembled and used for the
192 actuarial valuation of the plan.

193 (aa) "Public employees retirement system" means the
194 West Virginia public employee's retirement system
195 created by article ten, chapter five of this code.

196 (bb) "Plan" means the West Virginia deputy sheriff
197 death, disability and retirement plan established by this
198 article.

199 (cc) "Plan year" means the twelve month period
200 commencing on the first day of July and ending the
201 following thirtieth day of June of any designated year.

202 (dd) "Regular interest" means the rate or rates of
203 interest per annum, compounded annually, as the board
204 shall from time to time adopt.

205 (ee) "Retirement income payments" means the
206 annual retirement income payments payable under the
207 plan.

208 (ff) "Spouse" means the person to whom the member
209 is legally married on the annuity starting date.

210 (gg) "Surviving spouse" means the person to whom
211 the member was legally married at the time of the
212 member's death and who survived the member.

213 (hh) "Totally disabled" means a member's inability
214 to engage in substantial gainful activity by reason of any
215 medically determined physical or mental impairment that
216 can be expected to result in death or that has lasted or can
217 be expected to last for a continuous period of not less than
218 twelve months.

219 For purposes of this subdivision:

220 (1) A member is totally disabled only if his or her
221 physical or mental impairment or impairments is so severe
222 that he or she is not only unable to perform his or her
223 previous work as a deputy sheriff but also cannot,
224 considering his or her age, education and work
225 experience, engage in any other kind of substantial
226 gainful employment which exists in the state regardless of
227 whether: (A) The work exists in the immediate area in
228 which the member lives; (B) a specific job vacancy exists;
229 or (C) the member would be hired if he or she applied for
230 work.

231 (2) "Physical or mental impairment" is an
232 impairment that results from an anatomical, physiological,
233 or psychological abnormality that is demonstrated by
234 medically accepted clinical and laboratory diagnostic
235 techniques.

236 A member's receipt of social security disability
237 benefits creates a rebuttable presumption that the member
238 is totally disabled for purposes of this plan. Substantial

239 gainful employment rebuts the presumption of total
240 disability.

241 (ii) "Year of service". A member shall, except in his
242 or her first and last years of covered employment, be
243 credited with year of service credit based upon the hours
244 of service performed as covered employment and credited
245 to the member during the plan year based upon the
246 following schedule:

247	Hours of Service	Year of Service Credited
248	Less than 500	0
249	500 to 999	1/3
250	1,000 to 1,499	2/3
251	1,500 or more	1

252 During a member's first and last years of covered
253 employment, the member shall be credited with one
254 twelfth of a year of service for each month during the plan
255 year in which the member is credited with an hour of
256 service. A member is not entitled to credit for years of
257 service for any time period during which he or she
258 received disability payments under section fourteen or
259 fifteen of this article. Except as specifically excluded,
260 years of service include covered employment prior to the
261 effective date.

262 Years of service which are credited to a member prior
263 to his or her receipt of accumulated contributions upon
264 termination of employment pursuant to section thirteen of
265 this article or section thirty, article ten, chapter five of this
266 code, shall be disregarded for all purposes under this plan
267 unless the member repays the accumulated contributions
268 with interest pursuant to section twelve of this article or
269 had prior to the effective date made the repayment
270 pursuant to section eighteen, article ten, chapter five of this
271 code.

§7-14D-2a. Meaning of terms.

1 Any term used in this article shall have the same
2 meaning as when used in a comparable context in the laws

3 of the United States, unless a different meaning is clearly
4 required. Any reference in this article to the Internal
5 Revenue Code includes all amendments made to the laws
6 of the United States after the thirty-first day of December,
7 one thousand nine hundred ninety-five, but prior to the
8 first day of January, one thousand nine hundred ninety-
9 eight, but no amendment to the laws of the United States
10 made on or after the first day of January, one thousand
11 nine hundred ninety-eight, shall be given any effect.

**§7-14D-3. Creation and administration of West Virginia
deputy sheriff's retirement system.**

1 There is hereby created the West Virginia deputy
2 sheriff's retirement system. The purpose of this system is
3 to provide for the orderly retirement of deputy sheriffs
4 who become superannuated because of age or permanent
5 disability and to provide certain survivor death benefits.
6 The retirement system constitutes a body corporate. All
7 business of the system shall be transacted in the name of
8 the West Virginia deputy sheriff's retirement system.

**§7-14D-4. Article to be liberally construed; supplements
federal social security.**

1 (a) The provisions of this article shall be liberally
2 construed so as to provide a general retirement system for
3 deputy sheriffs eligible to retire under the provisions of
4 this plan. Nothing in this article may be construed to
5 permit a county to substitute this plan for federal social
6 security now in force in West Virginia.

7 (b) The board shall administer the plan in accordance
8 with its terms and may construe the terms and determine
9 all questions arising in connection with the administration,
10 interpretation and application of the plan. The board may
11 sue and be sued, contract and be contracted with and
12 conduct all the business of the system in the name of the
13 plan. The board may employ those persons it considers
14 necessary or desirable to administer the plan. The board
15 shall administer the plan for the exclusive benefit of the
16 members and their beneficiaries subject to the specific
17 provisions of the plan. This plan and the moneys held in
18 trust under the plan constitute a qualified trust under

19 section 401 of the Internal Revenue Code and shall be
20 administered and construed as a qualified trust.

§7-14D-5. Members.

1 (a) Any deputy sheriff first employed by a county in
2 covered employment after the effective date of this article
3 shall be a member of this retirement system and plan and
4 may not qualify for membership in any other retirement
5 system administered by the board, so long as he or she
6 remains employed in covered employment.

7 (b) Any deputy sheriff employed in covered
8 employment on the effective date of this article shall
9 within six months of that effective date notify in writing
10 both the county commission in the county in which he or
11 she is employed and the board of his or her desire to
12 become a member of the plan. Any deputy sheriff who
13 elects to become a member of the plan ceases to be a
14 member or have any credit for employment in any other
15 retirement system administered by the board and shall
16 continue to be ineligible for membership in any other
17 retirement system administered by the board so long as
18 the deputy sheriff remains employed in covered
19 employment. Any deputy sheriff who does not
20 affirmatively elect to become a member of the plan
21 continues to be eligible for any other retirement system as
22 is from time to time offered to other county employees
23 but is ineligible for this plan regardless of any subsequent
24 termination of employment and rehire.

25 (c) Any deputy sheriff who was employed as a deputy
26 sheriff prior to the effective date, but was not employed on
27 the effective date of this article, shall become a member
28 upon rehire as a deputy sheriff. For purposes of this
29 section, the member's years of service and credited service
30 prior to the effective date shall not be counted for any
31 purposes under this plan unless: (1) The deputy sheriff
32 has not received the return of his or her accumulated
33 contributions in the public employees retirement fund
34 system pursuant to section thirty, article ten, chapter five
35 of this code; or (2) the accumulated contributions
36 returned to the member from the public employees
37 retirement system have been repaid pursuant to section

38 twelve of this article. If the conditions of subdivision (1)
39 or (2) of this subsection are met, all years of the deputy
40 sheriff's covered employment shall be counted as years of
41 service for the purposes. In connection with each deputy
42 sheriff receiving credit for prior employment provided in
43 this subsection, a transfer from public employees
44 retirement system to this plan shall be made pursuant to
45 the procedures described in section eight of this article.

46 (d) Once made, the election made under this section is
47 irrevocable. All deputy sheriffs first employed after the
48 effective date and deputy sheriffs electing to become
49 members as described in this section shall be members as a
50 condition of employment and shall make the
51 contributions required by section seven of this article.

§7-14D-6. Creation of fund; investments.

1 (a) There is hereby created the "West Virginia deputy
2 sheriff retirement fund" for the benefit of the members of
3 the retirement system created pursuant to this article and
4 the dependents of any deceased or retired member of the
5 system.

6 (b) All moneys paid into and accumulated in the fund,
7 except such amounts as are designated by the board for
8 payment of benefits as provided in this article, shall be
9 held in trust and invested in the consolidated pensions
10 fund as administered by the state investment management
11 board as provided by law.

§7-14D-7. Members' contributions; employer contributions.

1 There shall be deducted from the monthly salary of
2 each member and paid into the fund an amount equal to
3 eight and one-half percent of his or her monthly salary.
4 An additional nine and one-half percent of the monthly
5 salary of each member shall be paid to the fund by the
6 county commission of the county in which the member is
7 employed in covered employment. If the board finds that
8 the benefits provided by this article can be actually funded
9 with a lesser contribution, then the board shall reduce the
10 required member and employer contributions
11 proportionally.

§7-14D-8. Transfer from public employees retirement system.

1 (a) The consolidated retirement board shall, within
2 ninety days of the effective date of the transfer of a
3 deputy from the public employees retirement system to
4 the plan, transfer assets from the public employees
5 retirement system trust fund into the West Virginia deputy
6 sheriff trust fund. The amount to be transferred from the
7 public employees retirement system includes all
8 contributions made by each transferring deputy plus the
9 employers matching contribution for the retiring deputy
10 and an amount representing the normal amount of interest
11 the transferring deputy earned on all his or her
12 contributions and the contributions his or her employer
13 made on behalf of the transferring deputy.

14 (b) The amount of assets to be transferred for each
15 transferring deputy shall be computed as of the first day
16 of July, one thousand nine hundred ninety-eight, using the
17 actuarial valuation assumptions in effect for the first day
18 of July, one thousand nine hundred ninety-eight, actuarial
19 valuation of public employees retirement system, and
20 updated with seven and one-half percent annual interest to
21 the date of the actual asset transfer. The market value of
22 the assets of the transferring deputy in the public
23 employees retirement system shall be determined as of the
24 end of the month preceding the actual transfer. To
25 determine the computation of the asset share to be
26 transferred the board shall:

27 (1) Compute the market value of the public employees
28 retirement system assets;

29 (2) Compute the accrued liability for all public
30 employees retirement system retirees, beneficiaries,
31 disabled retirees and terminated inactive members;

32 (3) Reduce the market value of public employees
33 retirement system assets by the accrued liability
34 determined in subdivision (2) of this subsection;

35 (4) Compute the entry age method accrued liability
36 for all active public employees retirement system
37 members;

38 (5) Compute the share of accrued liability as
39 determined pursuant to subdivision (4) of this subsection,
40 that is attributable to those deputy sheriffs in public
41 employees retirement system who have elected to transfer
42 to the plan;

43 (6) Compute the percentage of active's accrued
44 liability computed to the deputy sheriffs by dividing
45 subdivision (5) by subdivision (4) of this subsection;

46 (7) Determine the asset share to be transferred from
47 public employees retirement system to the plan by
48 multiplying subdivision (3) times subdivision (6) of this
49 subsection.

50 (c) Once a deputy sheriff has elected to transfer from
51 the public employees retirement system, transfer by the
52 public employees retirement system of that deputy's
53 contributions, including all amounts contributed by the
54 deputy's employer for that deputy with interest upon both
55 the deputy's and the employer's contributions shall
56 operate as a complete bar to any further liability to the
57 transferring from the public employees retirement system,
58 and constitutes an agreement whereby the transferring
59 deputy forever indemnifies and holds harmless the public
60 employees retirement system from providing him or her
61 any form of retirement benefit whatsoever until such time
62 as that deputy obtains other employment which would
63 make him or her eligible to re-enter the public employees
64 retirement system with no credit whatsoever for the
65 amounts transferred to the deputy sheriffs retirement
66 system.

67 (d) The board shall cause a judicial determination to
68 be made regarding the transfer of assets from the public
69 employees retirement system to the deputy sheriffs
70 retirement system by causing a suit to be filed in the
71 supreme court of this state seeking a writ of mandamus on
72 or before the thirty-first day of July, one thousand nine
73 hundred ninety-eight.

§7-14D-8a. Notice requirements; test case.

1 (a) Each county shall prepare a written notice to be
2 delivered to each deputy sheriff employed prior to the
3 first day of July, one thousand nine hundred ninety-eight.
4 This notice shall clearly and accurately explain the
5 benefits, financial implications and consequences to a
6 deputy sheriff of electing to participate in the retirement
7 plan created in this article, including the consequences and
8 financial implications in regard to the benefits under the
9 public employees insurance plan as set forth in article
10 sixteen, chapter five of this code for those deputy sheriffs
11 employed by a county which participates in that insurance
12 plan. This notice shall be distributed to each deputy
13 sheriff and the county shall obtain a signed receipt from
14 each deputy sheriff acknowledging that the deputy sheriff
15 was provided a copy of the notice required in this
16 subsection. If a deputy sheriff makes the election
17 provided for in section eight of this article, he or she shall
18 be considered to have made a voluntary, informed
19 decision in regard to the election to participate in the
20 retirement system created in this article.

21 (b) The consolidated retirement board shall cause to
22 be included in the judicial determination required in
23 section eight of this article the issue regarding the possible
24 loss of any rights in regard to benefits accorded the
25 electing deputy under the West Virginia public employees
26 insurance act, article sixteen, chapter five of this code, and
27 whether a deputy sheriff, by electing to participate in the
28 retirement plan created in this article, is being unlawfully
29 discriminated against, or is being unlawfully deprived of a
30 right or benefit to which he or she would otherwise be
31 entitled.

32 (c) Nothing in this section may be construed to alter,
33 affect or change any of the rights and benefits of any
34 deputy sheriff who has insurance coverage under article
35 sixteen, chapter five of this code as a result of being a
36 spouse or dependant of a participant who is the primary
37 insured under article sixteen, chapter five of this code.

38 (d) Nothing contained in this section may be
39 construed to affect or pertain to any life insurance
40 coverage under article sixteen, chapter five of this code.

§7-14D-9. Retirement; commencement of benefits.

1 A member may retire and commence to receive
2 retirement income payments upon attaining early or
3 normal retirement age by filing with the board his or her
4 voluntary petition in writing for retirement: *Provided*, That
5 retirement income payments shall commence no later than
6 the first day of April following the member's seventy and
7 one-half year birthday or the cessation of covered
8 employment, whichever later occurs. Upon receipt of the
9 petition, the board shall promptly provide the member
10 with an explanation of his or her optional forms of
11 retirement benefits and upon receipt of properly executed
12 forms from the member, the board shall process
13 member's request for and commence payments as soon as
14 administratively feasible.

§7-14D-10. Retirement credited service through member's use, as option, of accrued annual or sick leave days.

1 Any member accruing annual leave or sick leave days
2 may, after the effective date of this section, elect to use the
3 days at the time of retirement to acquire additional
4 credited service in this retirement system: *Provided*, That
5 the accrued annual or sick leave may not be used to
6 purchase health insurance under the public employees
7 insurance agency until the member reaches the age of
8 fifty-five. The days shall be applied on the basis of two
9 workdays' credit granted for each one day of accrued
10 annual or sick leave days, with each month of retirement
11 service credit to equal twenty workdays and with any
12 remainder of ten workdays or more to constitute a full
13 month of additional credit and any remainder of less than
14 ten workdays to be dropped and not used, notwithstanding
15 any provisions of the code to the contrary. The credited
16 service shall be allowed and not considered to controvert
17 the requirement of no more than twelve months' credited
18 service in any year's period.

§7-14D-11. Retirement benefits.

1 (a) *Normal retirement.* — A member who ceases
2 covered employment, has attained normal retirement age,

3 and whose annuity starting date is within forty-five days of
4 the later of the two, shall receive retirement income
5 payments equal to his or her accrued benefit in the normal
6 form or retirement income payments in an optional form
7 as provided under section twelve of this article which is the
8 actuarial equivalent of his or her accrued benefit in the
9 normal form.

10 (b) *Early retirement.* — A member who ceases covered
11 employment and has attained early retirement age while in
12 covered employment may elect to receive retirement
13 income payments commencing at age fifty or older which
14 is the actuarial equivalent of the member's accrued benefit
15 which would have been payable at the member's normal
16 retirement age based upon his or her final average salary
17 and years of credited service determined at the cessation
18 of his or her covered employment. Payments will be in
19 the normal form or in an optional form as allowed in
20 section twelve of this article which is the actuarial
21 equivalent of the normal form as reduced for early
22 commencement of benefits.

23 (c) *Late retirement.* — A member whose annuity
24 starting date is more than forty-five days after the later of
25 his or her attainment of normal retirement age or the
26 cessation of his or her covered employment shall receive
27 retirement income payments equal to the accrued benefit
28 in the normal form which is the actuarial equivalent of the
29 benefit to which he or she would be entitled had the
30 retirement income payments commenced within forty-five
31 days of the later of his or her attainment of normal
32 retirement age or cessation of covered employment.

33 (d) Retirement benefits shall be paid monthly in an
34 amount equal to one twelfth of the retirement income
35 payments elected and at those times established by the
36 board. Notwithstanding any other provision of the plan, a
37 member who is married on the annuity starting date will
38 receive his or her retirement income payments in the form
39 of a sixty-six and two-thirds percent joint and survivor
40 annuity with his or her spouse unless prior to the annuity
41 starting date the spouse waives the form of benefit.

§7-14D-12. Annuity options.

1 Prior to the effective date of retirement, but not
2 thereafter, a member may elect to receive retirement
3 income payments in the normal form, or the actuarial
4 equivalent of the normal form from the following options:

5 (a) Option A - Joint and Survivor Annuity. A life
6 annuity payable during the joint lifetime of the member
7 and his or her beneficiary who is a natural person with an
8 insurable interest in the member's life. Upon the death of
9 either the member or his or her beneficiary, the benefit
10 shall continue as a life annuity to the survivor in an
11 amount equal to fifty percent, sixty-six and two-thirds
12 percent, seventy-five percent or one hundred percent of
13 the amount paid while both were living as selected by the
14 member. If the retiring member is married, the spouse
15 shall sign a waiver of benefit rights if the beneficiary is to
16 be other than the spouse.

17 (b) Option B - Contingent Joint and Survivor Annuity.
18 A life annuity payable during the joint lifetime of the
19 member and his or her beneficiary who must be a natural
20 person with an insurable interest in the member's life.
21 Upon the death of the member, the benefit shall continue
22 as a life annuity to the beneficiary in an amount equal to
23 fifty percent, sixty-six and two-thirds percent, seventy-five
24 percent or one hundred percent of the amount paid while
25 both were living as selected by the member. If the
26 beneficiary dies first, the monthly amount of benefits shall
27 be reduced. If the retiring member is married, the spouse
28 shall sign a waiver of benefit rights if the beneficiary is to
29 be other than the spouse.

30 (c) Option C - Ten Years Certain and Life Annuity. A
31 life annuity payable during the member's lifetime but in
32 any event for a minimum of ten years. If the member dies
33 before the expiration of ten years, the remaining payments
34 shall be made to a designated beneficiary, if any, or
35 otherwise to the member's estate.

36 (d) Option D - Level Income Annuity. A life annuity
37 payable monthly in an increased amount "A" from the
38 time of retirement until the member is social security
39 retirement age, and then a lesser amount "B" payable for
40 the member's lifetime thereafter, with these amounts

41 computed actuarially to satisfy the following two
42 conditions:

43 (1) Actuarial equivalence. The actuarial present value
44 at the date of retirement of the member's annuity if taken
45 in the normal form must equal the actuarial present value
46 of the term life annuity in amount "A" plus the actual
47 present value of the deferred life annuity in amount "B".

48 (2) Level income. The amount "A" equals the
49 amount "B" plus the amount of the member's estimated
50 monthly social security primary insurance amount that
51 would commence at the date amount "B" becomes
52 payable. For this calculation, the primary insurance
53 amount is estimated when the member applies for
54 retirement, using social security law then in effect, using
55 assumptions established by the board.

56 (e) Option E - Level Income Joint and Survivor
57 Annuity. An annuity structured under the same
58 methodology as in subdivision (d) of this section, with the
59 term annuity amount "A" payable until the member's
60 social security retirement age and the amount "B"
61 payable as a fifty percent, sixty-six and two-thirds percent,
62 seventy-five percent or one hundred percent joint and
63 survivor annuity upon the member's attaining social
64 security retirement age with the members selecting the
65 applicable percentage rate, if the retiring member is
66 married, the spouse shall sign a waiver of benefit rights if
67 the beneficiary is to be other than the spouse.

68 (f) Option F - Increasing Annuity. A life annuity
69 payable in any of the forms described in this section, and
70 subject to the corresponding conditions, with the amount
71 of monthly payment increasing at one and one-half
72 percent, two percent or two and one-half percent
73 compounded annually throughout the life of the annuity.
74 Annuities taken in this form shall be adjusted the first day
75 of April of each year following the member's annuity
76 starting date with a prorated increase given on the first day
77 of April to retirees who have not yet been retired a full
78 year on that date.

79 In the case of a member who has elected the options
80 set forth in subdivisions (b) and (e) of this section,
81 respectively, and whose beneficiary dies prior to the
82 member's death, the member may name an alternative
83 beneficiary. If an alternative beneficiary is named within
84 eighteen months following the death of the prior
85 beneficiary, the benefit shall be adjusted to be the actuarial
86 equivalent of the member's normal form of benefit. If
87 the election is not made until eighteen months after the
88 death of the prior beneficiary, the amount shall be
89 reduced so that it is only ninety percent of the actuarial
90 equivalent of the member's normal form of benefit.

**§7-14D-13. Refunds to certain members upon discharge or
resignation; deferred retirement.**

1 (a) Any member who terminates covered employment
2 and is not eligible to receive disability benefits under this
3 article is, by written request filed with the board, entitled to
4 receive from the fund the member's accumulated
5 contributions. Except as provided in subsection (b) of this
6 section, upon withdrawal the member shall forfeit his or
7 her accrued benefit and cease to be a member.

8 (b) Any member who withdraws accumulated
9 contributions from either this plan or the public
10 employees retirement system and thereafter becomes
11 reemployed in covered employment shall not receive any
12 credited service for the prior employment unless following
13 his or her return to covered employment, the member
14 redeposits in the fund the amount of the accumulated
15 contributions, together with interest on the accumulate
16 contributions at the rate determined by the board from the
17 date of withdrawal to the date of redeposit. Upon
18 repayment he or she shall receive the same credit on
19 account of his or her former service as if no refund had
20 been made. The repayment shall be made in a lump sum
21 within sixty months of the deputy sheriff's reemployment
22 sum or if later, within sixty months of the effective date of
23 this article.

24 (c) Every member who completes sixty months of
25 covered employment is eligible, upon cessation of covered
26 employment, to either withdraw his or her accumulated

27 contributions in accordance with subsection (a) of this
28 section, or to choose not to withdraw his or her
29 accumulated contribution and to receive retirement
30 income payments upon attaining early or normal
31 retirement age.

§7-14D-14. Awards and benefits for disability — Duty related.

1 Any member who after the effective date of this article
2 and during covered employment: (A) Has been or
3 becomes either totally or partially disabled by injury,
4 illness or disease; and (B) the disability is a result of an
5 occupational risk or hazard inherent in or peculiar to the
6 services required of members; or (C) the disability was
7 incurred while performing law-enforcement functions
8 during either scheduled work hours or at any other time;
9 and (D) in the opinion of the board, the member is by
10 reason of the disability unable to perform adequately the
11 duties required of a deputy sheriff, is entitled to receive
12 and shall be paid from the fund in monthly installments
13 during the lifetime of the member, or if sooner until the
14 member attains normal retirement age or until the
15 disability sooner terminates, the compensation under
16 either subdivision (a) or (b) of this section.

17 (a) If the member is totally disabled, the member shall
18 receive ninety percent of his or her average monthly
19 compensation for the twelve-month period preceding the
20 member's disability, or the shorter period if the member
21 has not worked twelve months.

22 (b) If the member is partially disabled, the member
23 shall receive forty-five percent of his or her average
24 monthly compensation for the twelve-month period
25 preceding the member's disability, or the shorter period if
26 the member has not worked twelve months.

27 If the member remains totally disabled until attaining
28 sixty-five years of age, the member shall then receive the
29 retirement benefit provided for in sections eleven and
30 twelve of this article.

31 If the member remains partially disabled until
32 attaining sixty years of age the member shall then receive

33 the retirement benefit provided for in sections eleven and
34 twelve of this article.

§7-14D-15. Same — Due to other causes.

1 (a) Any member who after the effective date of this
2 article and during covered employment: (1) Has been or
3 becomes totally or partially disabled from any cause other
4 than those set forth in section fourteen of this article and
5 not due to vicious habits, intemperance or willful
6 misconduct on his or her part; and (2) in the opinion of
7 the board, he or she is by reason of the disability unable to
8 perform adequately the duties required of a deputy
9 sheriff, is entitled to receive and shall be paid from the
10 fund in monthly installments during the lifetime of the
11 member, or if sooner until the member attains normal
12 retirement age or until the disability sooner terminates the
13 compensation set forth in, either subsection (b) or (c) of
14 this section.

15 (b) If the member is totally disabled, he or she shall
16 receive sixty-six and two-thirds percent of his or her
17 average monthly compensation for the twelve-month
18 period preceding the disability, or the shorter period, if the
19 member has not worked twelve months.

20 (c) If the member is partially disabled, he or she shall
21 receive thirty-three and one-third percent of his or her
22 average monthly compensation for the twelve-month
23 period preceding the disability, or the shorter period, if the
24 member has not worked twelve months.

25 (d) If the member remains disabled until attaining
26 sixty years of age, then the member shall receive the
27 retirement benefit provided for in sections eleven and
28 twelve of this article.

29 (e) The board shall propose legislative rules for
30 promulgation in accordance with the provisions of article
31 three, chapter twenty-nine-a of this code concerning
32 member disability payments so as to ensure that the
33 payments do not exceed one hundred percent of the
34 average current salary in any given county for the position
35 last held by the member.

§7-14D-16. Same — Physical examinations; termination of disability.

1 The board may require any member who has applied
2 for or is receiving disability benefits under this article to
3 submit to a physical examination, mental examination or
4 both, by a physician or physicians selected or approved by
5 the board and may cause all costs incident to the
6 examination and approved by the board to be paid from
7 the fund. The costs may include hospital, laboratory, X
8 ray, medical and physicians' fees. A report of the
9 findings of any physician shall be submitted in writing to
10 the board for its consideration. If, from the report,
11 independent information, or from the report and any
12 hearing on the report, the board is of the opinion and
13 finds that: (1) The member has become reemployed as a
14 law-enforcement officer; (2) two physicians who have
15 examined the member have found that considering the
16 opportunities for law enforcement in West Virginia, the
17 member could be so employed as a deputy sheriff; or (3)
18 other facts exist to demonstrate that the member is no
19 longer totally disabled or partially disabled as the case
20 may be, then the disability benefits shall cease. If the
21 member was totally disabled and is found to have
22 recovered, the board shall determine whether the member
23 continues to be partially disabled. If the board finds that
24 the member is no longer totally disabled but is partially
25 disabled, then the member shall continue to receive partial
26 disability benefits in accordance with this article. Benefits
27 shall cease once the member has been found to be no
28 longer either totally or partially disabled: *Provided*, That
29 the board shall require recertification for each partial or
30 total disability at regular intervals as specified by the
31 guidelines adopted by the public employees retirement
32 system.

§7-14D-17. Prior disability.

1 Any deputy sheriff who became totally disabled as a
2 result of illness or injury incurred in the line of duty prior
3 to the effective date of this article may be a member of the
4 plan at his or her election and is entitled to disability,
5 death and retirement benefits under this article in lieu of

6 any other disability, death or retirement benefits provided
7 by the state or his or her county of employment:
8 *Provided*, That the deputy would have been eligible for
9 disability under section fourteen of this article had that
10 section been in effect at the time of the disability. The
11 amounts of the benefits shall be determined as if the
12 disability first commenced after the effective date of this
13 article with monthly compensation equal to that average
14 monthly compensation which the member was receiving in
15 the plan year prior to the initial disability.

§7-14D-18. Awards and benefits to surviving spouse — When member dies in performance of duty, etc.

1 (a) The surviving spouse of any member who, after the
2 effective date of this article while in covered employment,
3 has died or dies, by reason of injury, illness or disease
4 resulting from an occupational risk or hazard inherent in
5 or peculiar to the service required of members, while the
6 member was or is engaged in the performance of his or
7 her duties as a deputy sheriff, or the survivor spouse of a
8 member who dies from any cause while receiving benefits
9 pursuant to section fourteen of this article, is entitled to
10 receive and shall be paid from the fund benefits as
11 determined in subsection (b) of this section: To the
12 surviving spouse annually, in equal monthly installments
13 during his or her lifetime an amount equal to the greater
14 of: (i) Two thirds of the base salary received in the
15 preceding twelve-month period by the deceased member;
16 or (ii) if the member dies after his or her early or normal
17 retirement age, the monthly amount which the spouse
18 would have received had the member retired the day
19 before his or her death, elected a one hundred percent
20 joint and survivor annuity with the spouse as the joint
21 annuitant, and then died.

22 (b) Benefits for a surviving spouse received under this
23 section, section twenty and section twenty-one of this
24 article are in lieu of receipt of any other benefits under
25 this article for the spouse or any other person or under the
26 provisions of any other state retirement system based upon
27 the member's covered employment.

§7-14D-19. Same — When member dies from nonservice-connected causes.

1 (a) In any case where a member who has been a
2 member for at least ten years, while in covered
3 employment after the effective date of this article, has died
4 or dies from any cause other than those specified in
5 section eighteen of this article and not due to vicious
6 habits, intemperance or willful misconduct on his or her
7 part, the fund shall pay annually in equal monthly
8 installments to the surviving spouse during his or her
9 lifetime, a sum equal to the greater of: (i) One half of the
10 base salary received in the preceding twelve-month
11 employment period by the deceased member; or (ii) if the
12 member dies after his or her early or normal retirement
13 age, the monthly amount which the spouse would have
14 received had the member retired the day before his or her
15 death, elected a one hundred percent joint and survivor
16 annuity with the spouse as the joint annuitant, and then
17 died. Where the member is receiving disability benefits
18 under section fourteen of this article at the time of his or
19 her death, the most recent monthly compensation
20 determined under section seventeen of this article shall be
21 substituted for the base salary in (i) of this section.

22 (b) Benefits for a surviving spouse received under this
23 section, section twenty and section twenty-one of this
24 article are in lieu of receipt of any other benefits under
25 this article for the spouse or any other person or under the
26 provisions of any other state retirement system based upon
27 the member's covered employment.

**§7-14D-20. Additional death benefits and scholarships —
Dependent children.**

1 (a) In addition to the spouse death benefits in sections
2 eighteen and nineteen of this article, the surviving spouse
3 is entitled to receive and there shall be paid to the spouse
4 one hundred dollars monthly for each dependent child.

5 (b) If the surviving spouse dies or if there is no
6 surviving spouse, the fund shall pay monthly to each
7 dependent child a sum equal to one fourth of the
8 surviving spouse's entitlement under either section

9 nineteen or twenty of this article. If there is neither a
10 surviving spouse nor a dependent child, the fund shall pay
11 in equal monthly installments to the dependent parents of
12 the deceased member during their joint lifetimes a sum
13 equal to the amount which a surviving spouse, without
14 children, would have received: *Provided*, That when there
15 is only one dependent parent surviving, that parent is
16 entitled to receive during his or her lifetime one-half the
17 amount which both parents, if living, would have been
18 entitled to receive.

19 (c) Any person qualifying as a dependent child under
20 this, in addition to any other benefits due under this or
21 other sections of this article, is entitled to receive a
22 scholarship to be applied to the career development
23 education of that person. This sum, up to but not
24 exceeding six thousand dollars per year, shall be paid
25 from the fund to any university or college in this state or
26 to any trade or vocational school or other entity in this
27 state approved by the board, to offset the expenses of
28 tuition, room and board, books, fees or other costs
29 incurred in a course of study at any of these institutions so
30 long as the recipient makes application to the board on an
31 approved form and under such rules as the board may
32 provide, and maintains scholastic eligibility as defined by
33 the institution or the board. The board may propose
34 legislative rules for promulgation in accordance with
35 article three, chapter twenty-nine-a of this code which
36 define age requirements, physical and mental
37 requirements, scholastic eligibility, disbursement methods,
38 institutional qualifications and other requirements as
39 necessary and not inconsistent with this section.

§7-14D-21. Burial benefit.

1 Any member who dies as a result of any service
2 related illness or injury after the effective date is entitled to
3 a lump sum burial benefit of five thousand dollars. If the
4 member is married, the burial benefit will be paid to the
5 member's spouse. If the member is not married, the
6 burial benefit will be paid to the member's estate for the
7 purposes of paying burial expenses, settling the member's
8 final affairs, or both. Any unspent balance shall be

9 distributed as a part of the member's estate. If the
10 member is not entitled to a death benefit under sections
11 nineteen and twenty of this article, then if greater, the
12 amount payable to the member's estate shall be his or her
13 accumulated contributions.

§7-14D-22. Double death benefits prohibited.

1 A surviving spouse is not entitled to receive
2 simultaneous death benefits under this article as a result of
3 the death of two or more members to whom the spouse
4 was married. Any spouse who becomes eligible for a
5 subsequent death benefit under this article while receiving
6 a death benefit under this article shall receive the higher
7 benefit, but not both.

§7-14D-23. Loans to members.

1 (a) A member who is not yet receiving disability or
2 retirement income benefits from the plan may borrow
3 from the plan an amount up to one half of his or her
4 accumulated contributions, but not less than five hundred
5 dollars nor more than eight thousand dollars. No loan
6 may be made from the plan if the board determines that
7 the loans constitute more than fifteen percent of the
8 amortized cost value of the assets of the plan as of the last
9 day of the preceding plan year. The board may
10 discontinue the loans any time it determines that cash flow
11 problems might develop as a result of the loans. Each
12 loan shall be repaid through monthly installments over
13 periods of six through sixty months and carry interest on
14 the unpaid balance and an annual effective interest rate
15 that is two hundred basis points higher than the most
16 recent rate of interest used by the board for determining
17 actuarial contributions levels. Monthly loan payments
18 shall be calculated to be as nearly equal as possible with all
19 but the final payment being an equal amount. An eligible
20 member may make additional loan payments or pay off
21 the entire loan balance at any time without incurring any
22 interest penalty. At the member's option, the monthly
23 loan payment may include a level premium sufficient to
24 provide declining term insurance with the plan as
25 beneficiary to repay the loan in full upon the member's
26 death. If a member declines the insurance and dies before

27 the loan is repaid, the unpaid balance of the loan shall be
28 deducted from the lump sum insurance benefit payable
29 under section twenty-one of this article.

30 (b) A member with an unpaid loan balance who wishes
31 to retire may have the loan repaid in full by accepting
32 retirement income payments reduced by deducting from
33 the actuarial reserve for the accrued benefit the amount of
34 the unpaid balance and then converting the remaining of
35 the reserve to a monthly pension payable in the form of
36 the annuity desired by the member.

§7-14D-24. Service as sheriff.

1 Any member who after the effective date of this article
2 is elected sheriff of a county in West Virginia may elect to
3 continue as a member in this plan by paying the amounts
4 required by section seven of this article. Upon the
5 election, service as a sheriff shall be treated as covered
6 employment and the sheriff is not entitled to any credit
7 for that service under any other retirement system of the
8 state.

§7-14D-25. Exemption from taxation, garnishment and other process.

1 The moneys in the fund and the right of a member,
2 spouse or other beneficiary to benefits under this article,
3 to the return of contributions, or to any retirement, death
4 or disability payments under the provisions of this article,
5 are exempt from any state or municipal tax; are not
6 subject to execution, garnishment, attachment or any other
7 process whatsoever with the exception that the benefits are
8 subject to a qualified domestic relations order as that term
9 is defined in section 414 (p) of the Internal Revenue
10 Code; and are unassignable except as is provided in this
11 article.

§7-14D-26. Fraud; penalties; and repayment.

1 Any person who knowingly makes any false statement
2 or who falsifies or permits to be falsified any record of the
3 retirement system in any attempt to defraud that system is
4 guilty of a misdemeanor and, upon conviction, shall be
5 punished by a fine not to exceed one thousand dollars, by

6 confinement in the county or regional jail not to exceed
7 one year, or by both a fine and confinement. Any
8 increased benefit received by any person as a result of the
9 falsification or fraud shall be returned to the fund upon
10 demand by the board.

**§7-14D-27. Credit toward retirement for member's prior
military service; credit toward retirement
when member has joined armed forces in time
of armed conflict.**

1 (a) Any member who has previously served on active
2 military duty is entitled to receive additional years of
3 service for the purpose of determining his or her years of
4 credited service for a period equal to the active military
5 duty not to exceed five years, subject to the following:

6 (1) That he or she has been honorably discharged
7 from the armed forces;

8 (2) That he or she substantiates by appropriate
9 documentation or evidence his or her period of active
10 military duty; and

11 (3) That he or she is receiving no benefits from any
12 other retirement system for his or her active military duty.

13 (b) In addition, any member who while in covered
14 employment was commissioned, enlisted or inducted into
15 the armed forces of the United States or, being a member
16 of the reserve officers' corps, was called to active duty in
17 the armed forces between the first day of September, one
18 thousand nine hundred forty, and the close of hostilities in
19 World War II, or between the twenty-seventh day of June,
20 one thousand nine hundred fifty, and the close of the
21 armed conflict in Korea on the twenty-seventh day of July,
22 one thousand nine hundred fifty-three, between the first
23 day of August, one thousand nine hundred sixty-four, and
24 the close of the armed conflict in Vietnam, or during any
25 other period of armed conflict by the United States
26 whether sanctioned by a declaration of war by the
27 Congress or by executive or other order of the president,
28 is entitled to and shall receive credited service, for a period
29 equal to the full time that he or she has or, pursuant to that

30 commission, enlistment, induction or call, shall have served
31 with the armed forces subject to the following:

32 (1) That he or she has been honorably discharged
33 from the armed forces;

34 (2) That within ninety days after honorable discharge
35 from the armed forces, he or she presented himself or
36 herself to the county commission and offered to resume
37 service as a deputy sheriff; and

38 (3) That he or she has made no voluntary act, whether
39 by reenlistment, waiver of discharge, acceptance of
40 commission or otherwise, to extend or participate in
41 extension of the period of service with the armed forces
42 beyond the period of service for which he or she was
43 originally commissioned, enlisted, inducted or called.

44 (c) The total amount of service allowable under
45 subsections (a) and (b) of this section may not exceed five
46 years.

47 (d) Any service credit allowed under this section may
48 be credited one time only for each deputy sheriff,
49 regardless of any changes in job title or responsibilities.

§7-14D-28. Pro rata reduction of annuities.

1 Any provision in this article to the contrary
2 notwithstanding, if at the end of any fiscal year the total of
3 the annuities paid from the retirement fund during the
4 said fiscal year is more than ten percent of the sum of the
5 balances in the fund at the end of the said fiscal year, the
6 said annuities payable in the next ensuing fiscal year shall
7 be reduced, pro rata, so that the sum of the annuities so
8 reduced shall not exceed ten percent of the sum of the
9 said balances in the fund. The said pro rata reduction
10 shall be applied to all annuities payable in the said ensuing
11 fiscal year.

**§7-14D-29. Effective date; report to joint committee on
government and finance; special starting date
for benefits.**

1 (a) The provisions of this article become effective the
2 first day of July, one thousand nine hundred ninety-eight:
3 *Provided*, That no payout of any benefits may be made to
4 any person prior to the first day of January, two thousand:
5 *Provided, however*, That members who retired due to a
6 disability may begin receiving the benefits at the rate and
7 in the amount specified in either section fourteen or
8 section fifteen of this article, as the case may be, from this
9 fund after the thirtieth day of June, one thousand nine
10 hundred ninety-nine: *Provided further*, That until the
11 thirtieth day of June, one thousand nine hundred ninety-
12 nine, those members who retired due to a disability may
13 draw benefits from this fund at the rate and in the amount
14 set forth in section twenty-five, article ten, chapter five of
15 this code.

16 (b) During the eighteen-month period before the pay-
17 out of benefits begins, the joint committee on government
18 and finance shall cause an interim study or studies to be
19 conducted on potential effects of the implementation of
20 this retirement system, including, but not limited to,
21 potential funding mechanisms to provide health insurance
22 coverage for retirees in the fifty to fifty-five age group.

§7-14D-30. Limitation of county liability.

1 No county which has timely met all of its obligations
2 under this article is liable for any payments or
3 contributions to the deputy sheriff retirement plan which
4 are owed to the plan by another county or counties. No
5 county commission may deposit funds into the deputy
6 sheriff retirement fund in excess of the amount specified
7 in section seven of this article, the fees set forth in article
8 fourteen-e of this chapter and the fees set forth in section
9 seventeen, article three, chapter seventeen-a of this code.

**ARTICLE 14E. ESTABLISHMENT OF CERTAIN FEES; DEDICA-
TION OF FEE TO DEPUTY SHERIFF'S RE-
TIREMENT SYSTEM.**

§7-14E-1. Legislative findings and purpose.

§7-14E-2. Statewide uniform fees for reports generated by sheriff's offices; dedication of fees.

§7-14E-1. Legislative findings and purpose.

1 (a) The Legislature hereby finds and declares that the
2 preservation of peace is a necessary and important
3 function and a requirement for an orderly society. This
4 important function is carried on throughout the state of
5 West Virginia at both the state and local level. Very
6 important components of law enforcement in this state are
7 the county sheriffs and their deputies.

8 (b) The Legislature, cognizant that it has enacted
9 retirement legislation for municipal police officers and for
10 the state police, declares that deputy sheriffs are now in
11 need of a retirement system. The Legislature further
12 declares that the deputy sheriffs of this state are
13 professional law-enforcement officers who keep the peace,
14 help and protect the citizens of this state. The Legislature
15 finds that, when it comes to retirement, the deputy sheriffs
16 are treated differently than other law-enforcement officers
17 in this state.

18 (c) For the foregoing reasons, and for other important
19 reasons, the Legislature created the deputy sheriff's
20 retirement system under article fourteen-d of this chapter.
21 The fees established in this article are to help ensure the
22 actuarial soundness of the deputy sheriff's retirement
23 system.

§7-14E-2. Statewide uniform fees for reports generated by sheriff's offices; dedication of fees.

1 (a) Effective the first day of July, one thousand nine
2 hundred ninety-eight, the county commission of each
3 county in this state shall set a fee for obtaining certain
4 reports. This fee shall be set at a minimum of ten dollars
5 for each report, with a maximum of twenty dollars for
6 each report. Ten dollars of the charge for each report
7 shall be deposited into the deputy sheriff's retirement
8 fund created in section six, article fourteen-d, chapter

9 seven of this code. The reports for which a charge may be
10 made are traffic accident reports, criminal investigation
11 reports, incident reports and property reports.

12 (b) Effective the first day of July, one thousand nine
13 hundred ninety-eight, all sheriff's offices in this state shall
14 collect a fee of five dollars for performing the following
15 services: adult private employment fingerprinting;
16 fingerprinting for federal firearm permits; motor vehicle
17 number identification; adult identification card and photo-
18 identification card. Upon collection, these fees shall be
19 deposited into the deputy sheriff's retirement fund created
20 in section six, article fourteen-d of this chapter.

21 (c) Effective the first day of July, one thousand nine
22 hundred ninety-eight, all sheriff's offices in this state shall
23 collect a fee of five dollars for each nongovernmental
24 background investigation report. Upon collection, these
25 fees shall be deposited into the deputy sheriff's retirement
26 fund created in section six, article fourteen-d, chapter
27 seven of this code.

28 (d) No charge may be made under this section for any
29 report or reports made to governmental agencies.

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

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

§17A-3-17. Application for and renewal of registration; sheriffs authorized to issue renewals of registration for certain vehicles.

1 (a) Application for renewal of a vehicle registration
2 shall be made by the vehicle owner by proper application
3 and payment of taxes and registration fees provided by
4 law.

5 (b) The division may receive applications for renewal
6 of any vehicle registration and each sheriff shall receive

7 applications from residents in his or her county for
8 renewal of any Class A or G vehicle registration. The
9 division and each sheriff shall issue the renewals of
10 registration each receives, respectively, in accordance with
11 all of the provisions in this article pertaining to renewal of
12 vehicle registration including, but not limited to, the
13 payment of the taxes and fees required thereunder.

14 (c) Each sheriff shall charge a service fee of one dollar
15 for each renewal of a Class A or G vehicle registration he
16 or she issues. Effective the first day of July, one thousand
17 nine hundred ninety-eight, the sheriff shall pay one half
18 of this fee into the county general fund. The sheriff shall
19 pay the remaining one half of this fee into the deputy
20 sheriff retirement fund created in section six, article
21 fourteen-d, chapter seven of this code.

22 (d) On the first day of each month, each sheriff shall
23 pay over to the commissioner all fees he or she collected
24 during the preceding month for renewal of Class A and G
25 vehicle registrations, except his or her service fees. The
26 payment shall be accompanied by a report showing the
27 name of the county, the name and address of the person
28 who obtained the registration and paid the registration fee
29 therefor, the vehicle registered, the registration number,
30 the date the registration was issued, the signature of the
31 sheriff and any other information the commissioner may
32 reasonably require in order to maintain the functions and
33 records of the department. The commissioner shall
34 deposit all fees he or she receives from the sheriffs for
35 renewal of Class A and G vehicle registrations in the state
36 treasury to the credit of the state road fund as provided in
37 section twenty-one, article two of this chapter.

38 (e) The commissioner shall provide each sheriff with
39 the necessary forms, supplies, registration plates,
40 registration decals and instructions necessary to enable
41 him or her to perform the duties and functions specified
42 in this section.

43 (f) No person may display upon a vehicle a new
44 registration plate or registration decal prior to the first day
45 of the month preceding the new registration period.

CHAPTER 241

(H. B. 2299—By Delegates Beach, Kominar, Fragale,
Williams, Heck and Dempsey)

[Passed March 14, 1998; in effect from passage. Approved by the Governor.]

AN ACT to amend article ten-d, chapter five 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 authorizing the deduction from the monthly benefits of retirees for the payment of dues to retiree associations and providing a procedure for authorizing and revoking authority for such dues deductions.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10D. CONSOLIDATED PUBLIC RETIREMENT BOARD.

§5-10D-6. Voluntary deductions by the consolidated public retirement board from monthly benefits to retirees to pay association dues.

1 Any recipient of monthly retirement benefits from
2 any public retirement plan in this state may authorize that
3 a deduction from his or her monthly benefits be made for
4 the payment of membership dues or fees to a retiree
5 association. The deductions shall be authorized on a form
6 provided by the consolidated public retirement board and
7 shall include: (a) The identity and social security number
8 of the retiree; (b) the amount and frequency of the
9 deduction; (c) the identity and address of the association
10 to which the dues or fees shall be paid; and (d) the
11 signature of the retiree. Upon execution of the
12 authorization and its receipt by the consolidated public
13 retirement board, the deduction shall be made in the
14 manner specified on the form and remitted to the

15 designated association on the tenth day of each month:
16 *Provided*, That the deduction may not be made more
17 frequently than monthly. Deduction authorizations may
18 be revoked at any time at least thirty days prior to the date
19 on which the deduction is regularly made and on a form
20 to be provided by the consolidated public retirement
21 board.

CHAPTER 242

(S. B. 750—By Senators Prezioso, Bailey, Dittmar and Buckalew)

[Passed March 12, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eighty-seven, article one-e, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to creating a state offense of absence without leave; and penalty.

Be it enacted by the Legislature of West Virginia:

That section eighty-seven, article one-e, 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 1E. CODE OF MILITARY JUSTICE.

PART X. PUNITIVE SECTIONS.

§15-1E-87. Absence without leave.

1 (a) Any person subject to this article who, without
2 authority:

3 (1) Fails to go to his or her appointed place of duty at
4 the time prescribed;

5 (2) Goes from that place; or

6 (3) Absents himself or herself or remains absent from
7 his or her unit, organization or place of duty at which he
8 or she is required to be at the time prescribed; shall be
9 punished as a court-martial may direct.

10 (b) In addition, the offense committed under
11 subsection (a) of this section, constitutes a misdemeanor
12 triable in the criminal courts of this state. Any person
13 convicted hereunder shall be sentenced to confinement in
14 the county or regional jail as follows: (1) One day for
15 each unit training assembly from which the person was
16 absent without leave; or (2) one day for each day of
17 annual training or other duty from which the person was
18 absent without leave.

19 These sentences are mandatory and shall not be
20 subject to suspension, probation, reduction or home
21 confinement.

CHAPTER 243

(S. B. 745—By Senators Wooton, Ball, Bowman, Dittmar,
Hunter, Kessler, Oliverio, Ross, Schoonover,
Snyder, White, Buckalew and Kimble)

[Passed March 12, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article two, chapter twenty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the powers and duties of the public service commission to regulate public utilities; and authorizing the commission to require public utilities to charge emergency shelter providers the lowest rates available.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

§24-2-2. General power of commission to regulate public utilities.

1 (a) The commission is hereby given power to
2 investigate all rates, methods and practices of public
3 utilities subject to the provisions of this chapter; to require
4 them to conform to the laws of this state and to all rules,
5 regulations and orders of the commission not contrary to
6 law; and to require copies of all reports, rates,
7 classifications, schedules and timetables in effect and used
8 by the public utility or other person, to be filed with the
9 commission, and all other information desired by the
10 commission relating to the investigation and requirements,
11 including inventories of all property in such form and
12 detail as the commission may prescribe. The commission
13 may compel obedience to its lawful orders by mandamus
14 or injunction or other proper proceedings in the name of
15 the state in any circuit court having jurisdiction of the
16 parties or of the subject matter, or the supreme court of
17 appeals direct, and the proceedings shall have priority over
18 all pending cases. The commission may change any
19 intrastate rate, charge or toll which is unjust or
20 unreasonable or any interstate charge with respect to
21 matters of a purely local nature which have not been
22 regulated by or pursuant to an act of Congress and may
23 prescribe a rate, charge or toll that is just and reasonable,
24 and change or prohibit any practice, device or method of
25 service in order to prevent undue discrimination or
26 favoritism between persons and between localities and
27 between commodities for a like and contemporaneous
28 service. But in no case shall the rate, toll or charge be
29 more than the service is reasonably worth, considering the
30 cost of the service. Every order entered by the
31 commission shall continue in force until the expiration of
32 the time, if any, named by the commission in the order, or
33 until revoked or modified by the commission, unless the
34 order is suspended, modified or revoked by order or
35 decree of a court of competent jurisdiction: *Provided*,
36 That in the case of utilities used by emergency shelter
37 providers, the commission shall prescribe such rates,
38 charges or tolls that are the lowest available. "Emergency
39 shelter provider" means any nonprofit entity which
40 provides temporary emergency housing and services to
41 the homeless or to victims of domestic violence or other
42 abuse.

43 (b) Notwithstanding any other provision of this code
44 to the contrary, rates are not discriminatory if, when
45 considering the debt costs associated with a future water or
46 sewer project which would not benefit existing customers,
47 the commission establishes rates which ensure that the
48 future customers to be served by the new project are solely
49 responsible for the debt costs associated with the project.

CHAPTER 244

(Com. Sub. for H. B. 4277—By Mr. Speaker, Mr. Kiss,
and Delegate Ashley)

[Passed March 14, 1998; in effect from passage. Approved by the Governor.]

AN ACT to amend article two, 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 eighteen, relating to deregulation of electric service; setting forth legislative findings; providing jurisdiction to the public service commission to determine whether permitting retail customers in West Virginia to obtain direct access to competitive markets for their power supply is in the public interest; authorizing commission to develop a deregulation plan if such a determination is made; providing for involvement of interested parties; requiring that deregulation plan be submitted to the Legislature for approval or rejection; requiring issuance of reports on findings and on the potential state and local tax consequences of any plan submitted by the commission; permitting persons participating in plan development to issue reports; and providing continuing jurisdiction to the commission to modify or rescind any plan implemented by the commission.

Be it enacted by the Legislature of West Virginia:

That article two, 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 eighteen, to read as follows:

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

§24-2-18. Legislative findings on electric service; jurisdiction of the commission to determine public interest in permitting retail access to competitive power supply markets; participation of interested parties; development of deregulation plan; legislative approval or rejection of plan; certain reports required or permitted; continuing jurisdiction.

1 (a) The Legislature hereby finds that:

2 (1) Electric service is essential to the health and well-
3 being of residents, to public safety and to orderly
4 economic development, and the cost of electricity is an
5 important factor in decisions made by businesses
6 concerning locating, expanding and retaining facilities in
7 West Virginia. Therefore, reliable electric service should
8 continue to be available to all customers at reasonable
9 rates and on reasonable terms and conditions;

10 (2) Many state governments have been studying
11 policies that would create a competitive market for the
12 supply of electricity;

13 (3) The public service commission is the appropriate
14 agency to determine whether West Virginia should adopt a
15 plan whereby users of electricity in the state would have
16 open access across existing and new utility delivery
17 systems to a competitive market for power supply. An
18 affirmative determination of this question is hereafter
19 designated in this section as a "finding of public
20 interest." If the commission makes a finding of public
21 interest, the commission is also the appropriate agency to
22 develop such a plan for submission to the Legislature for
23 approval, hereafter designated in this section as a
24 "deregulation plan."

25 (4) Notwithstanding the commission's substantial
26 expertise in the supervision and regulation of the
27 electricity generation industry, the significant public
28 policy issues involved in determining whether to make a
29 finding of public interest and, if necessary, in developing a
30 deregulation plan, require that the commission seek and

31 secure the involvement of a wide spectrum of interests in
32 the state, including but not limited to the following
33 interests, hereafter collectively designated in this section as
34 "all interested parties": groups representing senior
35 citizens and other persons on fixed incomes, including the
36 American association of retired persons; groups
37 representing low income persons and the working poor,
38 including the West Virginia community action directors
39 association; labor unions, including the West Virginia
40 AFL-CIO, the communications workers of America, the
41 united mine workers of America, the West Virginia state
42 building and construction trades council, the international
43 brotherhood of electrical workers, the independent steel
44 workers, and the united steel workers of America; groups
45 representing residential consumers; groups representing
46 industrial consumers; groups representing commercial
47 consumers; groups representing the electric utility
48 industry and electricity generation concerns; groups
49 representing natural resources industries and associated
50 industries, including the West Virginia coal association and
51 the West Virginia oil and natural gas association; groups
52 representing heating, ventilating and air conditioning
53 contractors, including the West Virginia heating,
54 ventilating, air conditioning and electrical contractors
55 association; groups representing environmental concerns;
56 the electric industry research group of West Virginia
57 university; the West Virginia municipal league; and any
58 other person or group which has an interest in these issues.

59 (5) In order to provide meaningful involvement and
60 participation to all interested parties in determining
61 whether to make a finding of public interest and, if
62 necessary, in developing a deregulation plan, the
63 commission is directed (A) to provide notice to all
64 interested parties of each public meeting to be held by the
65 commission in studying whether to make a finding of
66 public interest and, if necessary, in developing a
67 deregulation plan, including providing written notice by
68 first class mail at least five days prior to the date of each
69 public meeting to each of the groups specifically
70 identified in subdivision (4) of this subsection; (B) to
71 consult with all interested parties attending such public
72 meetings; and (C) to report periodically to the joint
73 committee on government and finance of the Legislature

74 or any interim study committee appointed by the joint
75 committee on government and finance on the
76 commission's progress on these issues.

77 (6) The commission may not submit a deregulation
78 plan to the Legislature for approval unless it submits
79 findings and explains the basis for its findings, after
80 providing adequate notice to all interested parties and
81 other persons and holding a hearing or hearings, that the
82 deregulation plan fairly balances the interests of the
83 electric utilities, their customers, and the state's economy,
84 and that the deregulation plan:

85 (A) Is in the best interest of West Virginia electric
86 energy consumers;

87 (B) Results in potential benefits available for all
88 customers, considering that while some customers may be
89 immediately benefited by reductions in electricity costs,
90 depending on their individual needs and choices, no
91 customer should be worse off;

92 (C) Preserves universal electric service at reasonable
93 rates;

94 (D) Maintains reasonable standards of safety,
95 availability and reliability of electric service for all
96 customers at all times, including at times of peak load
97 usage of electric service;

98 (E) Does not result in a substantial negative impact on
99 employment in the state or the state's economy;

100 (F) Does not impact compliance with environmental
101 rules;

102 (G) Considers and maintains the public benefits of
103 energy efficiency, renewable resource technology and
104 research and development;

105 (H) Encourages the continued and expanded use of
106 West Virginia coal, oil, natural gas and other energy
107 resources;

108 (I) Assures that customers have meaningful choices
109 among electricity providers and that customers are
110 protected from anticompetitive behavior, poor service, and
111 unfair billing, collection and disconnection procedures;

112 (J) Is conditioned upon workable competition with a
113 level playing field for all buyers and sellers, and provides
114 for a code of conduct for electric service providers to be
115 established by commission rule;

116 (K) Assures that existing commitments of utilities
117 arising from past decisions made pursuant to historical
118 regulatory and legal principles are addressed in a fair and
119 reasonable manner, considering the financial integrity of
120 the utilities;

121 (L) Addresses and maintains adequate protections for
122 low-income consumers and gives meaningful
123 consideration to the development of funding mechanisms
124 to protect senior citizens and other persons on fixed
125 incomes, low income persons and the working poor; and

126 (M) Ensures that regulated industries do not subsidize
127 nonregulated industries and businesses.

128 (7) Restructuring of the electric utility industry should
129 reasonably preserve tax revenues for state and local
130 governments and should neither result in a shift of the tax
131 burden to any customer or customer group nor result in a
132 tax system which places any competitor in the market
133 place at a disadvantage.

134 (b) In addition to its other powers and duties, the
135 commission is authorized to determine, in consultation
136 with all interested parties, whether to make a finding of
137 public interest, and if a finding of public interest is made:

138 (1) To develop, in consultation with all interested
139 parties, a deregulation plan to allow deregulation of
140 existing utility generation assets and direct access by retail
141 customers to competitive electric power supply markets
142 and which is consistent with the legislative findings set
143 forth in subsection (a) of this section;

144 (2) To prescribe, by order or rules, procedures and
145 standards for the marketing of power supply in the state;
146 and

147 (3) To resolve all issues necessary to provide for an
148 orderly transition from the current regulated structure to a
149 system of direct retail access in a fully workable

150 competitive power supply market in a manner that is fair
151 to customers, electric utilities and other affected parties.

152 (c) If the commission develops a deregulation plan
153 pursuant to subsection (b) of this section, the commission
154 shall submit the deregulation plan to each house of the
155 Legislature during the next succeeding regular session of
156 the Legislature or during any special session of the
157 Legislature occurring after such regular session if
158 legislative approval of the deregulation plan is included in
159 the call therefor. Upon such submission, the Legislature
160 shall, by concurrent resolution, approve or reject the
161 deregulation plan. If the deregulation plan is so rejected,
162 the concurrent resolution shall set forth the reasons for
163 such rejection, and the commission may subsequently
164 modify the deregulation plan to meet the objections of the
165 Legislature and may resubmit it as modified to the
166 Legislature pursuant to this subsection. No initial or
167 modified deregulation plan may be adopted or
168 implemented by the commission until the Legislature has
169 approved it pursuant to this subsection.

170 (d) Upon the development of a deregulation plan and
171 prior to or concurrently with the submission of the
172 deregulation plan to the Legislature pursuant to subsection
173 (c) of this section, the commission shall issue a report to
174 the governor, the president of the Senate and the speaker
175 of the House of Delegates on the potential state or local
176 tax consequences which might be created by
177 implementation of the deregulation plan, along with
178 recommendations for statutory changes, if any are
179 necessary, to satisfy the legislative findings specified in
180 subdivisions (6) and (7), subsection (a) of this section.

181 (e) Upon the development of a deregulation plan and
182 prior to or concurrently with the submission of the
183 deregulation plan to the Legislature pursuant to subsection
184 (c) of this section, any interested party who actively
185 consulted with the commission during the development of
186 the deregulation plan may issue a report to the governor,
187 the president of the Senate and the speaker of the House
188 of Delegates setting forth the instances in which such
189 interested party believes the deregulation plan does not
190 satisfy one or more of the legislative findings specified in
191 subdivisions (6) and (7), subsection (a) of this section.

192 (f) After the adoption and implementation of a
193 deregulation plan approved by the Legislature pursuant to
194 subsection (c) of this section, the commission shall retain
195 authority and jurisdiction to modify or rescind the
196 deregulation plan if, upon application to the commission
197 or upon the commission's own motion, and after notice to
198 all interested parties and a hearing, the commission finds
199 that it is in the public interest to do so, after making a
200 finding that a substantial change in state or federal law or
201 a court decision necessitates the rescission or modification
202 of the deregulation plan to continue to meet the legislative
203 findings in this section or that for any other reason the
204 deregulation plan is not meeting such legislative findings.
205 The implementation of a deregulation plan through an
206 order of the commission pursuant to this section does not
207 amend existing provisions of this code, except as
208 specifically herein modified.

CHAPTER 245

(H. B. 4548—By Delegates Martin, Varner and Michael)

[Passed March 14, 1998; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections ten-c and ten-d, article three, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section ten-e, all relating to the state purchasing card program; exempting the Legislature from any fees associated with the use or nonuse of the state purchasing card; providing that the purchasing card fund shall be administered by the state auditor; and creating a purchasing card advisory committee.

Be it enacted by the Legislature of West Virginia:

That sections ten-c and ten-d, article three, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one,

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

ARTICLE 3. APPROPRIATIONS, EXPENDITURES AND DEDUCTIONS.

§12-3-10c. Transaction fees; disposition of fees.

§12-3-10d. Purchasing card fund created; expenditures.

§12-3-10e. Purchasing card advisory committee created; purpose; membership; expenses.

§12-3-10c. Transaction fees; disposition of fees.

1 (a) In order to promote and enhance the use of the
2 state purchasing card program established by the
3 provisions of section ten-a of this article and in order to
4 maintain and develop the fiscal operations and accounting
5 systems of the state, the auditor and the treasurer may
6 assess joint transaction fees for all financial documents
7 that will be processed on the central accounting system.
8 Such transaction fees shall be prescribed by legislative rule
9 proposed in accordance with article three, chapter twenty-
10 nine-a of this code and may include the following:

11 (1) A penalty fee to be assessed against spending units
12 of state government who submit claims for payment of
13 goods and services when those claims are authorized to be
14 paid by use of a state purchasing card and the spending
15 unit has failed to utilize the state purchasing card; and

16 (2) A transaction fee to be assessed against spending
17 units of state government for every transaction received,
18 electronically or otherwise, by the auditor from the
19 centralized accounting system.

20 (b) All fees collected under this section shall be
21 deposited into the "Technology Support and Acquisition
22 Fund" which is hereby created in the state treasury to be
23 administered by the auditor. The auditor and treasurer
24 shall use moneys deposited in the fund to maintain and
25 develop the state purchasing card program, support the
26 fiscal operations of the state, including the state centralized
27 accounting system, and to acquire and improve the
28 technology required to support these functions: *Provided,*

29 That expenditures from the fund are authorized from
30 collections and are to be made only in accordance with an
31 appropriation by the Legislature and in accordance with
32 the provision of article three of this chapter and upon
33 fulfillment of the provisions set forth in article two,
34 chapter five-a of this code: *Provided, however,* That for
35 the fiscal year ending the thirtieth day of June, one
36 thousand nine hundred ninety-eight, expenditures from
37 the fund may be made from collections: *Provided further,*
38 That the Legislature is exempt from any fees imposed
39 under this section.

§12-3-10d. Purchasing card fund created; expenditures.

1 All money received by the state pursuant to any
2 agreement with vendors providing purchasing charge
3 cards shall be deposited in a special revenue revolving
4 fund designated the "Purchasing Card Administration
5 Fund", in the state treasury to be administered by the
6 auditor. All expenses by the auditor in the implementation
7 and operation of the purchasing card program shall be
8 paid from the fund. Expenditures from the fund shall be
9 made in accordance with appropriations by the Legislature
10 pursuant to the provisions of article three, chapter twelve
11 of this code and upon fulfillment of the provisions of
12 article two, chapter five-a of this code.

**§12-3-10e. Purchasing card advisory committee created;
purpose; membership; expenses.**

1 There is created a purchasing card advisory committee
2 to enhance the development and implementation of the
3 purchasing card program. The committee shall solicit
4 input from state agencies and make recommendations to
5 improve the performance of the purchasing card program.
6 The committee consists of eleven members to be
7 appointed as follows:

8 (1) The auditor shall serve as chairperson of the
9 committee and shall appoint three members from the state
10 college system of West Virginia and the university system
11 of West Virginia, one member from the department of
12 health and human resources, and one member from the
13 division of highways;

14 (2) The secretary of the department of administration
15 shall appoint one member from the information services
16 and communications division, one member from the
17 financial accounting and reporting section, and one
18 member from the purchasing division;

19 (3) The secretary of the department of tax and
20 revenue shall appoint one member from the department of
21 tax and revenue; and

22 (4) The state treasurer shall appoint one member from
23 that office.

24 Committee members shall be appointed for a term of
25 one year, commencing on the first day of July, one
26 thousand nine hundred ninety-eight. Committee members
27 shall receive reimbursement for expenses actually incurred
28 in the performance of their duties on the committee.

CHAPTER 246

(H. B. 4632—By Delegate Pettit)

[Passed March 14, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections three, eight, nine and twelve, article twenty-two-a, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to racetrack video lottery; creation of an additional permitted job classification of video lottery floor attendant; providing for an annual license or permit fee; defining the term "eprom"; and increasing the number of terminals which may be located in a nonconforming location.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 22A. RACETRACK VIDEO LOTTERY ACT.

§29-22A-3. Definitions.

§29-22A-8. Form of application; local option elections; issuance of license; notice of incomplete application; notice of license or permit denial, suspension or revocation; procedure for review of license or permit denial, suspension or revocation; fees, renewal fees and renewal dates; bonding; renewal of licenses and permits; notice of change affecting license or permit; license or permit not transferrable or assignable.

§29-22A-9. General duties of all video lottery license and permit holders; duties of permitted manufacturers; duties of permitted service technicians; duties of permitted validation managers; duties of floor attendants; duties of licensed racetracks.

§29-22A-12. Number and location of video lottery terminals; security.

§29-22A-3. Definitions.

1 As used in this article:

2 (a) "Applicant" means any person applying for any
3 video lottery license or permit.

4 (b) "Associated equipment" means any hardware
5 located on a licensed racetrack's premises which is
6 connected to the video lottery system for the purpose of
7 performing communication, validation or other functions,
8 but not including the video lottery terminals or the
9 communication facilities of a regulated public utility.

10 (c) "Background investigation" means a security,
11 criminal and credit investigation of a person, as defined in
12 this section, who has applied for a video lottery license or
13 permit, or who has been granted a video lottery license or
14 permit.

15 (d) "Central computer," "central control computer" or
16 "central site system" means any central site computer
17 provided to and controlled by the commission to which
18 video lottery terminals communicate for purposes of
19 information retrieval and terminal activation and to disable
20 programs.

21 (e) "Commission" or "state lottery commission" means
22 the West Virginia lottery commission created by article
23 twenty-two of this chapter.

24 (f) "Control" means the authority to direct the
25 management and policies of an applicant or a license or
26 permit holder.

27 (g) "Costs" means the expenses incurred by the
28 commission in the testing and examination of video
29 lottery terminals and the performance of background
30 investigations and other related activities which are
31 charged to and collected from applicants or license or
32 permit holders.

33 (h) "Director" means the individual appointed by the
34 governor to provide management and administration
35 necessary to direct the state lottery office.

36 (i) "Disable" or "terminal disable" means the process of
37 executing a shutdown command from the central control
38 computer which causes video lottery terminals to cease
39 functioning.

40 (j) "Display" means the visual presentation of video
41 lottery game features on the video display monitor or
42 screen of a video lottery terminal.

43 (k) "EPROM" and "erasable programmable read-only
44 memory chips" means the electronic storage medium on
45 which the operation software for all games playable on a
46 video lottery terminal resides and which can also be in the
47 form of CD-ROM, flash RAM or other new technology
48 medium that the commission may from time to time
49 approve for use in video lottery terminals. All electronic
50 storage media are considered to be the property of the
51 state of West Virginia.

52 (l) "Floor attendant" means a person, employed by a
53 licensed racetrack, who holds a permit issued by the
54 commission and who corrects paper jams and bill jams in
55 video lottery terminals and also provides courtesy services
56 for video lottery players.

57 (m) "Gross terminal income" means the total amount
58 of cash inserted into the video lottery terminals operated
59 by a licensee, minus the total value of game credits which
60 are cleared from the video lottery terminals in exchange
61 for winning redemption tickets.

62 (n) "License" or "video lottery license" means
63 authorization granted by the commission to a racetrack
64 which is licensed by the West Virginia racing commission
65 to conduct thoroughbred or greyhound racing meetings
66 pursuant to article twenty-three, chapter nineteen of this
67 code permitting the racetrack to operate video lottery
68 terminals authorized by the commission.

69 (o) "Lottery" means the public gaming systems or
70 games established and operated by the state lottery
71 commission.

72 (p) "Manufacturer" means any person holding a
73 permit granted by the commission to engage in the
74 business of designing, building, constructing, assembling
75 or manufacturing video lottery terminals, the electronic
76 computer components of the video lottery terminals, the
77 random number generator of the video lottery terminals,
78 or the cabinet in which it is housed, and whose product is
79 intended for sale, lease or other assignment to a licensed
80 racetrack in West Virginia, and who contracts directly with
81 the licensee for the sale, lease or other assignment to a
82 licensed racetrack in West Virginia.

83 (q) "Net terminal income" means gross terminal
84 income minus an amount deducted by the commission to
85 reimburse the commission for its actual costs of
86 administering racetrack video lottery at the licensed
87 racetrack. No deduction for any or all costs and expenses
88 of a licensee related to the operation of video lottery
89 games shall be deducted from gross terminal income.

90 (r) "Own" means any beneficial or proprietary interest
91 in any property or business of an applicant or licensed
92 racetrack.

93 (s) "Pari-mutuel racing facility", "licensed racetrack",
94 "racetrack" or "track" means a facility where horse or dog
95 race meetings are held and the pari-mutuel system of
96 wagering is authorized pursuant to the provisions of article
97 twenty-three, chapter nineteen of this code: *Provided,*
98 That, for the purposes of this article, "pari-mutuel racing
99 facility", "licensed racetrack", "racetrack" or "track"
100 includes only a facility which was licensed prior to the first

101 day of January, one thousand nine hundred ninety-four,
102 to hold horse or dog race meetings, and which conducts
103 not less than two hundred twenty live racing dates for each
104 horse or dog race meeting or such other number of live
105 racing dates as may be approved by the racing
106 commission in accordance with the provisions of section
107 twelve-b, article twenty-three, chapter nineteen of this
108 code.

109 (t) "Permit" means authorization granted by the
110 commission to a person to function as either a video
111 lottery manufacturer, service technician or validation
112 manager.

113 (u) "Person" means any natural person, corporation,
114 association, partnership, limited partnership, or other
115 entity, regardless of its form, structure or nature.

116 (v) "Player" means a person who plays a video lottery
117 game on a video lottery terminal at a racetrack licensed by
118 the commission to conduct video lottery games.

119 (w) "Service technician" means a person, employed by
120 a licensed racetrack, who holds a permit issued by the
121 commission and who performs service, maintenance and
122 repair on licensed video lottery terminals in this state.

123 (x) "Video lottery game" means a commission
124 approved, owned and controlled electronically simulated
125 game of chance which is displayed on the screen or video
126 monitor of a video lottery terminal and which:

127 (1) Is connected to the commission's central control
128 computer by an on-line or dial-up communication system;

129 (2) Is initiated by a player's insertion of coins or
130 currency into a video lottery terminal, which causes game
131 play credits to be displayed on the video lottery terminal
132 and, with respect to which, each game play credit entitles a
133 player to choose one or more symbols or numbers or to
134 cause the video lottery terminal to randomly select
135 symbols or numbers;

136 (3) Allows the player to win additional game play
137 credits based upon game rules which establish the random

138 selection of winning combinations of symbols or numbers
139 or both and the number of free play credits to be awarded
140 for each winning combination of symbols or numbers or
141 both;

142 (4) Is based upon computer-generated random
143 selection of winning combinations based totally or
144 predominantly on chance;

145 (5) In the case of a video lottery game which allows
146 the player an option to select replacement symbols or
147 numbers or additional symbols or numbers after the game
148 is initiated and in the course of play, either: (A) Signals
149 the player, prior to any optional selection by the player of
150 randomly generated replacement symbols or numbers, as
151 to which symbols or numbers should be retained by the
152 player to present the best chance, based upon probabilities,
153 that the player may select a winning combination; (B)
154 signals the player, prior to any optional selection by the
155 player of randomly generated additional symbols or
156 numbers, as to whether the additional selection presents
157 the best chance, based upon probabilities, that the player
158 may select a winning combination; or (C) randomly
159 generates additional or replacement symbols and numbers
160 for the player after automatically selecting the symbols
161 and numbers which should be retained to present the best
162 chance, based upon probabilities, for a winning
163 combination, so that in any event, the player is not
164 permitted to benefit from any personal skill, based upon a
165 knowledge of probabilities, before deciding which
166 optional numbers or symbols to choose in the course of
167 video lottery game play;

168 (6) Allows a player at any time to simultaneously clear
169 all game play credits and print a redemption ticket
170 entitling the player to receive the cash value of the free
171 plays cleared from the video lottery terminal; and

172 (7) Does not use the following game themes
173 commonly associated with casino gambling: Roulette,
174 dice, or baccarat card games: *Provided*, That games
175 having a video display depicting symbols which appear to

176 roll on drums to simulate a classic casino slot machine,
177 game themes of other card games and keno may be used.

178 (y) "Validation manager" means a person who holds a
179 permit issued by the commission and who performs video
180 lottery ticket redemption services.

181 (z) "Video lottery" means a lottery which allows a
182 game to be played utilizing an electronic computer and an
183 interactive computer terminal device, equipped with a
184 video screen and keys, a keyboard or other equipment
185 allowing input by an individual player, into which the
186 player inserts coins or currency as consideration in order
187 for play to be available, and through which terminal
188 device the player may receive free games or credit that can
189 be redeemed for cash, or nothing, as may be determined
190 wholly or predominantly by chance. "Video lottery" does
191 not include a lottery game which merely utilizes an
192 electronic computer and a video screen to operate a lottery
193 game and communicate the results of the game, such as
194 the game "Travel", and which does not utilize an
195 interactive electronic terminal device allowing input by an
196 individual player.

197 (aa) "Video lottery terminal" means a commission-
198 approved interactive electronic terminal device which is
199 connected with the commission's central computer system,
200 and which is used for the purpose of playing video lottery
201 games authorized by the commission. A video lottery
202 terminal may simulate the play of one or more video
203 lottery games.

204 (bb) "Wager" means a sum of money or thing of value
205 risked on an uncertain occurrence.

§29-22A-8. Form of application; local option elections; issuance of license; notice of incomplete application; notice of license or permit denial, suspension or revocation; procedure for review of license or permit denial, suspension or revocation; fees, renewal fees and renewal dates; bonding; renewal of licenses and permits; notice of change affecting license or

permit; license or permit not transferrable or assignable.

1 (a) The commission shall determine the form of
2 applications to be used and shall not consider incomplete
3 applications. The commission may consider an
4 application when the applicant has completed and
5 executed all forms and documents required by the
6 commission and all application fees and costs have been
7 paid.

8 (b) The question of whether video lottery games shall
9 be permitted at pari-mutuel racetracks shall be determined
10 by local option election in each county in which a
11 pari-mutuel racetrack is located. The local option election
12 on this question may be placed on the ballot in each
13 county at any general election. The county commission
14 of the county in which the racetrack is located shall give
15 notice to the public of the election by publication of the
16 notice as a Class II-0 legal advertisement in compliance
17 with the provisions of article three, chapter fifty-nine of
18 this code, and the publication area for the publication shall
19 be the county in which the election is to be held. The date
20 of the last publication of the notice shall fall on a date
21 within the period of the fourteen consecutive days next
22 preceding the election.

23 On the local option election ballot shall be printed the
24 following:

25 Shall West Virginia lottery commission video lottery
26 games be permitted within an area at the [name of
27 racetrack] in which pari-mutuel betting is authorized by
28 law?

29 Yes No

30 (Place a cross mark in the square opposite your
31 choice.)

32 The ballots shall be counted, returns made and
33 canvassed as in general elections, and the results certified
34 by the commissioners of election to the county
35 commission. The county commission shall, without delay,
36 certify the result of the election to the commission.

37 (c) Upon receipt of the results of the election from the
 38 county commission, and if a majority has voted "yes", the
 39 commission shall issue the requested license if the
 40 applicant is otherwise qualified for the license. If a
 41 majority has voted "no", the commission shall notify the
 42 applicant of the results, the application shall be denied,
 43 and another election on the issue shall not be held for a
 44 period of two years: *Provided*, That for purposes of this
 45 section, the term "two years" means the interval between a
 46 general election and the next general election, and in no
 47 event shall it mean or encompass a period of time in
 48 excess of one hundred four weeks. If a majority has voted
 49 "yes", another local option election on the issue shall not
 50 be held for a period of five years. A local option election
 51 may thereafter be held if a written petition of qualified
 52 voters residing within the county equal to at least five
 53 percent of the number of persons who were registered to
 54 vote in the next preceding general election is received by
 55 the county commission of the county in which the horse
 56 or dog racetrack is located. The petition may be in any
 57 number of counterparts.

58 The petition shall be in the following form:

59 Petition For Local Option Election

60 We, the undersigned legally qualified voters, resident
 61 within the county of _____, do hereby
 62 petition that a special election be held within the county of
 63 _____ upon the following question: Shall
 64 West Virginia lottery commission video lottery games be
 65 permitted within an area at the [name of racetrack] in
 66 which pari-mutuel betting is authorized by law?

67 Name Address Date

68 (Post office or street address)

69 (d) The commission may not issue any license or
 70 permit until background investigations are concluded.
 71 The commission shall make an affirmative determination
 72 that the applicant is qualified and the applicable license or
 73 permit fees have been paid prior to issuing any license or
 74 permit.

75 (e) The commission shall notify the applicant if an
76 application is incomplete and the notification shall state
77 the deficiencies in the application.

78 (f) The commission shall notify applicants in writing
79 of the denial, suspension or revocation of a permit or
80 license and the reasons for the denial, suspension or
81 revocation in accordance with the provisions of section
82 fifteen of this article.

83 (g) An applicant may request a hearing to review a
84 license or permit denial, suspension or revocation in
85 accordance with section fifteen of this article.

86 (h) The following license or permit fees shall be paid
87 annually by each licensed racetrack, or permitted
88 manufacturer, service technician, floor attendant or
89 validation manager:

90 (1) Racetrack: \$1,000

91 (2) Manufacturer: \$10,000

92 (3) Service technician: \$100

93 (4) Validation manager: \$50

94 (5) Floor attendant: \$50

95 The fees shall be paid to the commission at the time of
96 license or permit application and on or before the first day
97 of July of each year thereafter, at which time the license or
98 permit may be renewed.

99 (i) An applicant for a video lottery license shall, prior
100 to the issuance of the license, post a bond or irrevocable
101 letter of credit in a manner and in an amount established
102 by the commission. The bond shall be issued by a surety
103 company authorized to transact business in West Virginia
104 and the company shall be approved by the insurance
105 commissioner of this state as to solvency and
106 responsibility.

107 (j) The commission shall renew video lottery licenses
108 and permits annually as of the first day of July of each
109 year, if each person seeking license or permit renewal

110 submits the applicable renewal fee, completes all renewal
111 forms provided by the commission, and continues to meet
112 all qualifications for a license or permit.

113 (k) License and permit holders shall notify the
114 commission of any proposed change of ownership or
115 control of the license or permit holder and of all other
116 transactions or occurrences relevant to license or permit
117 qualification. In order for a license or permit to remain in
118 effect, commission approval is required prior to
119 completion of any proposed change of ownership or
120 control of a license or permit holder.

121 (l) A license or permit is a privilege personal to the
122 license or permit holder and is not a legal right. A license
123 or permit granted or renewed pursuant to this article may
124 not be transferred or assigned to another person, nor may
125 a license or a permit be pledged as collateral. The
126 purchaser or successor of any license or permit holder
127 shall independently qualify for a license or permit. The
128 sale of more than five percent of a license or permit
129 holder's voting stock, or more than five percent of the
130 voting stock of a corporation which controls the license or
131 permit holder or the sale of a license or permit holder's
132 assets, other than those bought and sold in the ordinary
133 course of business, or any interest therein, to any person
134 not already determined to have met the qualifications of
135 section seven of this article voids the license unless the sale
136 has been approved in advance by the commission.

**§29-22A-9. General duties of all video lottery license and
permit holders; duties of permitted
manufacturers; duties of permitted service
technicians; duties of permitted validation
managers; duties of floor attendants; duties of
licensed racetracks.**

1 (a) All video lottery license and permit holders shall:

2 (1) Promptly report to the commission any facts or
3 circumstances related to video lottery operations which
4 constitute a violation of state or federal law;

✓

5 (2) Conduct all video lottery activities and functions in
6 a manner which does not pose a threat to the public health,
7 safety or welfare of the citizens of this state, and which
8 does not adversely affect the security or integrity of the
9 lottery;

10 (3) Hold the commission and this state harmless from
11 and defend and pay for the defense of any and all claims
12 which may be asserted against a license or permit holder,
13 the commission, the state or the employees thereof, arising
14 from the license or permit holder's participation in the
15 video lottery system authorized by this article;

16 (4) Assist the commission in maximizing video lottery
17 revenues;

18 (5) Maintain all records required by the commission;

19 (6) Upon request by the commission, provide the
20 commission access to all records and the physical premises
21 of the business or businesses where the license or permit
22 holder's video lottery activities occur, for the purpose of
23 monitoring or inspecting the license or permit holder's
24 activities and the video lottery games, video lottery
25 terminals and associated equipment; and

26 (7) Keep current in all payments and obligations to
27 the commission.

28 (b) Manufacturers shall:

29 (1) Manufacture terminals and associated equipment
30 for placement in this state in accordance with the
31 specifications and procedures specified in sections five
32 and six of this article;

33 (2) Manufacture terminals and associated equipment
34 to ensure timely delivery to licensed racetracks;

35 (3) Maintain and provide an inventory of spare parts
36 to assure the timely repair and continuous operation of
37 licensed video lottery terminals intended for placement in
38 this state;

39 (4) Provide to licensed racetracks and permitted
40 service technicians technical assistance and training in the
41 service and repair of video lottery terminals and associated
42 equipment so as to assure the continuous authorized
43 operation and play of the video lottery terminals; and

44 (5) Obtain certification of compliance under the
45 provisions of part fifteen of the federal communication
46 commission rules for all video lottery terminals placed in
47 this state.

48 (c) Service technicians shall:

49 (1) Maintain all skills necessary for the timely repair
50 and service of licensed video lottery terminals and
51 associated equipment so as to ensure the continued,
52 approved operation of those terminals;

53 (2) Attend all commission mandated meetings,
54 seminars and training sessions concerning the repair and
55 maintenance of licensed video lottery terminals and
56 associated equipment; and

57 (3) Promptly notify the commission of any electronic
58 or mechanical video lottery terminal malfunctions.

59 (d) Validation managers shall:

60 (1) Attend all commission mandated meetings,
61 seminars and training sessions concerning the validation
62 and redemption of video lottery winning tickets and the
63 operation of all ticket validation terminals and equipment;

64 (2) Maintain all skills necessary for the accurate
65 validation of video lottery tickets; and

66 (3) Supervise video lottery ticket validation procedures
67 at the applicable licensed racetrack.

68 (e) Floor attendants shall:

69 (1) Provide change and assistance to persons playing
70 video lottery games in a licensed racetrack video lottery
71 gaming area;

72 (2) Open video lottery terminal access doors to clear
73 ticket paper jams and to insert new paper ticket tapes into
74 the video lottery terminals; and

75 (3) Open video lottery terminal access doors to clear
76 bill jams from the bill acceptors in video lottery terminals.

77 (f) The specific duties required of all licensed
78 racetracks are as follows:

79 (1) Acquire video lottery terminals by purchase, lease
80 or other assignment and provide a secure location for the
81 placement, operation and play of the video lottery
82 terminals;

83 (2) Pay for the installation and operation of
84 commission approved telephone lines to provide direct
85 dial-up or on-line communication between each video
86 lottery terminal and the commission's central control
87 computer;

88 (3) Permit no person to tamper with or interfere with
89 the operation of any video lottery terminal;

90 (4) Ensure that telephone lines from the commission's
91 central control computer to the video lottery terminals
92 located at the licensed racetrack are at all times connected
93 and prevent any person from tampering or interfering
94 with the operation of the telephone lines;

95 (5) Ensure that video lottery terminals are within the
96 sight and control of designated employees of the licensed
97 racetrack;

98 (6) Ensure that video lottery terminals are placed and
99 remain placed in the specific locations within the licensed
100 racetrack which have been approved by the commission.
101 No video lottery terminal or terminals at a racetrack shall
102 be relocated without the prior approval of the commission;

103 (7) Monitor video lottery terminals to prevent access
104 to or play by persons who are under the age of eighteen
105 years or who are visibly intoxicated;

106 (8) Maintain at all times sufficient change and cash in
107 the denominations accepted by the video lottery terminals;

108 (9) Provide no access by a player to an automated
109 teller machine (ATM) in the area of the racetrack where
110 video lottery games are played, accept no credit card or
111 debit card from a player for the exchange or purchase of
112 video lottery game credits or for an advance of coins or
113 currency to be utilized by a player to play video lottery
114 games, and extend no credit, in any manner, to a player so
115 as to enable the player to play a video lottery game;

116 (10) Pay for all credits won upon presentment of a
117 valid winning video lottery ticket;

118 (11) Report promptly to the manufacturer and the
119 commission all video lottery terminal malfunctions and
120 notify the commission of the failure of a manufacturer or
121 service technician to provide prompt service and repair of
122 such terminals and associated equipment;

123 (12) Conduct no video lottery advertising and
124 promotional activities without the prior written approval of
125 the director;

126 (13) Install, post and display prominently at locations
127 within or about the licensed racetrack, signs, redemption
128 information and other promotional material as required
129 by the commission;

130 (14) Permit video lottery to be played only during
131 those hours established and approved by the commission;

132 (15) Maintain general liability insurance coverage for
133 all video lottery terminals in an amount of at least two
134 million dollars per claim;

135 (16) Promptly notify the commission in writing of any
136 breaks or tears to any logic unit seals;

137 (17) Assume liability for lost or stolen money from
138 any video lottery terminal; and

139 (18) Submit an audited financial statement, which has
140 been approved by the commission, to the commission
141 when applying for a license or permit and annually
142 thereafter prior to the time a license or permit may be
143 renewed.

**§29-22A-12. Number and location of video lottery terminals;
security.**

1 (a) A racetrack which has been licensed to conduct
2 video lottery games has the right to install and operate up
3 to four hundred video lottery terminals at a licensed
4 racetrack. A licensed racetrack may apply to the
5 commission for authorization to install and operate more
6 than four hundred video lottery terminals. If the
7 commission determines that the installation of additional
8 machines is in the best interest of the licensed racetrack,
9 the lottery commission and the citizens of this state, the
10 commission may grant permission to install and operate
11 additional machines.

12 (b) All video lottery terminals in licensed racetracks
13 shall be physically located as follows:

14 (1) The video lottery location shall be continuously
15 monitored through the use of a closed circuit television
16 system capable of recording activity for a continuous
17 twenty-four hour period. All video tapes shall be retained
18 for a period of at least thirty days;

19 (2) Access to video lottery terminal locations shall be
20 restricted to persons legally entitled by age to play video
21 lottery games;

22 (3) The licensed racetrack shall submit for
23 commission approval a floor plan of the area or areas
24 where video lottery terminals are to be operated showing
25 terminal locations and security camera mount locations;

26 (4) No video lottery terminal may be relocated without
27 prior approval from the commission; and

28 (5) Operational video lottery terminals may only be
29 located in the building or structure in which the
30 grandstand area of the racetrack is located and in the area
31 of the building or structure where pari-mutuel wagering is
32 permitted under the provisions of article twenty-three,
33 chapter nineteen of this code: *Provided*, That if the
34 commission, before the first day of November, one
35 thousand nine hundred ninety-three, has authorized any
36 racetrack to operate video lottery terminals and offer
37 video lottery games in a location which would not
38 conform to the requirements of this subdivision, the
39 racetrack may continue to use video lottery terminals
40 registered with and approved by the commission at that
41 nonconforming location and to offer the games and any
42 variations or composites of the games as may be approved
43 by the commission: *Provided, however*, That on the
44 effective date of this section, for each two video lottery
45 terminals located in a nonconforming location, the
46 racetrack shall locate and operate one video lottery
47 terminal in the building or structure in which the
48 grandstand area of the racetrack is located and in the area
49 of the building or structure where pari-mutuel wagering is
50 permitted.

51 (c) A licensee shall allow video lottery games to be
52 played only on days when live racing is being conducted
53 at the racetrack and/or on televised racing days: *Provided*,
54 That this restriction shall not apply to any racetrack
55 authorized by the commissioner prior to the first day of
56 November, one thousand nine hundred ninety-three, to
57 operate video lottery terminals and conduct video lottery
58 games.

59 (d) Security personnel shall be present during all
60 hours of operation at each video lottery terminal location.
61 Each license holder shall employ the number of security
62 personnel the commission determines is necessary to
63 provide for safe and approved operation of the video
64 lottery facilities and the safety and well-being of the
65 players.

CHAPTER 247

(Com. Sub. for H. B. 2569—By Delegates Collins, Proudfoot,
Staton and Kuhn)

[Passed March 13, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, eleven and sixteen, article twelve, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to real estate brokers and salespersons; excluding from the definition of "real estate broker" noncommissioned clerical employees of real estate brokers who perform certain administrative functions; setting forth grounds for refusing, suspending or revoking licenses, including the payment of a commission or other consideration to another broker or salesperson in certain instances; and setting forth criminal penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 12. REAL ESTATE COMMISSION, BROKERS AND SALESPERSONS.

§47-12-2. Definitions and exceptions.

§47-12-11. Procedure and grounds for refusal, suspension or revocation of license.

§47-12-16. Penalties for violations.

§47-12-2. Definitions and exceptions.

- 1 (a) The term "real estate broker" within the meaning of
- 2 this article includes all persons, partnerships, associations
- 3 and corporations, foreign and domestic, who for a fee,
- 4 commission or other valuable consideration or who with
- 5 the intention or expectation of receiving or collecting the
- 6 same, lists, sells, purchases, exchanges, rents, manages,
- 7 leases or auctions any real estate or the improvements
- 8 thereon, including options, or who negotiates or attempts

9 to negotiate any such activity; or who advertises or holds
10 himself, herself, itself or themselves out as engaged in such
11 activities; or who directs or assists in the procuring of a
12 purchaser or prospect calculated or intended to result in a
13 real estate transaction. The term "real estate broker" shall
14 also include any person, partnership, association or
15 corporation employed by or on behalf of the owner or
16 owners of lots, or other parcels of real estate, at a stated
17 salary or upon a fee, commission or otherwise to sell the
18 real estate, or any parts thereof, in lots or other parcels,
19 and who shall sell, manage, exchange, lease, offer, attempt
20 or agree to negotiate the sale, exchange or lease of any lot
21 or parcel of real estate.

22 (b) The term "real estate" as used in this article
23 includes leaseholds as well as any and every interest or
24 estate in land, whether corporeal or incorporeal, freehold
25 or nonfreehold, and whether the property is situated in this
26 state or elsewhere.

27 (c) The term "associate broker" means any person who
28 for compensation or other valuable consideration is
29 employed by a broker to perform all the functions
30 authorized by a broker's license only for and on behalf of
31 the employing broker including, but not limited to,
32 authority to supervise other salespersons employed by a
33 broker and manage an office on behalf of a broker.

34 (d) The term "real estate salesperson" means and
35 includes any person employed or engaged by or on
36 behalf of a licensed real estate broker to do or deal in any
37 activity as included in this section, for compensation or
38 otherwise.

39 (e) One act in consideration of or with the expectation
40 or intention of or upon the promise of receiving
41 compensation by fee, commission or otherwise, in the
42 performance of any act or activity contained in this
43 section, constitutes such persons, partnerships, association
44 or corporation, a real estate broker and make him or her,
45 them or it subject to the provisions and requirements of
46 this article.

47 (f) The term "real estate broker" or "real estate
48 salesperson" does not include any person, partnership,

49 association or corporation who, as a bona fide owner or
50 lessor, performs any aforesaid act:

51 (1) With reference to property owned or leased by him
52 or her to the regular employees thereof, where such acts
53 are performed in the regular course of or as an incident to
54 the management of, the property and the investment
55 therein;

56 (2) Nor shall this article be construed to include
57 attorneys-at-law, except that attorneys-at-law shall be
58 required to submit to the written examination required
59 under section seven of this article in order to qualify for a
60 broker's license: *Provided*, That an attorney-at-law who is
61 licensed as a real estate broker prior to the effective date
62 of this section is exempt from the written examination
63 required under section seven of this article;

64 (3) Nor any person holding in good faith a duly
65 executed power of attorney from the owner authorizing
66 the final consummation and execution for the sale,
67 purchase, lease or exchange of real estate;

68 (4) Nor to the acts of any person while acting as a
69 receiver, trustee, administrator, executor, guardian or
70 under the order of any court or while acting under
71 authority of a deed of trust or will;

72 (5) Nor shall this article apply to public officers while
73 performing their duties as such;

74 (6) Nor shall this article apply to the acquisition or
75 disposition of coal, oil or gas leasehold or coal, oil or gas
76 interests;

77 (7) Nor to persons properly licensed pursuant to the
78 provisions of article two-c, chapter nineteen of this code
79 when conducting an auction, any portion of which
80 contains any leasehold or estate in land, when the person is
81 retained to conduct an auction by a receiver or trustee in
82 bankruptcy, a fiduciary acting under the authority of a
83 deed of trust or will, or a fiduciary of a decedent's estate;

84 (8) Nor does this article apply to any person
85 employed by a real estate broker in a noncommissioned
86 clerical capacity who may in the course of employment be
87 required to:

88 (A) Disseminate brokerage preprinted and
89 predetermined real estate sales and rental information;

90 (B) Accept and process rental reservations or bookings
91 for a period not to exceed thirty consecutive days in a
92 manner and procedure predetermined by the broker;

93 (C) Collect predetermined rental fees for the rentals
94 which are to be promptly tendered to the broker; or

95 (D) Any combination thereof.

§47-12-11. Procedure and grounds for refusal, suspension or revocation of license.

1 (a) The commission may upon its own motion and
2 shall, upon the verified complaint in writing of any person
3 setting forth a cause of action under this section, ascertain
4 the facts and if warranted hold a hearing for the
5 suspension or revocation of a license. The commission
6 shall have full power to refuse a license for reasonable
7 cause or to revoke or suspend a license if the licensee:

8 (1) Obtains, renews or attempts to obtain or renew a
9 license through the submission of any application or other
10 writing that contains false or fraudulent information;

11 (2) Makes any substantial misrepresentation;

12 (3) Makes any false promises or representations of
13 character likely to influence, persuade or induce a person
14 involved in a real estate transaction;

15 (4) Pursues a continued or flagrant course of
16 misrepresentation or makes false promises or
17 representations through agents or salespersons or any
18 medium of advertising or otherwise;

19 (5) Uses misleading or false advertising or uses any
20 trade name or insignia of membership in any real estate
21 organization, in which the licensee is not a member;

22 (6) Acts for more than one party in a transaction
23 without the knowledge of all parties for whom he or she
24 acts;

25 (7) Fails, within a reasonable time, to account for or to
26 remit any moneys coming into his or her possession

27 belonging to others, or commingles moneys belonging to
28 others with his or her own funds;

29 (8) Displays a "for sale" or "for rent" sign on any
30 property without an agency therefor or without the
31 owner's consent;

32 (9) Fails to disclose in writing to all parties to a real
33 estate transaction, on the form promulgated by the
34 commission, whether the licensee is representing the seller,
35 the buyer or both;

36 (10) Fails to voluntarily furnish copies of a notice of
37 agency disclosure, and all listing agreements, sales
38 contracts, and lease agreements to all parties executing the
39 same;

40 (11) Pays or receives any rebate, profit, compensation
41 or commission as a result of a real estate transaction from
42 any person other than his or her principal;

43 (12) Induces any party to a contract, sale or lease to
44 enter into another contract, in lieu thereof, for the personal
45 gain of the licensee;

46 (13) Accepts a commission or other valuable
47 consideration as a real estate salesperson for the
48 performance of any of the acts specified in this article,
49 from any person, other than his or her employer, who
50 must be a licensed real estate broker;

51 (14) Pays a commission or other valuable
52 consideration to any person for acts or services performed
53 either in violation of this article or the real estate licensure
54 laws of any other state;

55 (15) Pays a commission or other valuable
56 consideration to another real estate broker or salesperson,
57 knowing that the other real estate broker or salesperson
58 will pay a portion or all of that which is received in a
59 manner that would constitute a violation of this article if it
60 were paid directly by a licensee of this state;

61 (16) Engages in the unlawful or unauthorized practice
62 of law as defined by the supreme court of appeals of West
63 Virginia;

64 (17) Procures an attorney for any customer or solicits
65 legal business for any attorney at law;

66 (18) Engages in any act or conduct which constitutes
67 or demonstrates bad faith, incompetency or
68 untrustworthiness, or dishonest, fraudulent or improper
69 dealing;

70 (19) Has been convicted in a court of competent
71 jurisdiction in this or in any other state of forgery,
72 embezzlement, obtaining money under false pretense,
73 extortion, conspiracy to defraud or of any other like
74 offense; or

75 (20) Has been convicted in a court of competent
76 jurisdiction in this or any other state of a felony.

77 (b) As used in this section:

78 (1) The words "convicted in a court of competent
79 jurisdiction" mean a plea of guilty or nolo contendere
80 entered by a person or a verdict of guilt returned against a
81 person at the conclusion of a trial;

82 (2) A certified copy of a conviction order entered in
83 such court is sufficient evidence to demonstrate a person
84 has been convicted in a court of competent jurisdiction.

§47-12-16. Penalties for violations.

1 Any person violating a provision of this article is
2 guilty of a misdemeanor and, upon conviction of a first
3 violation thereof, if an individual, shall be fined not less
4 than one thousand dollars nor more than two thousand
5 dollars, or confined in the county or regional jail not more
6 than ninety days, or both fined and confined; and if a
7 corporation, shall be fined not less than two thousand
8 dollars nor more than five thousand dollars. Upon
9 conviction of a second or subsequent violation, any person
10 so convicted, if an individual, shall be fined not less than
11 two thousand dollars nor more than five thousand dollars,
12 or confined in the county or regional jail for a term not to
13 exceed one year, or both fined and confined; and if a
14 corporation, shall be fined not less than five thousand
15 dollars nor more than ten thousand dollars. Any officer
16 or agent of a corporation, or any member or agent of a
17 partnership or association, shall be subject to the penalties
18 herein prescribed for individuals.

CHAPTER 248

(Com. Sub. for H. B. 4030—By Delegates Trump, L. White, Faircloth, Rowe,
Staton and Johnson)

[Passed February 11, 1998; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article two, chapter fifty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to limitation of actions and suits enforcing liens reserved by any conveyance of real estate or created by any trust deed or mortgage on real estate; permitting extensions of certain liens by the lienholder; providing that obligations payable on demand express no maturity date; and addressing the retroactive and prospective application of changes made.

Be it enacted by the Legislature of West Virginia:

That section five, 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.

§55-2-5. Enforcement of liens reserved by conveyance or created by deed of trust or mortgage on real estate.

1 (a) Any lien reserved by any conveyance of real estate
2 or created by any deed of trust or mortgage on real estate
3 expires after the following periods of time, unless suit to
4 enforce the lien is instituted prior to expiration of the time
5 period or unless the lien is extended as specified in
6 subsection (b) or (c) of this section:

7 (1) If the final maturity date of the obligation is
8 ascertainable from the lien instrument, the lien expires five
9 years after that date.

10 (2) If the final maturity date of the obligation is not
11 ascertainable from the lien instrument, the lien expires
12 thirty-five years after the date of the lien instrument.
13 However, if the lienholder rerecords the lien instrument
14 prior to thirty-five years from the date of the lien

15 instrument and includes a copy of the obligation secured
16 by the lien so that the final maturity is ascertainable, the
17 lien expires five years after the date of maturity.

18 (b) If an affidavit or extension notice executed by the
19 secured party or beneficiary of the lien instrument or an
20 amendment to the lien instrument executed by the grantor
21 or mortgagor and the secured party or beneficiary is
22 recorded prior to expiration of the original period of
23 limitation, as specified in subsection (a) of this section, the
24 period of limitation is extended as follows:

25 (1) If the final maturity date of the obligation, as
26 extended, secured by the lien instrument is ascertainable
27 from the affidavit, extension notice or amendment, the lien
28 expires five years after the date of final maturity of the
29 obligation, as extended.

30 (2) If the final maturity date of the obligation, as
31 extended, secured by the lien instrument is not
32 ascertainable from the affidavit, extension notice or
33 amendment, the lien expires thirty-five years after the date
34 of the lien instrument. However, if the lienholder
35 rerecords the lien instrument prior to thirty-five years
36 from the date of the lien instrument and includes a copy
37 of the obligation secured by the lien so that the final
38 maturity is ascertainable, the lien expires five years after
39 the date of maturity.

40 (c) Any affidavit, extension notice or amendment filed
41 pursuant to subsection (b) of this section after the effective
42 date of this section, shall include, but is not limited to, the
43 following:

44 (1) The unpaid balance of the debt and interest
45 secured by the lien instrument;

46 (2) The final maturity date of the obligation as
47 extended; and

48 (3) The book and page of recordation of the original
49 lien instrument.

50 The clerk of the county commission shall record and
51 index any affidavit, extension notice or amendment in the
52 same manner as the original lien instrument and shall note
53 that filing on the margin of the page where the original
54 lien instrument is recorded.

55 (d) If the lien instrument shows that it secures an
56 obligation payable in installments and the maturity date of
57 the final installment of the obligation is ascertainable from
58 the lien instrument, the time runs from the maturity date
59 of the final installment.

60 (e) For purposes of this section only, a lien instrument
61 securing an obligation which is payable on demand
62 expresses no maturity date.

63 (f) Nothing in this section extinguishes any lien which
64 was reserved or created and in effect prior to the first day
65 of July, one thousand nine hundred ninety-eight. With
66 respect to any lien reserved or created and in effect prior
67 to the first day of July, one thousand nine hundred ninety-
68 eight, the lien is valid for twenty years after its stated
69 maturity, or if no maturity date is stated in the lien
70 instrument, for thirty-five years after the date of the lien
71 instrument.

72 (g) The periods of limitation created by this section
73 may be extended only as provided in this section and may
74 not be extended by any other method or by operation of
75 law.

CHAPTER 249

(Com. Sub. for H. B. 4068—By Mr. Speaker, Mr. Kiss, and Delegate Ashley)

[By Request of the Executive]

[Passed March 13, 1998; 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-k, relating to creating the West Virginia traumatic brain and spinal cord injury rehabilitation fund; defining terms; creating traumatic brain and spinal cord injury rehabilitation fund board; designating certain public officials and authorizing governor to appoint certain citizens to serve on

the board; establishing terms of office, attendance requirements and officers of the board; authorizing board to promulgate legislative rules; providing for the reimbursement of expenses of board members; creating a special revenue account; providing for the administration of such fund; setting forth criteria for the use of such fund; defining duties of the board; and establishing certain restrictions on the use of such fund.

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-k, to read as follows:

ARTICLE 10K. WEST VIRGINIA TRAUMATIC BRAIN AND SPINAL CORD INJURY REHABILITATION FUND ACT.

- §18-10K-1. Terms defined.
- §18-10K-2. Board created, membership, terms, officers and staff.
- §18-10K-3. Promulgation of legislative rules.
- §18-10K-4. Expenses of board.
- §18-10K-5. Fund created; administration of fund; administrative fees; fund use.
- §18-10K-6. Criteria and priorities for use of fund.

§18-10K-1. Terms defined.

1 As used in this article, the term:

2 (1) "Board" means the West Virginia traumatic brain
3 and spinal cord injury rehabilitation fund board.

4 (2) "Fund" means the West Virginia traumatic brain
5 and spinal cord injury rehabilitation fund.

6 (3) "Traumatic brain injury" means an acquired injury
7 to the brain, including brain injuries caused by anoxia due
8 to near drowning. "Traumatic brain injury" does not
9 include brain dysfunction caused by congenital or
10 degenerative disorders, nor birth trauma.

11 (4) "Spinal cord injury" means a traumatic injury to
12 the spinal cord that results in a permanent loss of sensation
13 and voluntary movement below the level of the lesion.

§18-10K-2. Board created, membership, terms, officers and staff.

1 (a) There is established the West Virginia traumatic
2 brain and spinal cord injury rehabilitation fund board.

3 (b) The board shall consist of twenty-three members.
4 The members shall include:

5 (1) The secretary of the department of education and
6 the arts, *ex officio*, or his or her designee;

7 (2) The secretary of health and human resources, *ex*
8 *officio*, or his or her designee;

9 (3) The state superintendent of schools, *ex officio*, or
10 his or her designee;

11 (4) The secretary of the department of military affairs
12 and public safety, *ex officio*, or his or her designee;

13 (5) The director of the bureau of behavioral health
14 within the department of health and human resources, *ex*
15 *officio*, or his or her designee;

16 (6) The director of the division of rehabilitation
17 services, *ex officio*, or his or her designee;

18 (7) The director of the bureau of medical services, *ex*
19 *officio*, or his or her designee;

20 (8) The director of the office of emergency services,
21 *ex officio*, or his or her designee;

22 (9) The commissioner of the bureau of employment
23 programs, *ex officio*, or his or her designee;

24 (10) Seven members appointed by the governor to
25 represent public and private health organizations or other
26 disability coalitions or advisory groups; and

27 (11) Seven members appointed by the governor who
28 are either survivors of traumatic brain or spinal cord

29 injury or family members of persons with traumatic brain
30 or spinal cord injury.

31 (c) The citizen members shall be appointed by the
32 governor for terms of three years, except that of the
33 members first appointed, two of the representatives of
34 public and nonprofit private health organizations,
35 disability coalitions or advisory groups and two of the
36 representatives of survivors or family members of persons
37 with traumatic brain or spinal cord injuries shall serve for
38 terms of one year, two of the representatives of each of
39 those respective groups shall serve for terms of two years,
40 and the remaining three representatives of each of those
41 respective groups shall serve for terms of three years. All
42 subsequent appointments shall be for three years.
43 Members shall serve until the expiration of the term for
44 which they have been appointed or until their successors
45 have been appointed and qualified. In the event of a
46 vacancy the governor shall appoint a qualified person to
47 serve for the unexpired term. No member may serve
48 more than two consecutive three-year terms. State officers
49 or employees may be appointed to the board unless
50 otherwise prohibited by law.

51 (d) In the event a board member fails to attend more
52 than twenty-five percent of the scheduled meetings in a
53 twelve-month period, the board may, after written
54 notification to that member and the secretary of education
55 and the arts, request in writing that the governor remove
56 the member and appoint a new member to serve his or her
57 unexpired term.

58 (e) The board shall elect from its membership a
59 chairperson, treasurer and secretary as well as any other
60 officer as appropriate. The term of the chairperson is for
61 two years in duration and he or she cannot serve more
62 than two consecutive terms.

§18-10K-3. Promulgation of legislative rules.

1 The board may propose legislative rules for
2 promulgation, in accordance with the provisions of article
3 three, chapter twenty-nine-a of this code, necessary for the

4 transaction of its business or to carry out the purposes of
5 this article.

§18-10K-4. Expenses of board.

1 Members of the board shall receive reimbursement for
2 reasonable and necessary expenses actually incurred in the
3 performance of their duties as members of the board in
4 accordance with state travel regulations. Members with
5 disabilities may receive additional reimbursement for costs
6 associated with personal assistance, interpreters and
7 disability-related accommodations when those costs are
8 incurred in the course of conducting the business of the
9 board. All reimbursement authorized in this section shall
10 be paid from moneys in the fund.

§18-10K-5. Fund created; administration of fund; administrative fees; fund use.

1 (a) There is created in the state treasury a special
2 revenue account to be known as the "West Virginia
3 traumatic brain and spinal cord injury rehabilitation
4 fund" which is under the jurisdiction of the division of
5 rehabilitation services. The West Virginia traumatic brain
6 and spinal cord injury rehabilitation fund is subject to the
7 annual appropriation of funds by the Legislature. The
8 West Virginia traumatic brain and spinal cord injury
9 rehabilitation fund may receive any gifts, grants,
10 contributions or other money from any source which is
11 specifically designated for deposit in the fund.

12 (b) All moneys collected, received and deposited into
13 the state treasury and credited to the West Virginia
14 traumatic brain and spinal cord injury rehabilitation fund
15 shall be expended by the board exclusively in accordance
16 with the uses and criteria set forth in this article.
17 Expenditures from this fund for any other purposes are
18 void.

19 (c) The fund shall be administered by the division of
20 rehabilitation services under the department of education
21 and the arts. The division of rehabilitation services may
22 retain an amount not to exceed ten percent per annum of

23 the balance of the fund to cover any costs of
24 administration of the fund.

25 (d) Nothing in this article may be construed to
26 mandate funding for the West Virginia traumatic brain
27 and spinal cord injury rehabilitation fund or to require
28 any appropriation by the Legislature.

29 (e) Moneys in the fund shall be used to pay for
30 services that will increase opportunities for and enhance
31 the achievement of functional independence, and a return
32 to a productive lifestyle for individuals who have suffered
33 a traumatic brain injury or a spinal cord injury.

34 (f) Services that are eligible for payment by the fund
35 shall include, but not be limited to:

36 (1) Case management;

37 (2) Rehabilitative therapies and services;

38 (3) Attendant care;

39 (4) Home accessibility modifications;

40 (5) Equipment necessary for activities; and

41 (6) Family support services.

42 (g) Funds shall be expended according to the
43 priorities and criteria for disbursement established by the
44 board under section six of this article.

§18-10K-6. Criteria and priorities for use of fund.

1 (a) The board shall establish priorities and criteria for
2 the disbursement of moneys in the fund. When the board
3 determines that additional services should be eligible for
4 payments from the fund, the chairman shall provide
5 written notice to the division of rehabilitation services in
6 the department of education and the arts directing that
7 those services be eligible for payment by the fund.

8 (b) The board shall investigate the needs of citizens
9 with traumatic brain injuries and spinal cord injuries,
10 identify the gaps in services to these citizens, and issue an
11 annual report to the Legislature each year with
12 recommendations for meeting the identified needs,
13 improving coordination of services and summarizing its
14 actions during the preceding year.

15 (c) Moneys expended for services described under
16 section five of this article shall be as a payer of last resort
17 and only for citizens of this state. An individual shall use
18 comparable benefits and services that are available prior to
19 the expenditure of moneys available to that individual
20 through the fund.

CHAPTER 250

(H. B. 4003—By Mr. Speaker, Mr. Kiss, and Delegate Ashley)

[By Request of the Executive]

[Passed March 14, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article two-c, relating to establishing an orphan road and bridge acquisition and maintenance program in all counties; authorizing the use of able-bodied and willing welfare recipients and citizens' conservation corps workers to perform labor on repair and maintenance; requiring the department of health and human resources to furnish the division of highways lists of names of available welfare recipients; establishing criteria for including a road or bridge in the program; upgrading of certain roads and bridges; providing for the division of highways commissioner and personnel to identify and maintain orphan roads and bridges; and providing for termination of the program.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2C. ORPHAN ROAD AND BRIDGE ACQUISITION PROGRAM.

- §17-2C-1. Establishment of an orphan road and bridge acquisition and maintenance program in all counties; criteria for designation as an orphan road or bridge.
- §17-2C-2. Development of program; acquisition of rights-of-way.
- §17-2C-3. Duties of commissioner with respect to orphan roads and bridges; criteria for inclusion.
- §17-2C-4. Workforce of welfare recipients and citizens' conservation corps participants; division of highways required to furnish maintenance materials.
- §17-2C-5. Upgrading of roads and bridges in maintenance system.
- §17-2C-6. Termination of orphan roads and bridges program; report to the Legislature.

§17-2C-1. Establishment of an orphan road and bridge acquisition and maintenance program in all counties; criteria for designation as an orphan road or bridge.

1 Authority is hereby granted to the West Virginia
2 division of highways to establish a program to acquire and
3 maintain roads and bridges which meet the following three
4 criteria: (1) Are in existence as of the first day of January,
5 one thousand nine hundred ninety-eight; (2) are roads or
6 bridges which the public has a right to use; and (3) are
7 roads or bridges not maintained by any governmental
8 agency. These roads and bridges are herein designated as
9 orphan roads and bridges.

10 The Legislature hereby finds and declares it to be
11 important for the economic and social development of the
12 state that a program for the identification, acquisition and
13 maintenance of orphan roads and bridges be undertaken
14 by the state. In particular, the Legislature finds and
15 declares that basic maintenance should be performed on
16 orphan roads and bridges to promote the well-being of the
17 public.

§17-2C-2. Development of program; acquisition of rights-of-way.

1 The West Virginia division of highways shall develop
2 an orphan roads and bridges identification, acquisition
3 and maintenance program which shall include all counties.
4 At the discretion of the commissioner of the division of

5 highways, existing and temporary employees of the
6 division shall be assigned to locate and designate each
7 orphan road and bridge in each county. These
8 employees shall give to the commissioner of highways, in
9 a form proscribed by him or her, a detailed report on
10 acquisition, status of rights-of-way, and needed
11 maintenance for orphan roads and bridges in each county
12 or highway district. Specific contents of each report shall
13 be designated by the commissioner.

14 In order for a road or bridge to qualify for inclusion
15 into the state system, all necessary rights-of-way shall be
16 either dedicated or donated to the division of highways.

17 In the event that all property owners do not agree to
18 dedicate or donate the necessary rights-of-way, then any
19 individual, group, business or governmental entity can
20 donate to the state road fund a sum sufficient to cover the
21 expense of acquiring the right-of-way that has not been
22 dedicated or donated. The commissioner may also use any
23 moneys donated to the state road fund specifically for the
24 purposes of acquiring a right-of-way which has not been
25 dedicated or donated.

§17-2C-3. Duties of commissioner with respect to orphan roads and bridges; criteria for inclusion.

1 After reviewing the reports made to section two of this
2 article, the commissioner will determine whether a specific
3 road or bridge should be added to the state maintenance
4 system. The commissioner shall consider the following
5 criteria in reaching his or her determination: (1) The
6 availability of resources for maintaining the road or
7 bridge; (2) the number of persons served by the road or
8 bridge; (3) the current and anticipated use of the road or
9 bridge; (4) the condition of the road or bridge; (5) the
10 availability and suitability of alternate routes; (6) the
11 suitability for maintenance equipment to access and
12 maintain the road or bridge; (7) the existing design and
13 layout of the road or bridge; and (8) the number of roads
14 and bridges accepted into the maintenance system.

§17-2C-4. Workforce of welfare recipients and citizens' conservation corps participants; division of

highways required to furnish maintenance materials.

1 The West Virginia department of health and human
2 resources shall make available to the division of
3 highways a list of able-bodied welfare recipients who have
4 given permission for their names to be listed as recipients
5 available for work with the division of highways, and who
6 are available and able to work a minimum of twenty hours
7 a week at a manual labor job maintaining orphan roads
8 and bridges under the supervision of the district or county
9 highway offices. The commissioner of the division of
10 highways may, by contract, employ persons participating
11 in the citizens' conservation corps to maintain orphan
12 roads and bridges. The employment of welfare recipients
13 or workers provided through the citizens' conservation
14 corps to maintain orphan roads and bridges may not be
15 used to displace any division of highways employee in the
16 classified civil service, or to reduce classified civil service
17 positions within the division.

18 The division of highways is required to furnish trucks
19 or other proper motor vehicles and gravel or other
20 required materials to be used by the workforce created by
21 this section in the maintenance of the orphan roads and
22 bridges in each district and county.

§17-2C-5. Upgrading of roads and bridges in maintenance system.

1 Roads and bridges accepted into the maintenance
2 system under the provisions of this article are admitted
3 only for the purposes of maintenance. No upgrading of
4 said roads and bridges is to be undertaken unless
5 otherwise determined by the commissioner of highways.

§17-2C-6. Termination of orphan roads and bridges program; report to the Legislature.

1 The orphan roads and bridges acquisition and
2 maintenance program established pursuant to this article
3 will terminate on the thirty-first day of December, two
4 thousand one.

5 On or before the thirtieth day of January, one
6 thousand nine hundred ninety-nine, and annually
7 thereafter, the commissioner of the division of highways
8 shall submit a report to the Legislature which recounts the
9 activities of the program and the roads and bridges which
10 have been accepted into the state maintenance system.
11 The report shall include a breakdown by county of those
12 roads and bridges being maintained, the estimated costs
13 associated with maintenance and any other information
14 the commissioner deems necessary. Before the thirtieth
15 day of January, two thousand two, the commissioner shall
16 also submit proposed legislation formulating a policy for
17 the designation and acceptance into the state system of
18 orphan roads and bridges in the future.

CHAPTER 251

(H. B. 4688—By Delegates Kuhn, Claypole, Stalnaker, Thompson,
Capito, Everson and H. White)

[Passed March 14, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article two, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section three; and to amend and reenact section ten, article eight, chapter five-a of said code, all relating to the retention and destruction of the records of the secretary of state and to the authorization of digital imaging as a means of creating a preservation duplicate of a state record.

Be it enacted by the Legislature of West Virginia:

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

Chapter

5. General Powers and Authority of the Governor, Secretary of State and Attorney General; Board of Public Works; Miscellaneous Agencies, Commissions, Offices, Programs, Etc.

5A. Department of Administration.

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

ARTICLE 2. SECRETARY OF STATE.

**§5-2-3. Retention and preservation of records of the secretary
of state; destruction of records.**

1 (a) The secretary of state shall provide for the storage
2 and retention of those essential records, as defined in
3 section four, article eight, chapter five-a of this code, filed
4 in the office of the secretary of state for the period
5 specified by law or legislative rule. The secretary of state
6 shall propose rules for legislative approval in accordance
7 with the provisions of article three, chapter twenty-nine-a
8 of this code identifying the essential records and
9 providing for the minimum retention period.

10 (b) Where a preservation duplicate, as defined in
11 section three, article eight, chapter five-a of this code, is
12 made of a record filed with the secretary of state by
13 photography, microphotography, digital imaging or other
14 electronic means which accurately reproduces and
15 preserves the record on microfilm, microfiche, optical
16 disks or other unalterable electronic storage medium
17 which complies with national standards or nationally
18 accepted practice for permanent archival storage, the
19 secretary of state may provide for the destruction of the
20 original paper copy when the following conditions are
21 met:

22 (1) The preservation duplicate has been created,
23 reviewed for quality, indexed in a reasonable manner as
24 provided by the secretary of state and determined to be
25 accessible by means of the index;

26 (2) An additional archive copy of the preservation
27 duplicate has been created and stored in a fireproof,
28 secure storage location; and

29 (3) The original paper copy has been preserved for at
30 least three months following the creation of the
31 preservation duplicate.

32 (c) The original copies of the papers of the governor,
33 including executive orders, proclamations, appointments,
34 pardons and other documents signed by the governor,

35 shall be retained permanently, regardless of whether a
36 preservation duplicate has been created.

37 (d) The secretary of state shall have authority to
38 determine the retention period for nonessential records.

39 (e) The secretary of state may, upon mutual agreement
40 with the director of the division of archives and history,
41 transfer to the division of archives and history those
42 records of the secretary of state as may be identified as
43 having primarily historic value in order to make those
44 records more available for purposes of research.

45 (f) Following the expiration of the required retention
46 period, the destruction of confidential original records
47 shall be conducted in a manner designed to protect the
48 secrecy of those records.

49 (g) Nothing in this section shall be deemed to require
50 the secretary of state to destroy original records
51 immediately upon the expiration of the retention period.

CHAPTER 5A. DEPARTMENT OF ADMINISTRATION.

ARTICLE 8. PUBLIC RECORDS MANAGEMENT AND PRESER- VATION ACT.

§5A-8-10. Essential state records — Preservation duplicates.

1 (a) The administrator may make or cause to be made
2 preservation duplicates or may designate as preservation
3 duplicates existing copies of essential state records. A
4 preservation duplicate shall be durable, accurate, complete
5 and clear, and a preservation duplicate made by means of
6 photography, microphotography, photocopying, film,
7 microfilm or digital image stored on unalterable media
8 shall be made in conformity with the standards prescribed
9 therefor by the administrator.

10 (b) A preservation duplicate made by a photographic,
11 photostatic, microfilm, microcard, miniature photographic,
12 digital image or other process which accurately
13 reproduces or forms a durable and unalterable medium
14 for so reproducing the original, shall have the same force
15 and effect for all purposes as the original record whether
16 the original record is in existence or not. A transcript,
17 exemplification or certified copy of such preservation
18 duplicate shall be deemed for all purposes to be a
19 transcript, exemplification or certified copy of the original
20 record.

CHAPTER 252

(S. B. 601—By Senators Wooton, Ball, Bowman, Dittmar, Hunter,
Kessler, Oliverio, Ross, Schoonover, Snyder,
White, Deem and Kimble)

[Passed March 13, 1998; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section five-a, article eleven, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating generally to the collection and disbursement of recycling and solid waste assessment fees; establishing recycling assessment fee; providing for collection of the fee, providing recordkeeping; providing for recycling fee in rate approved by the public service commission for regulated motor carriers; defining terms; providing for exemptions; establishing procedures and administration of the funds; providing for criminal penalties; providing for the dedication of the proceeds; and establishing eligibility requirements for receipt of grants.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 11. WEST VIRGINIA RECYCLING PROGRAM.

***§20-11-5a. Recycling assessment fee; regulated motor carriers; dedication of proceeds; criminal penalties.**

1 (a) *Imposition.* — Effective the first day of January,
2 one thousand nine hundred ninety-two, a recycling
3 assessment fee is hereby levied and imposed upon the
4 disposal of solid waste at all solid waste disposal facilities
5 in this state, to be collected at the rate of two dollars per
6 ton or part thereof of solid waste. The fee imposed by this
7 section is in addition to all other fees levied by law.

8 (b) *Collection, return, payment and records.* — The
9 person disposing of solid waste at the solid waste disposal
10 facility shall pay the fee imposed by this section, whether

***Clerk's Note:** This section was also amended by SB 602 (Chapter 253), which passed subsequent to this act.

11 or not such person owns the solid waste, and the fee shall
12 be collected by the operator of the solid waste facility who
13 shall remit it to the tax commissioner.

14 (1) The fee imposed by this section accrues at the time
15 the solid waste is delivered to the solid waste disposal
16 facility.

17 (2) The operator shall remit the fee imposed by this
18 section to the tax commissioner on or before the fifteenth
19 day of the month next succeeding the month in which the
20 fee accrued. Upon remittance of the fee, the operator
21 shall be required to file returns on forms and in the
22 manner as prescribed by the tax commissioner.

23 (3) The operator shall account to the state for all fees
24 collected under this section and shall hold them in trust
25 for the state until they are remitted to the tax
26 commissioner.

27 (4) If any operator fails to collect the fee imposed by
28 this section, he or she is personally liable for such amount
29 as he or she failed to collect, plus applicable additions to
30 tax, penalties and interest imposed by article ten, chapter
31 eleven of this code.

32 (5) Whenever any operator fails to collect, truthfully
33 account for, remit the fee or file returns with the fee as
34 required in this section, the tax commissioner may serve
35 written notice requiring such operator to collect the fees
36 which become collectible after service of such notice, to
37 deposit such fees in a bank approved by the tax
38 commissioner, in a separate account, in trust for and
39 payable to the tax commissioner, and to keep the amount
40 of such fees in such account until remitted to the tax
41 commissioner. Such notice remains in effect until a notice
42 of cancellation is served on the operator or owner by the
43 tax commissioner.

44 (6) Whenever the owner of a solid waste disposal
45 facility leases the solid waste facility to an operator, the
46 operator is primarily liable for collection and remittance
47 of the fee imposed by this section and the owner is
48 secondarily liable for remittance of the fee imposed by
49 this section. However, if the operator fails, in whole or in
50 part, to discharge his or her obligations under this section,
51 the owner and the operator of the solid waste facility are
52 jointly and severally responsible and liable for compliance
53 with the provisions of this section.

54 (7) If the operator or owner responsible for collecting
55 the fee imposed by this section is an association or
56 corporation, the officers thereof are liable, jointly and
57 severally, for any default on the part of the association or
58 corporation, and payment of the fee and any additions to
59 tax, penalties and interest imposed by article ten, chapter
60 eleven of this code may be enforced against them and
61 against the association or corporation which they
62 represent.

63 (8) Each person disposing of solid waste at a solid
64 waste disposal facility and each person required to collect
65 the fee imposed by this section shall keep complete and
66 accurate records in such form as the tax commissioner
67 may require in accordance with the rules of the tax
68 commissioner.

69 (c) *Regulated motor carriers.* — The fee imposed by
70 this section is a necessary and reasonable cost for motor
71 carriers of solid waste subject to the jurisdiction of the
72 public service commission under chapter twenty-four-a of
73 this code. Notwithstanding any provision of law to the
74 contrary, upon the filing of a petition by an affected
75 motor carrier, the public service commission shall, within
76 fourteen days, reflect the cost of said fee in said motor
77 carrier's rates for solid waste removal service. In
78 calculating the amount of said fee to said motor carrier,
79 the commission shall use the national average of pounds
80 of waste generated per person per day as determined by
81 the United States environmental protection agency.

82 (d) *Definitions.* — For purposes of this section:

83 "Solid waste disposal facility" means any approved
84 solid waste facility or open dump in this state and includes
85 a transfer station when the solid waste collected at the
86 transfer station is not finally disposed of at a solid waste
87 facility within this state that collects the fee imposed by
88 this section.

89 Nothing herein authorizes in any way the creation or
90 operation of or contribution to an open dump.

91 (e) *Exemptions.* — The following transactions are
92 exempt from the fee imposed by this section:

93 (1) Disposal of solid waste at a solid waste facility by
94 the person who owns, operates or leases the solid waste
95 disposal facility if it is used exclusively to dispose of waste

96 originally produced by such person in such person's
97 regular business or personal activities or by persons
98 utilizing the facility on a cost-sharing or nonprofit basis;

99 (2) Reuse or recycling of any solid waste; and

100 (3) Disposal of residential solid waste by an individual
101 not in the business of hauling or disposing of solid waste
102 on such days and times as designated by the director of
103 the division of environmental protection by rule as exempt
104 from the fee imposed pursuant to section eleven, article
105 fifteen, chapter twenty-two of this code.

106 (f) *Procedure and administration.* — Notwithstanding
107 section three, article ten, chapter eleven of this code, each
108 and every provision of the "West Virginia Tax Procedure
109 and Administration Act" set forth in article ten, chapter
110 eleven of this code applies to the fee imposed by this
111 section with like effect as if said act were applicable only
112 to the fee imposed by this section and were set forth in
113 extenso herein.

114 (g) *Criminal penalties.* — Notwithstanding section two,
115 article nine, chapter eleven of this code, sections three
116 through seventeen, article nine, chapter eleven of this code
117 apply to the fee imposed by this section with like effect as
118 if said sections were the only fee imposed by this section
119 and were set forth in extenso herein.

120 (h) *Dedication of proceeds.* — The proceeds of the fee
121 collected pursuant to this section shall be deposited by the
122 tax commissioner, at least monthly, in a special revenue
123 account designated as the "Recycling Assistance Fund"
124 which is hereby created. The director of the division of
125 natural resources shall allocate the proceeds of the said
126 fund as follows:

127 (1) Fifty percent of the total proceeds shall be
128 provided in grants to assist municipalities, counties and
129 other interested parties in the planning and
130 implementation of recycling programs, public education
131 programs, and recycling market procurement efforts,
132 established pursuant to this article. The director of the
133 division of natural resources shall promulgate rules, in
134 accordance with chapter twenty-nine-a of this code,
135 containing application procedures, guidelines for
136 eligibility, reporting requirements and other matters
137 deemed appropriate: *Provided*, That persons responsible
138 for collecting, hauling or disposing of solid waste who do

139 not participate in the collection and payment of the solid
140 waste assessment fee imposed by this section in addition to
141 all other fees and taxes levied by law for solid waste
142 generated in this state which is destined for disposal, shall
143 not be eligible to receive grants under the provisions of
144 this article.

145 (2) Twelve and one-half percent of the total proceeds
146 shall be expended for personal services and benefit
147 expenses of full-time salaried conservation officers;

148 (3) Twelve and one-half percent of the total proceeds
149 shall be transferred to the West Virginia development
150 office, to be used in assisting counties and municipalities
151 in the design and construction of wastewater treatment
152 facilities;

153 (4) Twelve and one-half percent of the total proceeds
154 shall be transferred to the solid waste reclamation and
155 environmental response fund, established pursuant to
156 section eleven, article fifteen, chapter twenty-two of this
157 code, to be expended by the division of environmental
158 protection to assist in the funding of the pollution
159 prevention and open dumps program (PPOD) which
160 encourages recycling, reuse, waste reduction and clean-up
161 activities; and

162 (5) Twelve and one-half percent of the total proceeds
163 shall be deposited in the hazardous waste emergency
164 response fund established in article nineteen, chapter
165 twenty-two of this code.

166 (i) *Severability.* — If any provision of this section or
167 the application thereof is for any reason adjudged by any
168 court of competent jurisdiction to be invalid, such
169 judgment does not affect, impair or invalidate the
170 remainder of this section, but is confined in its operation
171 to the provision thereof directly involved in the
172 controversy in which such judgment is rendered, and the
173 applicability of such provision to other persons or
174 circumstances is not affected thereby.

175 (j) *Effective date.* — This section is effective on the
176 first day of January, one thousand nine hundred
177 ninety-two.

CHAPTER 253

(Com. Sub. for S. B. 602—By Senators Wooton, Ball, Dittmar, Kessler,
Oliverio, Schoonover and Snyder)

[Passed March 14, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five-a, article eleven, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section four, article sixteen, chapter twenty-two of said code, all relating generally to the collection and disbursement of recycling and solid waste assessment fees; ineligibility of certain persons to receive assistance from recycling assistance fund; authorizing the use of a portion of recycling assessment fee for certain purposes; reallocating a portion of recycling assessment fee; and authorizing transfer of a portion of solid waste assessment fee deposited into closure cost assistance fund.

Be it enacted by the Legislature of West Virginia:

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

CHAPTER 20. NATURAL RESOURCES.

Chapter

20. Natural Resources

22. Environmental Resources.

ARTICLE 11. WEST VIRGINIA RECYCLING PROGRAM.

***§20-11-5a. Recycling assessment fee; regulated motor carriers; dedication of proceeds; criminal penalties.**

1 (a) *Imposition.* — A recycling assessment fee is
2 hereby levied and imposed upon the disposal of solid
3 waste at all solid waste disposal facilities in this state, to be

***Clerk's Note:** This section was also amended by SB 601 (Chapter 252), which passed prior to this act.

4 collected at the rate of two dollars per ton or part of a ton
5 of solid waste. The fee imposed by this section is in
6 addition to all other fees levied by law.

7 (b) *Collection, return, payment and records.* — The
8 person disposing of solid waste at the solid waste disposal
9 facility shall pay the fee imposed by this section, whether
10 or not that person owns the solid waste, and the fee shall
11 be collected by the operator of the solid waste facility who
12 shall remit it to the tax commissioner:

13 (1) The fee imposed by this section accrues at the time
14 the solid waste is delivered to the solid waste disposal
15 facility;

16 (2) The operator shall remit the fee imposed by this
17 section to the tax commissioner on or before the fifteenth
18 day of the month next succeeding the month in which the
19 fee accrued. Upon remittance of the fee, the operator
20 shall file returns on forms and in the manner as prescribed
21 by the tax commissioner;

22 (3) The operator shall account to the state for all fees
23 collected under this section and shall hold them in trust
24 for the state until they are remitted to the tax
25 commissioner;

26 (4) If any operator fails to collect the fee imposed by
27 this section, he or she is personally liable for the amount
28 that he or she failed to collect, plus applicable additions to
29 tax, penalties and interest imposed by article ten, chapter
30 eleven of this code;

31 (5) Whenever any operator fails to collect, truthfully
32 account for, remit the fee or file returns with the fee as
33 required in this section, the tax commissioner may serve
34 written notice requiring the operator to collect the fees
35 which become collectible after service of the notice, to
36 deposit the fees in a bank approved by the tax
37 commissioner, in a separate account, in trust for and
38 payable to the tax commissioner, and to keep the amount
39 of the fees in the account until remitted to the tax
40 commissioner. The notice remains in effect until a notice

41 of cancellation is served on the operator or owner by the
42 tax commissioner;

43 (6) Whenever the owner of a solid waste disposal
44 facility leases the solid waste facility to an operator, the
45 operator is primarily liable for collection and remittance
46 of the fee imposed by this section and the owner is
47 secondarily liable for remittance of the fee imposed by
48 this section. However, if the operator fails, in whole or in
49 part, to discharge his or her obligations under this section,
50 the owner and the operator of the solid waste facility are
51 jointly and severally responsible and liable for compliance
52 with the provisions of this section;

53 (7) If the operator or owner responsible for collecting
54 the fee imposed by this section is an association or
55 corporation, the officers of the association or corporation
56 are liable, jointly and severally, for any default on the part
57 of the association or corporation, and payment of the fee
58 and any additions to tax, penalties and interest imposed by
59 article ten, chapter eleven of this code may be enforced
60 against them and against the association or corporation
61 which they represent; and

62 (8) Each person disposing of solid waste at a solid
63 waste disposal facility and each person required to collect
64 the fee imposed by this section shall keep complete and
65 accurate records in the form required by the tax
66 commissioner in accordance with the rules of the tax
67 commissioner.

68 (c) *Regulated motor carriers.* — The fee imposed by
69 this section is a necessary and reasonable cost for motor
70 carriers of solid waste subject to the jurisdiction of the
71 public service commission under chapter twenty-four-a of
72 this code. Notwithstanding any provision of law to the
73 contrary, upon the filing of a petition by an affected
74 motor carrier, the public service commission shall, within
75 fourteen days, reflect the cost of the fee in the motor
76 carrier's rates for solid waste removal service. In
77 calculating the amount of the fee to the motor carrier, the
78 commission shall use the national average of pounds of

79 waste generated per person per day as determined by the
80 United States environmental protection agency.

81 (d) *Definitions.* — For purposes of this section:

82 "Solid waste disposal facility" means any approved
83 solid waste facility or open dump in this state and includes
84 a transfer station when the solid waste collected at the
85 transfer station is not finally disposed of at a solid waste
86 facility within this state that collects the fee imposed by
87 this section.

88 Nothing in this section authorizes in any way the
89 creation or operation of or contribution to an open dump.

90 (e) *Exemptions.* — The following transactions are
91 exempt from the fee imposed by this section:

92 (1) Disposal of solid waste at a solid waste facility by
93 the person who owns, operates or leases the solid waste
94 disposal facility if it is used exclusively to dispose of waste
95 originally produced by that person in his or her regular
96 business or personal activities or by persons utilizing the
97 facility on a cost-sharing or nonprofit basis;

98 (2) Reuse or recycling of any solid waste; and

99 (3) Disposal of residential solid waste by an individual
100 not in the business of hauling or disposing of solid waste
101 on the days and times designated by the director of the
102 division of environmental protection by rule as exempt
103 from the fee imposed pursuant to section eleven, article
104 fifteen, chapter twenty-two of this code.

105 (f) *Procedure and administration.* — Notwithstanding
106 section three, article ten, chapter eleven of this code, each
107 and every provision of the "West Virginia Tax Procedure
108 and Administration Act" set forth in article ten, chapter
109 eleven of this code applies to the fee imposed by this
110 section with like effect as if the act were applicable only to
111 the fee imposed by this section and were set forth in
112 extenso in this section.

113 (g) *Criminal penalties.* — Notwithstanding section two,
114 article nine, chapter eleven of this code, sections three

115 through seventeen, article nine, chapter eleven of this code
116 apply to the fee imposed by this section with like effect as
117 if the sections were the only fee imposed by this section
118 and were set forth in extenso in this section.

119 (h) *Dedication of proceeds.* — The proceeds of the fee
120 collected pursuant to this section shall be deposited by the
121 tax commissioner, at least monthly, in a special revenue
122 account designated as the "recycling assistance fund"
123 which is hereby continued. The director of the division of
124 natural resources shall allocate the proceeds of the fund as
125 follows:

126 (1) Fifty percent of the total proceeds shall be
127 provided in grants to assist municipalities, counties and
128 other interested parties in the planning and
129 implementation of recycling programs, public education
130 programs and recycling market procurement efforts,
131 established pursuant to this article. The director of the
132 division of natural resources shall promulgate rules, in
133 accordance with chapter twenty-nine-a of this code,
134 containing application procedures, guidelines for
135 eligibility, reporting requirements and other matters
136 considered appropriate: *Provided*, That persons
137 responsible for collecting, hauling or disposing of solid
138 waste who do not participate in the collection and payment
139 of the solid waste assessment fee imposed by this section
140 in addition to all other fees and taxes levied by law for
141 solid waste generated in this state which is destined for
142 disposal, shall not be eligible to receive grants under the
143 provisions of this article;

144 (2) Twelve and one-half percent of the total proceeds
145 shall be expended for personal services and benefit
146 expenses of full-time salaried conservation officers;

147 (3) Twelve and one-half percent of the total proceeds
148 shall be transferred to the West Virginia development
149 office, through the thirtieth day of June, one thousand
150 nine hundred ninety-eight, to be used in assisting counties
151 and municipalities in the design and construction of
152 wastewater treatment facilities and other solid waste
153 management projects designed to protect the waters of the

154 state. Beginning the first day of July, one thousand nine
155 hundred ninety-eight, these total proceeds shall be directly
156 allocated to the solid waste planning fund;

157 (4) Twelve and one-half percent of the total proceeds
158 shall be transferred to the solid waste reclamation and
159 environmental response fund, established pursuant to
160 section eleven, article fifteen, chapter twenty-two of this
161 code, to be expended by the division of environmental
162 protection to assist in the funding of the pollution
163 prevention and open dumps program (PPOD) which
164 encourages recycling, reuse, waste reduction and clean-up
165 activities; and

166 (5) Twelve and one-half percent of the total proceeds
167 shall be deposited in the hazardous waste emergency
168 response fund established in article nineteen, chapter
169 twenty-two of this code.

CHAPTER 22. ENVIRONMENTAL RESOURCES.

ARTICLE 16. SOLID WASTE LANDFILL CLOSURE ASSISTANCE PROGRAM.

§22-16-4. Solid waste assessment fee; penalties.

1 (a) *Imposition.* — A solid waste assessment fee is levied
2 and imposed upon the disposal of solid waste at any solid
3 waste disposal facility in this state in the amount of three
4 dollars and fifty cents per ton or like ratio on any part of a
5 ton of solid waste, except as provided in subsection (e) of
6 this section: *Provided*, That any solid waste disposal
7 facility may deduct from this assessment fee an amount,
8 not to exceed the fee, equal to the amount that the facility
9 is required by the public service commission to set aside
10 for the purpose of closure of that portion of the facility
11 required to close by article fifteen of this chapter. The fee
12 imposed by this section is in addition to all other fees and
13 taxes levied by law and shall be added to and constitute
14 part of any other fee charged by the operator or owner of
15 the solid waste disposal facility.

16 (b) *Collection, return, payment and records.* — The
17 person disposing of solid waste at the solid waste disposal

18 facility shall pay the fee imposed by this section, whether
19 or not that person owns the solid waste, and the fee shall
20 be collected by the operator of the solid waste facility who
21 shall remit it to the tax commissioner:

22 (1) The fee imposed by this section accrues at the time
23 the solid waste is delivered to the solid waste disposal
24 facility;

25 (2) The operator shall remit the fee imposed by this
26 section to the tax commissioner on or before the fifteenth
27 day of the month next succeeding the month in which the
28 fee accrued. Upon remittance of the fee, the operator
29 shall file returns on forms and in the manner prescribed
30 by the tax commissioner;

31 (3) The operator shall account to the state for all fees
32 collected under this section and shall hold them in trust
33 for the state until they are remitted to the tax
34 commissioner;

35 (4) If any operator fails to collect the fee imposed by
36 this section, he or she is personally liable for the amount
37 he or she failed to collect, plus applicable additions to tax,
38 penalties and interest imposed by article ten, chapter
39 eleven of this code;

40 (5) Whenever any operator fails to collect, truthfully
41 account for, remit the fee or file returns with the fee as
42 required in this section, the tax commissioner may serve
43 written notice requiring the operator to collect the fees
44 which become collectible after service of the notice, to
45 deposit the fees in a bank approved by the tax
46 commissioner, in a separate account, in trust for and
47 payable to the tax commissioner, and to keep the amount
48 of the fees in the account until remitted to the tax
49 commissioner. The notice shall remain in effect until a
50 notice of cancellation is served on the operator or owner
51 by the tax commissioner;

52 (6) Whenever the owner of a solid waste disposal
53 facility leases the solid waste facility to an operator, the
54 operator is primarily liable for collection and remittance
55 of the fee imposed by this section and the owner is

56 secondarily liable for remittance of the fee imposed by
57 this section. However, if the operator fails, in whole or in
58 part, to discharge his or her obligations under this section,
59 the owner and the operator of the solid waste facility are
60 jointly and severally responsible and liable for compliance
61 with the provisions of this section;

62 (7) If the operator or owner responsible for collecting
63 the fee imposed by this section is an association or
64 corporation, the officers of the association or corporation
65 are liable, jointly and severally, for any default on the part
66 of the association or corporation, and payment of the fee
67 and any additions to tax, penalties and interest imposed by
68 article ten, chapter eleven of this code may be enforced
69 against them as against the association or corporation
70 which they represent; and

71 (8) Each person disposing of solid waste at a solid
72 waste disposal facility and each person required to collect
73 the fee imposed by this section shall keep complete and
74 accurate records in the form required by the tax
75 commissioner in accordance with the rules of the tax
76 commissioner.

77 (c) *Regulated motor carriers.* — The fee imposed by
78 this section is a necessary and reasonable cost for motor
79 carriers of solid waste subject to the jurisdiction of the
80 public service commission under chapter twenty-four-a of
81 this code. Notwithstanding any provision of law to the
82 contrary, upon the filing of a petition by an affected
83 motor carrier, the public service commission shall, within
84 fourteen days, reflect the cost of the fee in the motor
85 carrier's rates for solid waste removal service. In
86 calculating the amount of the fee to the motor carrier, the
87 commission shall use the national average of pounds of
88 waste generated per person per day as determined by the
89 United States environmental protection agency.

90 (d) *Definitions.* — For purposes of this section, the
91 term "solid waste disposal facility" means any approved
92 solid waste facility or open dump in this state, and includes
93 a transfer station when the solid waste collected at the
94 transfer station is not finally disposed of at a solid waste

95 facility within this state that collects the fee imposed by
96 this section. Nothing in this section authorizes in any way
97 the creation or operation of or contribution to an open
98 dump.

99 (e) *Exemptions.* — The following transactions are
100 exempt from the fee imposed by this section:

101 (1) Disposal of solid waste at a solid waste disposal
102 facility by the person who owns, operates or leases the
103 solid waste disposal facility if the facility is used
104 exclusively to dispose of waste originally produced by that
105 person in the person's regular business or personal
106 activities or by persons utilizing the facility on a
107 cost-sharing or nonprofit basis;

108 (2) Reuse or recycling of any solid waste;

109 (3) Disposal of residential solid waste by an individual
110 not in the business of hauling or disposing of solid waste
111 on the days and times designated by the director as
112 exempt from the solid waste assessment fee; and

113 (4) Disposal of solid waste at a solid waste disposal
114 facility by a commercial recycler which disposes of thirty
115 percent or less of the total waste it processes for recycling.
116 In order to qualify for this exemption each commercial
117 recycler shall keep accurate records of incoming and
118 outgoing waste by weight. The records shall be made
119 available to the appropriate inspectors from the division,
120 upon request.

121 (f) *Procedure and administration.* — Notwithstanding
122 section three, article ten, chapter eleven of this code, each
123 and every provision of the "West Virginia Tax Procedure
124 and Administration Act" set forth in article ten, chapter
125 eleven of this code applies to the fee imposed by this
126 section with like effect as if the act were applicable only to
127 the fee imposed by this section and were set forth in
128 extenso in this section.

129 (g) *Criminal penalties.* — Notwithstanding section two,
130 article nine, chapter eleven of this code, sections three
131 through seventeen, article nine, chapter eleven of this code
132 apply to the fee imposed by this section with like effect as
133 if the sections were applicable only to the fee imposed by
134 this section and were set forth in extenso in this section.

135 (h) *Dedication of proceeds.* — (1) The proceeds of
136 the fee collected pursuant to this section shall be deposited
137 in the closure cost assistance fund established pursuant to
138 section twelve of this article: *Provided*, That the director
139 may transfer up to fifty cents for each ton of solid waste
140 disposed of in this state upon which the fee imposed by
141 this section is collected on or after the first day of July,
142 one thousand nine hundred ninety-eight, to the solid waste
143 enforcement fund established pursuant to section eleven,
144 article fifteen of this chapter.

145 (2) Fifty percent of the proceeds of the fee collected
146 pursuant to this article in excess of thirty thousand tons
147 per month from any landfill which is permitted to accept
148 in excess of thirty thousand tons per month pursuant to
149 section nine, article fifteen of this chapter shall be
150 remitted, at least monthly, to the county commission in the
151 county in which the landfill is located. The remainder of
152 the proceeds of the fee collected pursuant to this section
153 shall be deposited in the closure cost assistance fund
154 established pursuant to section twelve of this article.

CHAPTER 254

(S. B. 178—By Senators Oliverio, Bowman, Hunter, Ross,
Snyder, Deem, Scott, Kessler, White, Dittmar,
Anderson, McKenzie, Ball, Prezioso and Sharpe)

[Passed February 17, 1998; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, two, five, seven, eight, nine, ten, twelve, fifteen and twenty, article fifteen, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections one, two, eight, twenty-four, twenty-five, twenty-six, twenty-seven and twenty-eight, article four, chapter twenty-two-c of said code; to further amend said chapter by adding thereto a new article, designated article four-a; and to amend and reenact section one-c, article two, chapter twenty-four of said code, all relating generally to

solid waste management; stating purpose and legislative findings; providing definitions; establishing powers and duties of the director; providing for rulemaking; modifying provisions relating to free day; limiting the size of solid waste facilities; removing discriminatory language; requiring the director to consider certain things in determining facility size; prohibiting discrimination by a commercial solid waste facility based on origin of waste; providing for performance bonds; establishing bond requirements; establishing period of bond liability; providing for sewage sludge management; requiring tipping fees for sewage sludge disposed of in a landfill cell; prohibiting use of sewage sludge as daily cover; establishing maximum limits for receipt of sewage sludge at new and existing commercial solid waste facilities and sewage sludge processing facilities; prohibiting transportation of sludge in violation of this act; requiring balanced output of sludge to intake of sludge; requiring recordkeeping; requiring odor monitoring and testing; providing for orders, inspections and enforcement; providing civil and criminal penalties; providing for minor modifications of permits; providing legislative findings and purposes relating to county and regional solid waste authorities; providing definitions; authorizing development and continuation of litter and solid waste control plans; providing for approval by solid waste management board; developing of plan by director; providing for advisory rules; providing for commercial solid waste facility siting plan; providing for facilities subject to plan; establishing site approval criteria; providing for approval by solid waste management board; providing for public hearings; providing for rules; providing for approval of new Class A facilities, conversion from Class B to Class A and increasing maximum allowable monthly tonnage of Class A facilities by solid waste authorities; explaining legislative findings and purpose for local participation; providing for local participation by referendum; mandating referendum for new Class A facilities; allowing petition for referendum for conversion of Class B facility to a Class A facility; requiring the receipt of a certificate of need prior to referendum; allowing petition for referendum when seeking to increase the maximum allowable monthly tonnage of Class A facilities; requiring permits; establishing powers and duties of public service

commission; requiring certificate of need for solid waste facilities; and requiring public service commission to promulgate rules.

Be it enacted by the Legislature of West Virginia:

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

Chapter

22. Environmental Resources.

22C. Environmental Resources; Boards, Authorities, Commissions and Compacts.

24. Public Service Commission.

CHAPTER 22. ENVIRONMENTAL RESOURCES.

ARTICLE 15. SOLID WASTE MANAGEMENT ACT.

§22-15-1. Purpose and legislative findings.

§22-15-2. Definitions.

§22-15-5. Powers and duties; rules and rulemaking.

§22-15-7. Special provision for residential solid waste disposal.

§22-15-8. Limit on the size of solid waste facilities; rulemaking.

§22-15-9. Exemption for solid waste facility handling in excess of thirty thousand tons per month.

§22-15-10. Prohibitions; permits required.

§22-15-12. Performance bonds; amount and method of bonding; bonding requirements; period of bond liability.

§22-15-15. Orders, inspections and enforcement; civil and criminal penalties.

§22-15-20. Sewage sludge management.

§22-15-1. Purpose and legislative findings.

- 1 (a) The purpose of this article is to establish a
- 2 comprehensive program of controlling all phases of solid
- 3 waste management.

4 (b) The Legislature finds that solid waste disposal is a
5 universal problem for all of the United States and that
6 West Virginia is committed to participating in the waste
7 stream market and not interfering with the free flow of
8 solid waste into or out of this state. However, the
9 Legislature also recognizes that solid waste disposal has
10 inherent long-term environmental, health and
11 infrastructure impacts on local communities where the
12 solid waste facilities are located. It is the Legislature's
13 intent to establish reasonable uniform requirements on all
14 waste disposed of in this state regardless of origin.
15 Because of the importance and impact associated with the
16 location and operation of solid waste facilities, this article
17 establishes a thorough and balanced application and
18 regulatory process which provides an efficient and
19 reasonable permitting process while affording the state
20 and its citizens full and fair participation in decisions
21 associated with the location, operation and oversight of the
22 solid waste collection and disposal process.

23 (c) The Legislature further finds that solid waste
24 disposal has inherent risks and negative impact on local
25 communities and specifically finds the following: (1)
26 Uncontrolled, inadequately controlled and improper
27 collection, transportation, processing and disposal of solid
28 waste is a public nuisance and a clear and present danger
29 to people; (2) provides harborages and breeding places
30 for disease-carrying, injurious insects, rodents and other
31 pests harmful to the public health, safety and welfare; (3)
32 constitutes a danger to livestock and domestic animals; (4)
33 decreases the value of private and public property, causes
34 pollution, blight and deterioration of the natural beauty
35 and resources of the state and has adverse economic and
36 social effects on the state and its citizens; (5) results in the
37 squandering of valuable nonrenewable and
38 nonreplenishable resources contained in solid waste; (6)
39 that resource recovery and recycling reduces the need for
40 landfills and extends their life; and that (7) proper
41 disposal, resource recovery or recycling of solid waste is
42 for the general welfare of the citizens of this state.

43 (d) The Legislature further finds that Class A landfills
44 often create special environmental problems that require

45 statewide coordination of the management of such
46 landfills.

47 (e) The Legislature further finds based upon
48 engineering, environmental concerns, land-use planning,
49 transportation system networks, public health, safety and
50 welfare, that the amount of solid waste disposed of by
51 solid waste facilities must be limited in order to protect this
52 state's environment and the public in general against
53 adverse impact.

54 (f) The Legislature further finds that incineration
55 technologies present potentially significant health and
56 environmental problems.

57 (g) The Legislature further finds that there is a need
58 for efforts to continue to evaluate the viability of future
59 incineration technologies that are both environmentally
60 sound and economically feasible.

61 (h) The Legislature further finds that composting
62 large quantities of sewage sludge at a single location can
63 seriously impact the local community where the facility is
64 located. The potential adverse impact of noxious odors
65 and environmental and health hazards requires assurances
66 that local communities are not adversely impacted by the
67 location of sewage sludge composting facilities. Further,
68 the newness of the technology and processes for
69 managing sewage sludge processing require careful and
70 evolving regulatory oversight mechanisms, assuring that
71 sewage sludge processing and composting are properly
72 conducted. Therefore, limitations and qualifications for
73 location and management of sewage sludge processing
74 facilities are a necessary and integral part of the
75 management of solid waste in West Virginia.

§22-15-2. Definitions.

1 Unless the context clearly requires a different
2 meaning, as used in this article the terms:

3 (1) "Agronomic rate" means the whole sewage sludge
4 application rate, by dry weight, designed:

5 (A) To provide the amount of nitrogen needed by the
6 food crop, feed crop, fiber crop, cover crop or vegetation
7 on the land; and

8 (B) To minimize the amount of nitrogen in the sewage
9 sludge that passes below the root zone of the crop or
10 vegetation grown on the land to the groundwater.

11 (2) "Applicant" means the person applying for a
12 commercial solid waste facility permit or similar renewal
13 permit and any person related to such person by virtue of
14 common ownership, common management or family
15 relationships as the director may specify, including the
16 following: Spouses, parents and children and siblings.

17 (3) "Approved solid waste facility" means a solid waste
18 facility or practice which has a valid permit under this
19 article.

20 (4) "Back hauling" means the practice of using the
21 same container to transport solid waste and to transport
22 any substance or material used as food by humans,
23 animals raised for human consumption or reusable item
24 which may be refilled with any substance or material used
25 as food by humans.

26 (5) "Bulking agent" means any material mixed and
27 composted with sewage sludge.

28 (6) "Class A facility" means a commercial solid waste
29 facility which handles an aggregate of between ten
30 thousand and thirty thousand tons of solid waste per
31 month. Class A facility includes two or more Class B solid
32 waste landfills owned or operated by the same person in
33 the same county, if the aggregate tons of solid waste
34 handled per month by such landfills exceeds nine
35 thousand nine hundred ninety-nine tons of solid waste per
36 month.

37 (7) "Commercial recycler" means any person,
38 corporation or business entity whose operation involves
39 the mechanical separation of materials for the purpose of
40 reselling or recycling at least seventy percent by weight of
41 the materials coming into the commercial recycling
42 facility.

43 (8) "Commercial solid waste facility" means any solid
44 waste facility which accepts solid waste generated by
45 sources other than the owner or operator of the facility
46 and does not include an approved solid waste facility
47 owned and operated by a person for the sole purpose of
48 the disposal, processing or composting of solid wastes
49 created by that person or such person and other persons
50 on a cost-sharing or nonprofit basis and does not include
51 land upon which reused or recycled materials are
52 legitimately applied for structural fill, road base, mine
53 reclamation and similar applications.

54 (9) "Compost" means a humus-like material resulting
55 from aerobic, microbial, thermophilic decomposition of
56 organic materials.

57 (10) "Composting" means the aerobic, microbial,
58 thermophilic decomposition of natural constituents of
59 solid waste to produce a stable, humus-like material.

60 (11) "Commercial composting facility" means any
61 solid waste facility processing solid waste by composting,
62 including sludge composting, organic waste or yard waste
63 composting, but does not include a composting facility
64 owned and operated by a person for the sole purpose of
65 composting waste created by that person or such person
66 and other persons on a cost-sharing or nonprofit basis and
67 shall not include land upon which finished or matured
68 compost is applied for use as a soil amendment or
69 conditioner.

70 (12) "Cured compost" or "finished compost" means
71 compost which has a very low microbial or decomposition
72 rate which will not reheat or cause odors when put into
73 storage and that has been put through a separate aerated
74 curing cycle stage of thirty to sixty days after an initial
75 composting cycle or compost which meets all regulatory
76 requirements after the initial composting cycle.

77 (13) "Director" means the director of the division of
78 environmental protection or such other person to whom
79 the director has delegated authority or duties pursuant to
80 article one of this chapter.

81 (14) "Division" means the division of environmental
82 protection.

83 (15) "Energy recovery incinerator" means any solid
84 waste facility at which solid wastes are incinerated with the
85 intention of using the resulting energy for the generation
86 of steam, electricity or any other use not specified herein.

87 (16) "Incineration technologies" means any
88 technology that uses controlled flame combustion to
89 thermally break down solid waste, including refuse-
90 derived fuel, to an ash residue that contains little or no
91 combustible materials, regardless of whether the purpose is
92 processing, disposal, electric or steam generation or any
93 other method by which solid waste is incinerated.

94 (17) "Incinerator" means an enclosed device using
95 controlled flame combustion to thermally break down
96 solid waste, including refuse-derived fuel, to an ash residue
97 that contains little or no combustible materials.

98 (18) "Landfill" means any solid waste facility for the
99 disposal of solid waste on or in the land for the purpose of
100 permanent disposal. Such facility is situated, for purposes
101 of this article, in the county where the majority of the
102 spatial area of such facility is located.

103 (19) "Materials recovery facility" means any solid
104 waste facility at which source-separated materials or
105 materials recovered through a mixed waste processing
106 facility are manually or mechanically shredded or
107 separated for purposes of reuse and recycling, but does
108 not include a composting facility.

109 (20) "Mature compost" means compost which has
110 been produced in an aerobic, microbial, thermophilic
111 manner and does not exhibit phytotoxic effects.

112 (21) "Mixed solid waste" means solid waste from
113 which materials sought to be reused or recycled have not
114 been source-separated from general solid waste.

115 (22) "Mixed waste processing facility" means any solid
116 waste facility at which materials are recovered from mixed
117 solid waste through manual or mechanical means for
118 purposes of reuse, recycling or composting.

119 (23) "Municipal solid waste incineration" means the
120 burning of any solid waste collected by any municipal or
121 residential solid waste disposal company.

122 (24) "Open dump" means any solid waste disposal
123 which does not have a permit under this article, or is in
124 violation of state law, or where solid waste is disposed in a
125 manner that does not protect the environment.

126 (25) "Person" or "persons" means any industrial user,
127 public or private corporation, institution, association, firm
128 or company organized or existing under the laws of this
129 or any other state or country; state of West Virginia;
130 governmental agency, including federal facilities; political
131 subdivision; county commission; municipal corporation;
132 industry; sanitary district; public service district; drainage
133 district; soil conservation district; watershed improvement
134 district; partnership; trust; estate; person or individual;
135 group of persons or individuals acting individually or as a
136 group; or any legal entity whatever.

137 (26) "Publicly owned treatment works" means any
138 treatment works owned by the state or any political
139 subdivision thereof, any municipality or any other public
140 entity which processes raw domestic, industrial or
141 municipal sewage by any artificial or natural processes in
142 order to remove or so alter constituents as to render the
143 waste less offensive or dangerous to the public health,
144 comfort or property of any of the inhabitants of this state,
145 before the discharge of the plant effluent into any of the
146 waters of this state, and which produces sewage sludge.

147 (27) "Recycling facility" means any solid waste facility
148 for the purpose of recycling at which neither land disposal
149 nor biological, chemical or thermal transformation of
150 solid waste occurs: *Provided*, That mixed waste recovery
151 facilities, sludge processing facilities and composting
152 facilities are not considered recycling facilities nor
153 considered to be reusing or recycling solid waste within
154 the meaning of this article, article four, chapter twenty-
155 two-c and article eleven, chapter twenty of this code.

156 (28) "Sewage sludge" means solid, semisolid or liquid
157 residue generated during the treatment of domestic sewage
158 in a treatment works. Sewage sludge includes, but is not

159 limited to, domestic septage, scum or solids removed in
160 primary, secondary or advanced wastewater treatment
161 processes and a material derived from sewage sludge.
162 "Sewage sludge" does not include ash generated during
163 the firing of sewage sludge in a sewage sludge incinerator.

164 (29) "Sewage sludge processing facility" is a solid
165 waste facility that processes sewage sludge for: (A) Land
166 application; (B) incineration; or (C) disposal at an
167 approved landfill. Such processes include, but are not
168 limited to, composting, lime stabilization, thermophilic,
169 microbial and anaerobic digestion.

170 (30) "Sludge" means any solid, semisolid, residue or
171 precipitate, separated from or created by a municipal,
172 commercial or industrial waste treatment plant, water
173 supply treatment plant or air pollution control facility or
174 any other such waste having similar origin.

175 (31) "Solid waste" means any garbage, paper, litter,
176 refuse, cans, bottles, waste processed for the express
177 purpose of incineration; sludge from a waste treatment
178 plant; water supply treatment plant or air pollution control
179 facility; and other discarded materials, including offensive
180 or unsightly matter, solid, liquid, semisolid or contained
181 liquid or gaseous material resulting from industrial,
182 commercial, mining or community activities but does not
183 include solid or dissolved material in sewage or solid or
184 dissolved materials in irrigation return flows or industrial
185 discharges which are point sources and have permits under
186 article five-a of this chapter, or source, special nuclear or
187 byproduct material as defined by the Atomic Energy Act
188 of 1954, as amended, including any nuclear or byproduct
189 material considered by federal standards to be below
190 regulatory concern, or a hazardous waste either identified
191 or listed under article five-e of this chapter or refuse,
192 slurry, overburden or other wastes or material resulting
193 from coal-fired electric power or steam generation, the
194 exploration, development, production, storage and
195 recovery of coal, oil and gas and other mineral resources
196 placed or disposed of at a facility which is regulated under
197 chapter twenty-two, twenty-two-a or twenty-two-b of this
198 code, so long as such placement or disposal is in

199 conformance with a permit issued pursuant to such
200 chapters.

201 (32) "Solid waste disposal" means the practice of
202 disposing of solid waste including placing, depositing,
203 dumping or throwing or causing any solid waste to be
204 placed, deposited, dumped or thrown.

205 (33) "Solid waste disposal shed" means the
206 geographical area which the solid waste management
207 board designates and files in the state register pursuant to
208 section eight, article twenty-six, chapter sixteen of this
209 code.

210 (34) "Solid waste facility" means any system, facility,
211 land, contiguous land, improvements on the land,
212 structures or other appurtenances or methods used for
213 processing, recycling or disposing of solid waste,
214 including landfills, transfer stations, materials recovery
215 facilities, mixed waste processing facilities, sewage sludge
216 processing facilities, commercial composting facilities and
217 other such facilities not herein specified, but not including
218 land upon which sewage sludge is applied in accordance
219 with section twenty of this article. Such facility shall be
220 deemed to be situated, for purposes of this article, in the
221 county where the majority of the spatial area of such
222 facility is located: *Provided*, That a salvage yard, licensed
223 and regulated pursuant to the terms of article twenty-three,
224 chapter seventeen of this code, is not a solid waste facility.

225 (35) "Solid waste facility operator" means any person
226 or persons possessing or exercising operational,
227 managerial or financial control over a commercial solid
228 waste facility, whether or not such person holds a
229 certificate of convenience and necessity or a permit for
230 such facility.

231 (36) "Source-separated materials" means materials
232 separated from general solid waste at the point of origin
233 for the purpose of reuse and recycling but does not mean
234 sewage sludge.

§22-15-5. Powers and duties; rules and rulemaking.

1 In addition to all other powers, duties, responsibilities
2 and authority granted and assigned to the director in this

3 code and elsewhere described by law, the director is
4 empowered as follows:

5 (a) The director shall promulgate rules in compliance
6 with the West Virginia administrative procedures act to
7 carry out the provisions of this article including
8 modifying any existing rules and establishing permit
9 application fees up to an amount sufficient to defray the
10 costs of permit review. In promulgating rules the director
11 shall consider and establish requirements based on the
12 quantity of solid waste to be handled, including different
13 requirements for solid waste facilities or approved solid
14 waste facilities which handle more than one hundred tons
15 of solid waste per day, the environmental impact of solid
16 waste disposal, the nature, source or characteristics of the
17 solid waste, potential for contamination of ground, surface
18 and potable waters, requirements for public roadway
19 standards and design for access to the facilities with
20 approval by the commissioner of the division of highways,
21 the financial capability of the applicant, soil and
22 geological considerations, environmental and other natural
23 resource considerations.

24 (b) The director, after public notice and opportunity
25 for public hearing near the affected community, may issue
26 a permit with reasonable terms and conditions for
27 installation, establishment, modification, operation or
28 closure of a solid waste facility: *Provided*, That the
29 director may deny the issuance of a permit on the basis of
30 information in the application or from other sources
31 including public comment, if the solid waste facility is
32 likely to cause adverse impacts on the environment. The
33 director may also prohibit the installation or establishment
34 of specific types and sizes of solid waste facilities in a
35 specified geographical area of the state based on the
36 above-cited factor and may delete such geographical area
37 from consideration for that type and size solid waste
38 facility.

39 (c) The director may refuse to grant any permit if he
40 or she has reasonable cause to believe, as indicated by
41 documented evidence, that the applicant, or any officer,
42 director or manager, thereof, or person owning a five

43 percent or more interest, beneficial or otherwise, or other
44 person conducting or managing the affairs of the
45 applicant or of the proposed licensed premises, in whole
46 or in part:

47 (1) Has demonstrated, either by his or her police
48 record or by his or her record as a permittee under articles
49 eleven through nineteen of this chapter or chapter twenty
50 of this code, a lack of respect for law and order, generally,
51 or for the laws and rules governing the disposal of solid
52 wastes;

53 (2) Has misrepresented a material fact in applying to
54 the director for a permit;

55 (3) Has been convicted of a felony or other crime
56 involving moral turpitude;

57 (4) Has exhibited a pattern of violating environmental
58 laws in any state or the United States or combination
59 thereof; or

60 (5) Has had any permit revoked under the
61 environmental laws of any state or the United States.

62 (d) The director or any authorized representative,
63 employee or agent of the division may, at reasonable
64 times, enter onto any approved solid waste facility, open
65 dump or property where solid waste is present for the
66 purpose of making an inspection or investigation of solid
67 waste disposal.

68 (e) The director or any authorized representative,
69 employee or agent of the division may, at reasonable
70 times, enter any approved solid waste facility, open dump
71 or property where solid waste is present and take samples
72 of the waste, soils, air or water or may, upon issuance of an
73 order, require any person to take and analyze samples of
74 such waste, soil, air or water.

75 (f) The director may also perform or require a person,
76 by order, to perform any and all acts necessary to carry
77 out the provisions of this article or the rules promulgated
78 thereunder.

79 (g) The director or his or her authorized
80 representative, employee or agent shall make periodic

81 inspections at every approved solid waste facility to
82 effectively implement and enforce the requirements of this
83 article or its rules and may, in coordination with the
84 commissioner of the division of highways, conduct at
85 weigh stations or any other adequate site or facility
86 inspections of solid waste in transit.

87 (h) The director shall require and set the amount of
88 performance bonds for persons engaged in the practice of
89 solid waste disposal in this state, pursuant to section twelve
90 of this article.

91 (i) The director shall require: (1) That persons
92 disposing of solid waste at commercial solid waste facilities
93 within the state file with the operator of the commercial
94 solid waste facility records concerning the type, amount
95 and origin of solid waste disposed of by them; and (2) that
96 operators of commercial solid waste facilities within the
97 state maintain records and file them with the director
98 concerning the type, amount and origin of solid waste
99 accepted by them.

100 (j) Identification of interests. — The director shall
101 require an applicant for a solid waste facility permit to
102 provide the following information:

103 (1) The names, addresses and telephone numbers of:

104 (A) The permit applicant;

105 (B) Any other person conducting or managing the
106 affairs of the applicant or of the proposed permitted
107 premises, including any contractor for gas or energy
108 recovery from the proposed operation, if the contractor is
109 a person other than the applicant; and

110 (C) Parties related to the applicant by blood, marriage
111 or business association, including the relationship to the
112 applicant;

113 (2) The names and addresses of the owners of record
114 of surface and subsurface areas within, and contiguous to,
115 the proposed permit area;

116 (3) The names and addresses of the holders of record
117 to a leasehold interest in surface or subsurface areas
118 within, and contiguous to, the proposed permit area;

119 (4) A statement of whether the applicant is an
120 individual, corporation, partnership, limited partnership,
121 government agency, proprietorship, municipality,
122 syndicate, joint venture or other entity. For applicants
123 other than sole proprietorships, the application shall
124 contain the following information, if applicable:

125 (A) Names and addresses of every officer, general and
126 limited partner, director and other persons performing a
127 function similar to a director of the applicant;

128 (B) For corporations, the principal shareholders;

129 (C) For corporations, the names, principal places of
130 businesses and internal revenue service tax identification
131 numbers of United States parent corporations of the
132 applicant, including ultimate parent corporations and
133 United States subsidiary corporations of the applicant and
134 the applicant's parent corporations; and

135 (D) Names and addresses of other persons or entities
136 having or exercising control over any aspect of the
137 proposed facility that is regulated by the division,
138 including, but not limited to, associates and agents;

139 (5) If the applicant or an officer, principal
140 shareholder, general or limited partner or other related
141 party to the applicant, has a beneficial interest in, or
142 otherwise manages or controls another person or
143 municipality engaged in the business of solid waste
144 collection, transportation, storage, processing, treatment or
145 disposal, the application shall contain the following
146 information:

147 (A) The name, address and tax identification number
148 or employer identification number of the corporation or
149 other person or municipality; and

150 (B) The nature of the relationship or participation with
151 the corporation or other person or municipality;

152 (6) An application shall list permits or licenses, issued
153 by the division or other environmental regulatory agency
154 to each person or municipality identified in paragraph (1)
155 of this subdivision and to other related parties to the
156 applicant, that are currently in effect or have been in effect

157 in at least part of the previous ten years. This list shall
158 include the type of permit or license, number, location,
159 issuance date and, when applicable, the expiration date;

160 (7) An application shall identify the solid waste
161 facilities in the state which the applicant or a person or
162 municipality identified in paragraph (1) of this
163 subdivision and other related parties to the applicant
164 currently owns or operates, or owned or operated in the
165 previous ten years. For each facility, the applicant shall
166 identify the location, type of operation and state or federal
167 permits under which they operate or have operated.
168 Facilities which are no longer permitted or which were
169 never under permit shall also be listed.

170 (k) Compliance information. — An application shall
171 contain the following information for the ten-year period
172 prior to the date on which the application is filed:

173 (1) A description of notices of violation, including the
174 date, location, nature and disposition of the violation, that
175 were sent by the division to the applicant or a related
176 party, concerning any environmental law, rule, or order of
177 the division, or a condition of a permit or license. In lieu
178 of a description, the applicant may provide a copy of
179 notices of violation;

180 (2) A description of administrative orders, civil penalty
181 assessments and bond forfeiture actions by the division,
182 and civil penalty actions adjudicated by the state, against
183 the applicant or a related party concerning any
184 environmental law, rule, or order of the division, or a
185 condition of a permit or license. The description shall
186 include the date, location, nature and disposition of the
187 actions. In lieu of a description, the applicant may
188 provide a copy of the orders, assessments and actions;

189 (3) A description of a summary, misdemeanor or
190 felony conviction, a plea of guilty or plea of no contest
191 that has been obtained in this state against the applicant or
192 a related party under any environmental law or rule
193 concerning the storage, collection, treatment,
194 transportation, processing or disposal of solid waste. The
195 description shall include the date, location, nature and
196 disposition of the actions;

197 (4) A description of a court proceeding concerning
198 any environmental law or rule that was not described
199 under paragraph (3) of this subdivision in which the
200 applicant or a related party has been party. The
201 description shall include the date, location, nature and
202 disposition of the proceedings;

203 (5) A description of a consent order, consent
204 adjudication, consent decree or settlement agreement
205 involving the applicant or a related party concerning any
206 environmental law or rule in which the division, other
207 governmental agencies, the United States environmental
208 protection agency, or a county health department was a
209 party. The description shall include the date, location,
210 nature and disposition of the action. In lieu of a
211 description, the applicant may provide a copy of the order,
212 adjudication, a decree or agreement;

213 (6) For facilities and activities identified under
214 paragraph (1) of this subdivision, a statement of whether
215 the facility or activity was the subject of an administrative
216 order, consent agreement, consent adjudication, consent
217 order, settlement agreement, court order, civil penalty,
218 bond forfeiture proceeding, criminal conviction, guilty or
219 no contest plea to a criminal charge or permit or license
220 suspension or revocation under the act or the
221 environmental protection acts. If the facilities or activities
222 were subject to these actions, the applicant shall state the
223 date, location, nature and disposition of the violation. In
224 lieu of a description, the applicant may provide a copy of
225 the appropriate document. The application shall also state
226 whether the division has denied a permit application filed
227 by the applicant or a related party, based on compliance
228 status;

229 (7) When the applicant is a corporation, a list of the
230 principal shareholders that have also been principal
231 shareholders of other corporations which have committed
232 violations of any environmental law or rule. The list shall
233 include the date, location, nature and disposition of the
234 violation, and shall explain the relationship between the
235 principal shareholder and both the applicant and the other
236 corporation;

237 (8) A description of a misdemeanor or felony
238 conviction, a plea of guilty and a plea of no contest, by the
239 applicant or a related party for violations outside of this
240 state of any environmental protection laws or regulations.
241 The description shall include the date of the convictions or
242 pleas, and the date, location and nature of the offense;

243 (9) A description of final administrative orders, court
244 orders, court decrees, consent decrees or adjudications,
245 consent orders, final civil penalty adjudications, final bond
246 forfeiture actions or settlement agreements involving the
247 applicant or a related party for violations outside of this
248 state of any environmental protection laws or regulations.
249 The description shall include the date of the action and the
250 location and nature of the underlying violation. In lieu of
251 a description, the applicant may provide a copy of the
252 appropriate document.

253 (l) All of the information provided by the applicant
254 pursuant to this section is not confidential and may be
255 disclosed pursuant to the provisions of chapter
256 twenty-nine-b of this code.

§22-15-7. Special provision for residential solid waste disposal.

1 All commercial and public landfills shall establish and
2 publish a yearly schedule providing for one day per
3 month on which a person not in the business of hauling or
4 disposing of solid waste may dispose of, in a landfill, an
5 amount of residential solid waste, up to one pick-up
6 truckload or its equivalent, free of all charges and fees:
7 *Provided*, That the provisions of this section shall not take
8 effect until the first day of July, one thousand nine
9 hundred ninety-eight. Any person who is not a resident
10 of West Virginia may only participate in the monthly free
11 disposal day upon proof that his or her state of residence
12 would likewise allow West Virginia residents to dispose of
13 residential solid waste in the same or substantially similar
14 manner.

§22-15-8. Limit on the size of solid waste facilities; rulemaking.

1 (a) On and after the first day of October, one thousand
2 nine hundred ninety-one, it is unlawful to operate any
3 commercial solid waste facility that handles between ten
4 thousand and thirty thousand tons of solid waste per
5 month, except as provided in section nine of this article
6 and sections twenty-six, twenty-seven and twenty-eight,
7 articles four and four-a; chapter twenty-two-c of this code.

8 (b) Except as provided in section nine of this article,
9 the maximum quantity of solid waste which may lawfully
10 be received or disposed of at any commercial solid waste
11 facility is thirty thousand tons per month.

12 (c) The director shall, within the limits contained in
13 this article, place a limit on the amount of solid waste
14 received or disposed of per month in commercial solid
15 waste facilities. The director shall consider at a minimum
16 the following criteria in determining a commercial solid
17 waste facility's monthly tonnage limit:

18 (1) The proximity and potential impact of the solid
19 waste facility upon groundwater, surface water and potable
20 water;

21 (2) The projected life and design capacity of the solid
22 waste facility;

23 (3) The available air space, lined acreage, equipment
24 type and size, adequate personnel and wastewater
25 treatment capabilities; and

26 (4) Other factors related to the environmentally safe
27 and efficient disposal of solid waste.

28 (d) Within the limits established in this article, the
29 director shall determine the amount of sewage sludge
30 which may be safely treated, stored, processed, composted,
31 dumped or placed in a solid waste facility.

32 (e) The director shall promulgate emergency rules,
33 and propose for legislative promulgation, legislative rules
34 pursuant to the provisions of article three, chapter twenty-
35 nine-a of this code, to effectuate the requirements of this
36 section. When developing the rules, the director shall
37 consider at a minimum the potential impact of the

38 treatment, storage, processing, composting, dumping or
39 placing sewage sludge at a solid waste facility:

40 (1) On the groundwater, surface waters and potable
41 waters in the area;

42 (2) On the air quality in the area;

43 (3) On the projected life and design capacity of the
44 solid waste facility;

45 (4) On the available air space, lined acreage,
46 equipment type and size, personnel and wastewater
47 treatment capabilities;

48 (5) The facility's ability to adequately develop markets
49 and market the product which results from the proper
50 treatment of sewage sludge; and

51 (6) Other factors related to the environmentally safe
52 and efficient treatment, storage, processing, composting,
53 dumping or placing of sewage sludge at a solid waste
54 facility.

55 (f) Sewage sludge disposed of at a landfill must
56 contain at least twenty percent solid by weight. This
57 requirement may be met by adding or blending sand,
58 sawdust, lime, leaves, soil or other materials that have been
59 approved by the director prior to disposal. Alternative
60 sewage sludge disposal methods can be utilized upon
61 obtaining written approval from the director. No facility
62 may accept for land filling in any month sewage sludge in
63 excess of twenty-five percent of the total tons of solid
64 waste accepted at the facility for land filling in the
65 preceding month.

**§22-15-9. Exemption for solid waste facility handling in excess
of thirty thousand tons per month.**

1 (a) Notwithstanding any provision in this article, article
2 four, chapter twenty-two-c, article two, chapter twenty-four
3 of this code, any other section of this code, or any prior
4 enactment of the code to the contrary, and
5 notwithstanding any defects in or challenges to any

6 actions which were or are required to be performed in
7 satisfaction of the following criteria, any person who on
8 the first day of October, one thousand nine hundred
9 ninety-one, has:

10 (1) Obtained site approval for a commercial solid
11 waste facility from a county or regional solid waste
12 authority or county commission pursuant to a prior
13 enactment of this code, or has otherwise satisfied the
14 requirements of subsection (a), section twenty-five, article
15 four, chapter twenty-two-c of this code;

16 (2) Entered into a contract with a county commission
17 regarding the construction and operation of a solid waste
18 facility, which contract contains rates for the disposal of
19 solid waste anticipated to be disposed of at the facility;

20 (3) Obtained, pursuant to section one-f, article two,
21 chapter twenty-four of this code, following a public
22 hearing, an order from the public service commission
23 approving the rates established in the contract with the
24 county commission; and

25 (4) An application for a permit for a commercial solid
26 waste facility pending with the division of environmental
27 protection, or is operating under a permit or compliance
28 order, is permitted to handle in excess of the limitation
29 established in section eight of this article up to fifty
30 thousand tons of solid waste per month at a commercial
31 solid waste facility so long as the person complies with the
32 provisions of this section.

33 (b) Any person desiring to operate a commercial solid
34 waste facility which handles an amount of solid waste per
35 month in excess of the limitation established in section
36 eight of this article, but not exceeding the tonnage
37 limitation described in subsection (a) of this section may
38 file a notice with the county commission of the county in
39 which the facility is or is to be located requesting a
40 countywide referendum. Upon receipt of such notice, the
41 county commission shall order a referendum be placed
42 upon the ballot, not less than fifty-six days before the next
43 primary or general election:

44 (1) Such referendum will be to determine whether it is
45 the will of the voters of the county that a commercial solid
46 waste facility be permitted to handle more than the
47 limitation established in section eight of this article not to
48 exceed fifty thousand tons per month. Any such election
49 shall be held at the voting precincts established for
50 holding primary or general elections. All of the
51 provisions of the general election laws, when not in
52 conflict with the provisions of this article, apply to voting
53 and elections hereunder, insofar as practicable;

54 (2) The ballot, or the ballot labels where voting
55 machines are used, shall have printed thereon substantially
56 the following:

57 "Shall a commercial solid waste facility, permitted to
58 handle up to, but no more than fifty thousand tons of
59 solid waste per month be located within
60 _____ County, West Virginia?

61 For the facility

62 Against the facility

63 (Place a cross mark in the square opposite your
64 choice.)"

65 If a majority of the legal votes cast upon the question
66 is against the facility handling an amount of solid waste of
67 up to fifty thousand tons per month then the division shall
68 not proceed any further with the application. If a majority
69 of the legal votes cast upon the question is in favor of
70 permitting the facility within the county, then the
71 application process as set forth in this article may proceed:
72 *Provided*, That such vote is not binding on or require the
73 division to issue a permit.

74 (c) If a person submits to a referendum in accordance
75 with this section, all approvals, certificates and permits
76 granted and all actions undertaken by a regional or
77 county solid waste authority or county commission with
78 regard to the person's commercial solid waste facility
79 within the county under this article or article four, chapter
80 twenty-two-c of this code, or previously enacted sections
81 of articles five-f and nine, chapter twenty of this code are

82 valid, complete and in full compliance with all the
83 requirements of law and any defects contained in such
84 approvals, certificates, permits or actions are cured and
85 such defects may not be invoked to invalidate any such
86 approval, certificate, permit or action.

87 (d) Notwithstanding any provision of this code to the
88 contrary, any person described in subsection (a) of this
89 section who complies with the referendum requirement of
90 this section and complies with the permitting requirements
91 of the division provided in section ten of this article, shall
92 not be required to comply with the requirements of
93 sections twenty-five, twenty-six, twenty-seven and
94 twenty-eight, article four, chapter twenty-two-c of this
95 code: *Provided*, That such person is entitled to receive a
96 certificate of need pursuant to the provisions of subsection
97 (a), section one-c, article two, chapter twenty-four of this
98 code to handle the tonnage level authorized pursuant to
99 subsection (a) of this section.

100 (e) The purpose of this section is to allow any person
101 who satisfies the four criteria contained in subsection (a)
102 of this section, notwithstanding any defects in or
103 challenges to any actions which were or are required to be
104 performed in satisfaction of such criteria, to submit the
105 question of siting a facility that accepts up to fifty
106 thousand tons within the county to a referendum in order
107 to obtain a decision at the county or regional level
108 regarding the siting of the facility and that submission of
109 this question at the county level is the only approval,
110 permit or action required at the county or regional level to
111 establish and site the proposed facility.

§22-15-10. Prohibitions; permits required.

1 (a) Open dumps are prohibited and it is unlawful for
2 any person to create, contribute to or operate an open
3 dump or for any landowner to allow an open dump to
4 exist on the landowner's property unless that open dump is
5 under a compliance schedule approved by the director.
6 Such compliance schedule shall contain an enforceable
7 sequence of actions leading to compliance and shall not
8 exceed two years. Open dumps operated prior to the first
9 day of April, one thousand nine hundred eighty-eight, by

10 a landowner or tenant for the disposal of solid waste
11 generated by the landowner or tenant at his or her
12 residence or farm are not a violation of this section if such
13 open dump did not constitute a violation of law on the
14 first day of January, one thousand nine hundred
15 eighty-eight, and unauthorized dumps which were created
16 by unknown persons do not constitute a violation of this
17 section: *Provided*, That no person may contribute
18 additional solid waste to any such dump after the first day
19 of April, one thousand nine hundred eighty-eight, except
20 that the owners of the land on which unauthorized dumps
21 have been or are being made are not liable for such
22 unauthorized dumping unless such landowners refuse to
23 cooperate with the division in stopping such unauthorized
24 dumping.

25 (b) It is unlawful for any person, unless the person
26 holds a valid permit from the division to install, establish,
27 construct, modify, operate or abandon any solid waste
28 facility. All approved solid waste facilities shall be
29 installed, established, constructed, modified, operated or
30 abandoned in accordance with this article, plans,
31 specifications, orders, instructions and rules in effect.

32 (c) Any permit issued under this article shall be issued
33 in compliance with the requirements of this article, its rules
34 and article eleven of this chapter and the rules
35 promulgated thereunder, so that only a single permit is
36 required of a solid waste facility under these two articles.
37 Each permit issued under this article shall have a fixed
38 term not to exceed five years: *Provided*, That the director
39 may administratively extend a permit beyond its five-year
40 term if the approved solid waste facility is in compliance
41 with this article, its rules and article eleven of this chapter
42 and the rules promulgated thereunder: *Provided*,
43 *however*, That such administrative extension may not be
44 for more than one year. Upon expiration of a permit,
45 renewal permits may be issued in compliance with rules
46 promulgated by the director.

47 (d) For existing solid waste facilities which formerly
48 held division of health permits which expired by law and
49 for which complete permit applications for new permits

50 pursuant to this article were submitted as required by law,
51 the division may enter an administrative order to govern
52 solid waste activities at such facilities, which may include a
53 compliance schedule, consistent with the requirements of
54 the division's solid waste management rules, to be effective
55 until final action is taken to issue or deny a permit for
56 such facility pursuant to this article, or until further order
57 of the division.

58 (e) No person may dispose in the state of any solid
59 waste in a manner which endangers the environment or the
60 public health, safety or welfare as determined by the
61 director: *Provided*, That the carcasses of dead animals
62 may be disposed of in any solid waste facility or in any
63 other manner as provided for in this code. Upon request
64 by the director, the commissioner of the bureau of public
65 health shall provide technical advice concerning the
66 disposal of solid waste or carcasses of dead animals within
67 the state.

68 (f) A commercial solid waste facility shall not
69 discriminate in favor of or against the receipt of any waste
70 otherwise eligible for disposal at the facility based on its
71 geographic origin.

72 (g) In addition to all the requirements of this article
73 and the rules promulgated hereunder, a permit to
74 construct a new commercial solid waste facility or to
75 expand the spatial area of an existing facility, may not be
76 issued unless the public service commission has granted a
77 certificate of need, as provided in section one-c, article
78 two, chapter twenty-four of this code. If the director
79 approves a permit or permit modification, the certificate of
80 need shall become a part of the permit and all conditions
81 contained in the certificate of need shall be conditions of
82 the permit and may be enforced by the division in
83 accordance with the provisions of this article. If the
84 director approves a permit or permit modification, the
85 certificate of need shall become a part of the permit and
86 all conditions contained in the certificate of need shall be
87 conditions of the permit and may be enforced by the
88 division in accordance with the provisions of this article.

89 (h) The director shall promulgate legislative rules
90 pursuant to article three, chapter twenty-nine-a of this
91 code which reflect the purposes as set forth in this section.

**§22-15-12. Performance bonds; amount and method of
bonding; bonding requirements; period of
bond liability.**

1 (a) After a solid waste permit application has been
2 approved pursuant to this article, or once operations have
3 commenced pursuant to a compliance order, but before a
4 permit has been issued, each operator of a commercial
5 solid waste facility shall furnish bond, on a form to be
6 prescribed and furnished by the director, payable to the
7 state of West Virginia and conditioned upon the operator
8 faithfully performing all of the requirements of this
9 article, rules promulgated hereunder and the permit. The
10 amount of the bond required shall be determined by the
11 director based upon the total estimated cost to the state of
12 completing final closure according to the permit granted
13 to such facility and such measures as are necessary to
14 prevent adverse effects upon the environment; such
15 measures include, but are not limited to, satisfactory
16 monitoring, post-closure care, leachate treatment and
17 remedial measures: *Provided*, That the amount of the
18 bond shall be sufficient to conform to and be consistent
19 with the financial assurance requirements set forth under
20 Subtitle D of the federal Resource Conservation and
21 Recovery Act, 42 U. S. C. §§6901 et seq. and the
22 regulations promulgated thereunder. All bonds required
23 to be posted shall be consistent, whether the facility is
24 publicly or privately owned or operated. All permits shall
25 be bonded for at least ten thousand dollars. The bond
26 shall cover either: (1) The entire area to be used for the
27 disposal of solid waste; or (2) that increment of land
28 within the permit area upon which the operator will initiate
29 and conduct commercial solid waste facility operations
30 within the initial term of the permit pursuant to legislative
31 rules promulgated by the director pursuant to chapter
32 twenty-nine-a of this code. If the operator chooses to use
33 incremental bonding, as succeeding increments of
34 commercial solid waste facility operations are to be
35 initiated and conducted within the permit area, the

36 operator shall file with the director an additional bond or
37 bonds to cover such increments in accordance with this
38 section: *Provided, however,* That once the operator has
39 chosen to proceed with bonding either the entire area to
40 be used for the disposal of solid waste or with incremental
41 bonding, the operator shall continue bonding in that
42 manner for the term of the permit.

43 (b) The period of liability for performance bond
44 coverage shall commence with issuance of a permit and
45 continue for the full term of the permit and for a period
46 of up to thirty full years after final closure of the permit
47 site: *Provided,* That any further time period necessary to
48 achieve compliance with the requirements in the closure
49 plan of the permit is considered an additional liability
50 period.

51 (c) The form of the performance bond shall be
52 approved by the director and may include, at the option of
53 the director, surety bonding, collateral bonding (including
54 cash and securities), establishment of an escrow account,
55 letters of credit, performance bonding fund participation
56 (as established by the director), self-bonding or a
57 combination of these methods.

58 If collateral bonding is used, the operator may elect to
59 deposit cash, or collateral securities or certificates as
60 follows: Bonds of the United States or its possessions, of
61 the federal land bank, or of the homeowners' loan
62 corporation; full faith and credit general obligation bonds
63 of the state of West Virginia, or other states, and of any
64 county, district or municipality of the state of West
65 Virginia or other states; or certificates of deposit in a bank
66 in this state, which certificates shall be in favor of the
67 division. The cash deposit or market value of such
68 securities or certificates shall be equal to or greater than
69 the sum of the bond. The director shall, upon receipt of
70 any such deposit of cash, securities or certificates,
71 promptly place the same with the treasurer of the state of
72 West Virginia whose duty it is to receive and hold the same
73 in the name of the state in trust for the purpose for which
74 the deposit is made when the permit is issued. The
75 operator making the deposit is entitled from time to time

76 to receive from the state treasurer, upon the written
77 approval of the director, the whole or any portion of any
78 cash, securities or certificates so deposited, upon
79 depositing with the treasurer in lieu thereof, cash or other
80 securities or certificates of the classes herein specified
81 having value equal to or greater than the sum of the bond.

82 (d) Within twelve months prior to the expiration of the
83 thirty-year period following final closure, the division will
84 conduct a final inspection of the facility. The purpose of
85 the inspection is to determine compliance with this article,
86 the division's rules, the terms and conditions of the permit,
87 orders of the division and the terms and conditions of the
88 bond. Based upon this determination, the division will
89 either forfeit the bond prior to the expiration of the
90 thirty-year period following final closure, or release the
91 bond at the expiration of the thirty-year period following
92 final closure. Bond release requirements shall be provided
93 in rules promulgated by the director.

94 (e) If the operator of a commercial solid waste facility
95 abandons the operation of a solid waste disposal facility
96 for which a permit is required by this article or if the
97 permittee fails or refuses to comply with the requirements
98 of this article in any respect for which liability has been
99 charged on the bond, the director shall declare the bond
100 forfeited and shall certify the same to the attorney general
101 who shall proceed to enforce and collect the amount of
102 liability forfeited thereon, and where the operation has
103 deposited cash or securities as collateral in lieu of
104 corporate surety, the director shall declare said collateral
105 forfeited and shall direct the state treasurer to pay said
106 funds into a waste management fund to be used by the
107 director to effect proper closure and to defray the cost of
108 administering this article. Should any corporate surety
109 fail to promptly pay, in full, forfeited bond, it is
110 disqualified from writing any further surety bonds under
111 this article.

§22-15-15. Orders, inspections and enforcement; civil and criminal penalties.

1 (a) If the director, upon inspection or investigation by
2 duly authorized representatives or through other means

3 observes, discovers or learns of a violation of this article,
4 its rules, article eleven of this chapter or its rules, or any
5 permit or order issued under this article, he or she shall:

6 (1) Issue an order stating with reasonable specificity
7 the nature of the alleged violation and requiring
8 compliance immediately or within a specified time. An
9 order under this section includes, but is not limited to, any
10 or all of the following: Orders suspending, revoking or
11 modifying permits, orders requiring a person to take
12 remedial action or cease and desist orders;

13 (2) Seek an injunction in accordance with subsection
14 (e) of this section;

15 (3) Institute a civil action in accordance with
16 subsection (e) of this section; or

17 (4) Request the attorney general, or the prosecuting
18 attorney of the county wherein the alleged violation
19 occurred, to bring an appropriate action, either civil or
20 criminal in accordance with subsection (b) of this section.

21 (b) Any person who willfully or negligently violates
22 the provisions of this article, any permit or any rule or
23 order issued pursuant to this article is subject to the same
24 criminal penalties as set forth in section twenty-four,
25 article eleven of this chapter.

26 (c) Any person who violates any provision of this
27 article, any permit or any rule or order issued pursuant to
28 this article is subject to a civil administrative penalty, to be
29 levied by the director, of not more than five thousand
30 dollars for each day of such violation, not to exceed a
31 maximum of twenty thousand dollars:

32 (1) In assessing any such penalty, the director shall
33 take into account the seriousness of the violation and any
34 good faith efforts to comply with the applicable
35 requirements as well as any other appropriate factors as
36 may be established by the director by rules promulgated
37 pursuant to this article and article three, chapter
38 twenty-nine-a of this code. No assessment shall be levied
39 pursuant to this subsection until after the alleged violator
40 has been notified by certified mail or personal service.
41 The notice shall include a reference to the section of the

42 statute, rule, order or statement of permit conditions that
43 was allegedly violated, a concise statement of the facts
44 alleged to constitute the violation, a statement of the
45 amount of the administrative penalty to be imposed and a
46 statement of the alleged violator's right to an informal
47 hearing. The alleged violator has twenty calendar days
48 from receipt of the notice within which to deliver to the
49 director a written request for an informal hearing. If no
50 hearing is requested, the notice becomes a final order after
51 the expiration of the twenty-day period. If a hearing is
52 requested, the director shall inform the alleged violator of
53 the time and place of the hearing. The director may
54 appoint an assessment officer to conduct the informal
55 hearing and then make a written recommendation to the
56 director concerning the assessment of a civil administrative
57 penalty. Within thirty days following the informal
58 hearing, the director shall issue and furnish to the alleged
59 violator a written decision, and the reasons therefor,
60 concerning the assessment of a civil administrative
61 penalty. Within thirty days after notification of the
62 director's decision, the alleged violator may request a
63 formal hearing before the environmental quality board in
64 accordance with the provisions of section sixteen of this
65 article. The authority to levy a civil administrative penalty
66 is in addition to all other enforcement provisions of this
67 article and the payment of any assessment does not affect
68 the availability of any other enforcement provision in
69 connection with the violation for which the assessment is
70 levied: *Provided*, That no combination of assessments
71 against a violator under this section shall exceed twenty-
72 five thousand dollars for each day of such violation:
73 *Provided, however*, That any violation for which the
74 violator has paid a civil administrative penalty assessed
75 under this section shall not be the subject of a separate
76 civil penalty action under this article to the extent of the
77 amount of the civil administrative penalty paid. All
78 administrative penalties shall be levied in accordance with
79 rules issued pursuant to subsection (a), section five of this
80 article. The net proceeds of assessments collected
81 pursuant to this subsection shall be deposited in the solid
82 waste reclamation and environmental response fund

83 established in subdivision (3), subsection (h), section
84 eleven of this article;

85 (2) No assessment levied pursuant to subdivision (1),
86 subsection (c) above becomes due and payable until the
87 procedures for review of such assessment as set out in said
88 subsection have been completed.

89 (d) Any person who violates any provision of this
90 article, any permit or any rule or order issued pursuant to
91 this article is subject to a civil penalty not to exceed
92 twenty-five thousand dollars for each day of such
93 violation, which penalty shall be recovered in a civil action
94 either in the circuit court wherein the violation occurs or
95 in the circuit court of Kanawha County.

96 (e) The director may seek an injunction, or may
97 institute a civil action against any person in violation of
98 any provisions of this article or any permit, rule or order
99 issued pursuant to this article. In seeking an injunction, it
100 is not necessary for the director to post bond nor to allege
101 or prove at any stage of the proceeding that irreparable
102 damage will occur if the injunction is not issued or that the
103 remedy at law is inadequate. An application for injunctive
104 relief or a civil penalty action under this section may be
105 filed and relief granted notwithstanding the fact that all
106 administrative remedies provided for in this article have
107 not been exhausted or invoked against the person or
108 persons against whom such relief is sought.

109 (f) Upon request of the director, the attorney general
110 or the prosecuting attorney of the county in which the
111 violation occurs shall assist the director in any civil action
112 under this section.

113 (g) In any civil action brought pursuant to the
114 provisions of this section, the state, or any agency of the
115 state which prevails, may be awarded costs and reasonable
116 attorney's fees.

117 (h) In addition to all other grounds for revocation, the
118 director shall revoke a permit for any of the following
119 reasons:

120 (1) Fraud, deceit or misrepresentation in securing the
121 permit, or in the conduct of the permitted activity;

122 (2) Offering, conferring or agreeing to confer any
123 benefit to induce any other person to violate the
124 provisions of this chapter, or of any other law relating to
125 the collection, transportation, treatment, storage or disposal
126 of solid waste, or of any rule adopted pursuant thereto;

127 (3) Coercing a customer by violence or economic
128 reprisal or the threat thereof to utilize the services of any
129 permittee; or

130 (4) Preventing, without authorization of the division,
131 any permittee from disposing of solid waste at a licensed
132 treatment, storage or disposal facility.

133 (i) Within thirty days of the effective date of this
134 subsection, the director shall issue minor permit
135 modifications for all permits or permit modifications
136 issued on or after the twenty-eighth day of September, one
137 thousand nine hundred ninety-five, to reflect the tonnage
138 authorization set forth in the certificate of need for that
139 solid waste facility. All such facilities may continue to
140 receive such tonnage until the modification is received.

§22-15-20. Sewage sludge management.

1 (a) Within the limits imposed by section eight, article
2 fifteen of this chapter, the division shall develop and
3 implement a comprehensive program for the regulation
4 and management of sewage sludge. The division is
5 authorized to require permits for all facilities and activities
6 which generate, process or dispose of sewage sludge by
7 whatever means, including, but not limited to, land
8 application, composting, mixed waste composting,
9 incineration or any other method of handling sewage
10 sludge within the state.

11 (b) The director shall promulgate emergency rules
12 and propose legislative rules for legislative approval in
13 accordance with the provisions of article three, chapter
14 twenty-nine-a of this code necessary for the efficient and
15 orderly regulation of sewage sludge no later than ninety
16 days after the effective date of this article. All rules,
17 whether emergency or not, promulgated pursuant to this
18 section shall assure, at a minimum, the following:

19 (1) That entities which generate, process, dispose or
20 otherwise manage sewage sludge in the state are required
21 to report to the division the following:

22 (i) The specific source of the sewage sludge;

23 (ii) The amount of sewage sludge actually generated,
24 treated, stored, processed, composted, disposed or placed;

25 (iii) The content of heavy metals, pathogens, toxins or
26 vectors present in the sewage sludge; and

27 (iv) Each location that the sewage sludge is stored,
28 land applied or otherwise disposed of; the amount so
29 stored, land applied or otherwise disposed of; and the
30 capacity of that location to accept sewage sludge;

31 (2) That the division engage in reasonable and
32 periodic monitoring of all sewage sludge-related activities
33 and to monitor data supplied by sewage sludge producers,
34 processors or transporters to ensure compliance with state
35 and federal regulations;

36 (3) That representatives of the division have the ability
37 to enter onto any land application site for the purposes of
38 inspecting and analyzing the effects of sewage sludge
39 application on that site;

40 (4) That no permit for the processing or disposal of
41 sewage sludge will be issued until there is an accurate
42 finding that it has been adequately tested and shown not to
43 contain heavy metals, pathogens, toxins or vectors in
44 excess of regulatory standards;

45 (5) That the director may require a surety bond,
46 deposit or similar instrument in an amount sufficient to
47 cover the costs of future environmental remediation from
48 producers and importers of sewage sludge;

49 (6) That no person or entity be allowed to apply
50 sewage sludge to land in a manner that will result in
51 exceeding the maximum soil concentration for all
52 pollutants, including, but not limited to, arsenic, cadmium,
53 chromium, copper, lead, mercury, molybdenum, nickel,
54 selenium and zinc;

55 (7) That no person be allowed to land apply so much
56 sewage sludge as to exceed the agronomic rate for that
57 land or a rate of fifteen dry tons per acre per year,
58 whichever is less: *Provided*, That up to twenty-five dry
59 tons per acre per year may be applied in the reclamation
60 of surface mine land;

61 (8) That information relating to the disposal,
62 treatment, storage, processing, composting, dumping,
63 placing or land applying of sewage sludge is available to
64 affected communities and other persons who may request
65 the information in conformity with article one, chapter
66 twenty-nine-b of this code;

67 (9) That all sewage sludge processing facilities contain
68 sufficient design specifications to protect ground, surface
69 and potable waters, air quality, existing and potential land-
70 use planning and public health and safety;

71 (10) That regulation of composting facilities varies
72 according to types and quantities of materials handled;

73 (11) That only living or dead plant tissues are used as
74 bulking agents in sewage sludge processing facilities; and

75 (12) That a fee, to be paid by the producer, processor
76 or transporter be levied and imposed on the land
77 application of sewage sludge, to be collected at a per ton
78 rate, sufficient to cover the costs of the sewage sludge
79 management program. Fees collected pursuant to the
80 terms of this subsection shall be deposited in the special
81 revenue fund designated the "water quality management
82 fund" established under the provisions of section ten,
83 article eleven of this chapter. The fee schedule shall vary
84 according to the volume of materials handled and the
85 contaminant level of the sewage sludge and shall be
86 subject to the provisions of article three, chapter twenty-
87 nine-a of this code.

88 (c) For those publicly owned treatment works (POTW)
89 which produce sewage sludge and are regulated by the
90 division pursuant to a water pollution control permit,
91 including a West Virginia national pollutant discharge
92 elimination system (WV/NPDES) permit required under
93 article eleven of this chapter, a sewage sludge processing

94 permit shall be a part of the permit and shall include a
95 sewage sludge management plan approved by the director.
96 Upon approval by the director, POTWs may accept sewage
97 sludge from other POTWs on a cost-sharing or nonprofit
98 basis under its NPDES permit without being considered a
99 commercial solid waste facility.

100 (d) On and after the tenth day of April, one thousand
101 nine hundred ninety-three, any facility seeking to land
102 apply, compost, incinerate or recycle sewage sludge shall
103 first apply for and obtain a permit from the division. No
104 such permit may be issued until the rule provided for in
105 subsection (b) of this section is effective.

106 (e) All sewage sludge placed in, or used in a landfill
107 disposal cell by a solid waste facility shall be subject to the
108 same tipping and other fees levied by this chapter on the
109 disposal of solid waste and shall be included in said
110 facility's total tonnage, subject to the limitations
111 established in this article and the provisions of article four,
112 chapter twenty-two-c of this code: *Provided*, That no land
113 within a solid waste facility but outside a landfill disposal
114 cell, shall accept the permanent application of so much
115 sewage sludge as to exceed the agronomic rate or a rate of
116 fifteen dry tons per acre per year, whichever is less.

117 (f) Sewage sludge shall not be used as daily cover by a
118 landfill.

119 (g) Any solid waste facility currently operating under
120 a permit from the director as a Class A solid waste facility
121 and sewage sludge processing facility may receive, for the
122 purpose of composting, up to a maximum of twelve
123 thousand five hundred tons of sewage sludge per month,
124 as weighed at the time of receipt at the facility. No Class
125 A facility operating a sewage sludge processing facility
126 under this chapter shall, on an annual basis, temporarily or
127 permanently store, retain or stockpile more than one
128 hundred twenty-five thousand cubic yards of sewage
129 sludge or any intermediate or final material or product
130 derived wholly or partially from sewage sludge.

131 (h) Any solid waste facility currently operating under
132 a permit from the director as a Class B solid waste facility
133 and sewage sludge processing facility may receive, for the

134 purpose of composting, up to a maximum of five
135 thousand tons of sewage sludge per month, as weighed at
136 the time of receipt at the facility. No Class B facility
137 operating a sewage sludge processing facility under this
138 chapter shall, on an annual basis, temporarily or
139 permanently store, retain or stockpile more than fifty
140 thousand cubic yards of sewage sludge or any
141 intermediate or final material or product derived wholly or
142 partially from sewage sludge.

143 (i) Any POTW currently operating or holding a
144 WV/NPDES permit to operate a sewage sludge processing
145 facility for the purpose of composting sewage sludge may
146 receive, for the purpose of composting, up to a maximum
147 of five thousand tons of sewage sludge per month, as
148 weighed at the time of receipt at the facility. No POTW
149 operating a sewage sludge processing facility under this
150 chapter shall, on an annual basis, temporarily or
151 permanently store, retain or stockpile more than fifty
152 thousand cubic yards of sewage sludge or any
153 intermediate or final material or product derived wholly or
154 partially from sewage sludge.

155 (j) No person seeking to operate a sewage sludge
156 processing facility, commercial composting facility or
157 noncommercial composting facility may receive, for the
158 purpose of composting, up to a maximum of two
159 thousand tons of sewage sludge per month, as weighed at
160 the time of receipt at the facility. No person operating a
161 sewage processing facility under this chapter shall, on an
162 annual basis, temporarily or permanently store, retain or
163 stockpile more than twenty thousand cubic yards of
164 sewage sludge or any intermediate or final material or
165 product derived wholly or partially from sewage sludge.

166 (k) No sewage sludge processing facility may be
167 located within a forty mile radius of another sewage
168 sludge processing facility.

169 (l) Any facility under a consent agreement with the
170 director or chief of the office of water resources as of the
171 effective date of this article, regarding sewage sludge
172 stored, retained or stockpiled at that facility, shall dispose
173 of all accumulated sewage sludge in accordance with the

174 consent agreement. Such sewage sludge is not subject to
175 the limitations on storage, retention and stockpiling set
176 forth above unless the facility violates the terms and
177 conditions of its consent agreement.

178 (m) No person shall knowingly transport or deliver
179 sewage sludge, or any intermediate or final material or
180 product derived wholly or partially from sewage sludge in
181 violation of this section.

182 (n) Any solid waste facility which composts sewage
183 sludge shall have an annual output of finished or mature
184 compost removed from the facility balanced to the annual
185 input of sewage sludge relative to the nature of the sewage
186 sludge taken in.

187 (o) A person or facility that temporarily or
188 permanently, stores, retains or stockpiles sewage sludge or
189 any intermediate or final material or product derived
190 wholly or partially from sewage sludge, shall maintain
191 accurate operational records on site that are sufficiently
192 detailed to clearly and convincingly demonstrate to the
193 director that sewage sludge is being stored consistent with
194 the provisions of this section. The records shall be made
195 available to the director upon request.

196 (p) The director shall presume that a person or facility
197 which temporarily or permanently, stores, treats, handles,
198 processes, retains or stockpiles sewage sludge or any
199 intermediate or final material or product derived wholly or
200 partially from sewage sludge, contrary to the provisions of
201 this section is subject to all penalties available to the
202 director under this chapter.

203 (q) All persons operating a sewage sludge processing
204 facility shall provide off-site odor monitoring or testing
205 mechanisms approved by the director. The director shall
206 promulgate emergency rules and propose legislative rules
207 for legislative promulgation, rules specifying the nature
208 and type of odor monitoring or testing which will be
209 approved or how to obtain approval for proposed odor
210 monitoring or testing; the areas where the monitoring or
211 testing should occur; the frequency of monitoring or
212 testing which shall be no less than semiannually or as
213 otherwise ordered by the director and any other

214 conditions necessary to effectuate the purposes of this
215 subsection.

**CHAPTER 22C. ENVIRONMENTAL RESOURCES;
BOARDS, AUTHORITIES, COMMISSIONS AND
COMPACTS.**

**ARTICLE 4. COUNTY AND REGIONAL SOLID WASTE AUTHOR-
ITIES.**

§22C-4-1. Legislative findings and purposes.

§22C-4-2. Definitions.

§22C-4-8. Authority to develop litter and solid waste control plan; approval by solid waste management board; development of plan by director; advisory rules.

§22C-4-24. Commercial solid waste facility siting plan; facilities subject to plan; criteria; approval by solid waste management board; effect on facility siting; public hearings; rules.

§22C-4-25. Siting approval for solid waste facilities; effect on facilities with prior approval.

§22C-4-26. Approval of new Class A facilities by solid waste authorities.

§22C-4-27. Approval of conversion from Class B facility to Class A facility.

§22C-4-28. Approval of increase in maximum allowable monthly tonnage of Class A facilities.

§22C-4-1. Legislative findings and purposes.

1 The Legislature finds that the improper and
2 uncontrolled collection, transportation, processing and
3 disposal of domestic and commercial garbage, refuse and
4 other solid wastes in the state of West Virginia results in:
5 (1) A public nuisance and a clear and present danger to
6 the citizens of West Virginia; (2) the degradation of the
7 state's environmental quality including both surface and
8 ground waters which provide essential and irreplaceable
9 sources of domestic and industrial water supplies; (3)
10 provides harborages and breeding places for disease-
11 carrying, injurious insects, rodents and other pests
12 injurious to the public health, safety and welfare; (4)
13 decreases public and private property values and results in
14 the blight and deterioration of the natural beauty of the
15 state; (5) has adverse social and economic effects on the
16 state and its citizens; and (6) results in the waste and
17 squandering of valuable nonrenewable resources
18 contained in such solid wastes which can be recovered

19 through proper recycling and resource-recovery
20 techniques with great social and economic benefits for the
21 state.

22 The Legislature further finds that the proper
23 collection, transportation, processing, recycling and
24 disposal of solid waste is for the general welfare of the
25 citizens of the state and that the lack of proper and
26 effective solid waste collection services and disposal
27 facilities demands that the state of West Virginia and its
28 political subdivisions act promptly to secure such services
29 and facilities in both the public and private sectors.

30 The Legislature further finds that the process of
31 developing rational and sound solid waste plans at the
32 county or regional level is impeded by the proliferation of
33 siting proposals for new solid waste facilities.

34 Therefore, it is the purpose of the Legislature to
35 protect the public health and welfare by providing for a
36 comprehensive program of solid waste collection,
37 processing, recycling and disposal to be implemented by
38 state and local government in cooperation with the private
39 sector. The Legislature intends to accomplish this goal by
40 establishing county and regional solid waste authorities
41 throughout the state to develop and implement litter and
42 solid waste control plans.

43 It is further the purpose of the Legislature to reduce
44 our solid waste management problems and to meet the
45 purposes of this article by requiring county and regional
46 solid waste authorities to establish programs and plans
47 based on an integrated waste management hierarchy. In
48 order of preference, the hierarchy is as follows:

49 (1) *Source reduction.* — This involves minimizing
50 waste production and generation through product design,
51 reduction of toxic constituents of solid waste and similar
52 activities.

53 (2) *Recycling, reuse and materials recovery.* — This
54 involves separating and recovering valuable materials from
55 the waste stream, composting food and yard waste and
56 marketing of recyclables.

57 (3) *Landfilling*. — To the maximum extent possible,
58 this option should be reserved for nonrecyclables and
59 other materials that cannot practically be managed in any
60 other way. This is the lowest priority in the hierarchy and
61 involves the waste management option of last resort.

62 The Legislature further finds that the potential impacts
63 of proposed commercial solid waste facilities may have a
64 deleterious and debilitating impact upon the transportation
65 network, property values, economic growth, environmental
66 quality, other land uses and the public health and welfare
67 in affected communities. The Legislature also finds that
68 the siting of such facilities is not being adequately
69 addressed to protect these compelling interests of counties
70 and local communities.

71 The Legislature further finds that affected citizens and
72 local governments often look to state environmental
73 regulatory agencies to resolve local land-use conflicts
74 engendered by these proposed facilities. The Legislature
75 also finds that such local land-use conflicts are most
76 effectively resolved in a local governmental forum where
77 citizens can most easily participate in the decisionmaking
78 process and the land-use planning values of local
79 communities most effectively identified and incorporated
80 into a comprehensive policy which reflects the values and
81 goals of those communities.

82 Therefore, it is the purpose of the Legislature to
83 enable local citizens to resolve the land-use conflicts which
84 may be created by proposed commercial solid waste
85 facilities through the existing forum of county or regional
86 solid waste authorities.

§22C-4-2. Definitions.

1 Unless the context clearly requires a different
2 meaning, as used in this article, the terms:

3 (a) "Approved solid waste facility" means a
4 commercial solid waste facility or practice which has a
5 valid permit or compliance order under article fifteen,
6 chapter twenty-two of this code.

7 (b) "Commercial solid waste facility" means any solid
8 waste facility which accepts solid waste generated by

9 sources other than the owner or operator of the facility
10 and does not include an approved solid waste facility
11 owned and operated by a person for the sole purpose of
12 disposing of solid wastes created by that person or that
13 person and another person on a cost-sharing or nonprofit
14 basis and does not include land upon which reused or
15 recycled materials are legitimately applied for structural
16 fill, road base, mine reclamation and similar applications.

17 (c) "Commercial recycler" means any person,
18 corporation or business entity whose operation involves
19 the mechanical separation of materials for the purpose of
20 reselling or recycling at least seventy percent by weight of
21 the materials coming into the commercial recycling
22 facility.

23 (d) "Class A facility" means a commercial solid waste
24 facility which handles an aggregate of between ten and
25 thirty thousand tons of solid waste per month. Class A
26 facility includes two or more Class B solid waste landfills
27 owned or operated by the same person in the same county,
28 if the aggregate tons of solid waste handled per month by
29 such landfills exceeds nine thousand nine hundred ninety-
30 nine tons of solid waste per month.

31 (e) "Class B facility" means a commercial solid waste
32 facility which receives or is expected to receive an average
33 daily quantity of mixed solid waste equal to or exceeding
34 one hundred tons each working day, or serves or is
35 expected to serve a population equal to or exceeding forty
36 thousand persons, but which does not receive solid waste
37 exceeding an aggregate of ten thousand tons per month.
38 Class B facilities do not include construction/demolition
39 facilities: *Provided*, That the definition of Class B facility
40 may include such reasonable subdivisions or
41 subclassifications as the director may establish by
42 legislative rule proposed in accordance with the provisions
43 of chapter twenty-nine-a of this code.

44 (f) "Compliance order" means an administrative order
45 issued pursuant to section ten, article fifteen, chapter
46 twenty-two of this code authorizing a solid waste facility to
47 operate without a solid waste permit.

48 (g) "Open dump" means any solid waste disposal
49 which does not have a permit under this article, or is in
50 violation of state law, or where solid waste is disposed in a
51 manner that does not protect the environment.

52 (h) "Person" means any industrial user, public or
53 private corporation, institution, association, firm or
54 company organized or existing under the laws of this or
55 any other state or country; the state of West Virginia;
56 governmental agency, including federal facilities; political
57 subdivision; county commission; municipal corporation;
58 industry; sanitary district; public service district; drainage
59 district; soil conservation district; watershed improvement
60 district; partnership; trust; estate; person or individual;
61 group of persons or individuals acting individually or as a
62 group; or any legal entity whatever.

63 (i) "Sludge" means any solid, semisolid, residue or
64 precipitate, separated from or created by a municipal,
65 commercial or industrial waste treatment plant, water
66 supply treatment plant or air pollution control facility or
67 any other such waste having similar origin.

68 (j) "Solid waste" means any garbage, paper, litter,
69 refuse, cans, bottles, waste processed for the express
70 purpose of incineration, sludge from a waste treatment
71 plant, water supply treatment plant or air pollution control
72 facility, other discarded material, including offensive or
73 unsightly matter, solid, liquid, semisolid or contained
74 liquid or gaseous material resulting from industrial,
75 commercial, mining or community activities but does not
76 include solid or dissolved material in sewage, or solid or
77 dissolved materials in irrigation return flows or industrial
78 discharges which are point sources and have permits under
79 article eleven, chapter twenty-two of this code, or source,
80 special nuclear or byproduct material as defined by the
81 Atomic Energy Act of 1954, as amended, including any
82 nuclear or byproduct material considered by federal
83 standards to be below regulatory concern, or a hazardous
84 waste either identified or listed under article eighteen,
85 chapter twenty-two of this code, or refuse, slurry,
86 overburden or other waste or material resulting from coal-
87 fired electric power or steam generation, the exploration,

88 development, production, storage and recovery of coal, oil
89 and gas, and other mineral resources placed or disposed of
90 at a facility which is regulated under article two, three,
91 four, six, seven, eight, nine or ten, chapter twenty-two or
92 chapter twenty-two-a of this code, so long as such
93 placement or disposal is in conformance with a permit
94 issued pursuant to said chapters. "Solid waste" does not
95 include materials which are recycled by being used or
96 reused in an industrial process to make a product, as
97 effective substitutes for commercial products, or are
98 returned to the original process as a substitute for raw
99 material feedstock.

100 (k) "Solid waste disposal" means the practice of
101 disposing of solid waste including placing, depositing,
102 dumping or throwing or causing to be placed, deposited,
103 dumped or thrown any solid waste.

104 (l) "Solid waste disposal shed" means the geographical
105 area which the solid waste management board designates
106 and files in the state register pursuant to section nine,
107 article three of this chapter.

108 (m) "Solid waste facility" means any system, facility,
109 land, contiguous land, improvements on the land,
110 structures or other appurtenances or methods used for
111 processing, recycling or disposing of solid waste,
112 including landfills, transfer stations, resource-recovery
113 facilities and other such facilities not herein specified.
114 Such facility is situated, for purposes of this article, in the
115 county where the majority of the spatial area of such
116 facility is located.

117 (n) "Energy recovery incinerator" means any solid
118 waste facility at which solid wastes are incinerated with the
119 intention of using the resulting energy for the generation
120 of steam, electricity or any other use not specified herein.

121 (o) "Incineration technologies" means any technology
122 that uses controlled flame combustion to thermally break
123 down solid waste, including refuse-derived fuel, to an ash
124 residue that contains little or no combustible materials,
125 regardless of whether the purpose is processing, disposal,
126 electric or steam generation or any other method by which
127 solid waste is incinerated.

128 (p) "Incinerator" means an enclosed device using
129 controlled flame combustion to thermally break down
130 solid waste, including refuse-derived fuel, to an ash residue
131 that contains little or no combustible materials.

132 (q) "Materials recovery facility" means any solid waste
133 facility at which solid wastes are manually or mechanically
134 shredded or separated so that materials are recovered from
135 the general waste stream for purposes of reuse and
136 recycling.

**§22C-4-8. Authority to develop litter and solid waste control
plan; approval by solid waste management
board; development of plan by director;
advisory rules.**

1 (a) Each county and regional solid waste authority is
2 required to develop a comprehensive litter and solid waste
3 control plan for its geographic area and to submit said
4 plan to the solid waste management board on or before
5 the first day of July, one thousand nine hundred
6 ninety-one. Each authority shall submit a draft litter and
7 solid waste control plan to the solid waste management
8 board by the thirty-first day of March, one thousand nine
9 hundred ninety-one. The comments received by the
10 county or regional solid waste authority at public hearings,
11 two of which are required, shall be considered in
12 developing the final plan.

13 (b) Each litter and solid waste control plan shall
14 include provisions for:

15 (1) An assessment of litter and solid waste problems in
16 the county;

17 (2) The establishment of solid waste collection and
18 disposal services for all county residents at their
19 residences, where practicable, or the use of refuse
20 collection stations at disposal access points in areas where
21 residential collection is not practicable. In developing
22 such collection services, primacy shall be given to private
23 collection services currently operating with a certificate of
24 convenience and necessity from the motor carrier division
25 of the public service commission;

26 (3) The evaluation of the feasibility of requiring or
27 encouraging the separation of residential or commercial
28 solid waste at its source prior to collection for the purpose
29 of facilitating the efficient and effective recycling of such
30 wastes and the reduction of those wastes which must be
31 disposed of in landfills or by other nonrecycling means;

32 (4) The establishment of an appropriate mandatory
33 garbage disposal program which shall include methods
34 whereby residents must prove either: (i) Payment of
35 garbage collection fee; or (ii) proper disposal at an
36 approved solid waste facility or in an otherwise lawful
37 manner;

38 (5) A recommendation for the siting of one or more
39 properly permitted public or private solid waste facilities,
40 whether existing or proposed, to serve the solid waste
41 needs of the county or the region, as the case may be,
42 consistent with the comprehensive county plan prepared
43 by the county planning commission and the anticipated
44 volumes of solid waste originating within or without the
45 county or region which are likely to be disposed of within
46 the county or region;

47 (6) A timetable for the implementation of said plan;

48 (7) A program for the cleanup, reclamation and
49 stabilization of any open and unpermitted dumps;

50 (8) The coordination of the plan with the related solid
51 waste collection and disposal services of municipalities
52 and, if applicable, other counties;

53 (9) A program to enlist the voluntary assistance of
54 private industry and civic groups in volunteer cleanup
55 efforts to the maximum practicable extent;

56 (10) Innovative incentives to promote recycling
57 efforts;

58 (11) A program to identify the anticipated quantities
59 of solid wastes which are disposed of, but are not
60 generated by sources situated, within the boundaries of the
61 county or the region established pursuant to this section;

62 (12) Coordination with the division of highways and
63 other local, state and federal agencies in the control and

64 removal of litter and the cleanup of open and unpermitted
65 dumps;

66 (13) Establishment of a program to encourage and
67 utilize those individuals incarcerated in the regional jail
68 and those adults and juveniles sentenced to probation for
69 the purposes of litter pickup; and

70 (14) Provision for the safe and sanitary disposal of all
71 refuse from commercial and industrial sources within the
72 county or region, as the case may be, including refuse
73 from commercial and industrial sources, but excluding
74 refuse from sources owned or operated by the state or
75 federal governments.

76 (c) The solid waste management board shall establish
77 advisory rules to guide and assist the counties in the
78 development of the plans required by this section.

79 (d) Each plan prepared under this section is subject to
80 approval by the solid waste management board. Any plan
81 rejected by the solid waste management board shall be
82 returned to the regional or county solid waste authority
83 with a statement of the insufficiencies in such plan. The
84 authority shall revise the plan to eliminate the
85 insufficiencies and submit it to the director within ninety
86 days.

87 (e) The solid waste management board shall develop a
88 litter and solid waste control plan for any county or
89 regional solid waste authority which fails to submit such a
90 plan on or before the first day of July, one thousand nine
91 hundred ninety-two: *Provided*, That in preparing such
92 plans the director may determine whether to prepare a
93 regional or county based plan for those counties which
94 fail to complete such a plan.

**§22C-4-24. Commercial solid waste facility siting plan;
facilities subject to plan; criteria; approval by
solid waste management board; effect on
facility siting; public hearings; rules.**

1 (a) On or before the first day of July, one thousand
2 nine hundred ninety-one, each county or regional solid
3 waste authority shall prepare and complete a commercial
4 solid waste facilities siting plan for the county or counties

5 within its jurisdiction: *Provided*, That the solid waste
6 management board may authorize any reasonable
7 extension of up to one year for the completion of the said
8 siting plan by any county or regional solid waste
9 authority. The siting plan shall identify zones within each
10 county where siting of the following facilities is authorized
11 or prohibited:

12 (1) Commercial solid waste facilities which may accept
13 an aggregate of more than ten thousand tons of solid
14 waste per month.

15 (2) Commercial solid waste facilities which shall accept
16 only less than an aggregate of ten thousand tons of solid
17 waste per month.

18 (3) Commercial solid waste transfer stations or
19 commercial facilities for the processing or recycling of
20 solid waste.

21 The siting plan shall include an explanation of the
22 rationale for the zones established therein based on the
23 criteria established in subsection (b) of this section.

24 (b) The county or regional solid waste authority shall
25 develop the siting plan authorized by this section based
26 upon the consideration of one or more of the following
27 criteria: The efficient disposal of solid waste, including,
28 but not limited to, all solid waste which is disposed of
29 within the county or region regardless of its origin,
30 economic development, transportation infrastructure,
31 property values, groundwater and surface waters,
32 geological and hydrological conditions, aesthetic and
33 environmental quality, historic and cultural resources, the
34 present or potential land uses for residential, commercial,
35 recreational, environmental conservation or industrial
36 purposes and the public health, welfare and convenience.
37 The initial plan shall be developed based upon
38 information readily available. Due to the limited funds
39 and time available, the initial plan need not be an
40 exhaustive and technically detailed analysis of the criteria
41 set forth above. Unless the information readily available
42 clearly establishes that an area is suitable for the location
43 of a commercial solid waste facility or not suitable for
44 such a facility, the area shall be designated as an area in

45 which the location of a commercial solid waste facility is
46 tentatively prohibited. Any person making an application
47 for the redesignation of a tentatively prohibited area shall
48 make whatever examination is necessary and submit
49 specific detailed information in order to meet the
50 provision established in subsection (g) of this section.

51 (c) Prior to completion of the siting plan, the county
52 or regional solid waste authority shall complete a draft
53 siting plan and hold at least one public hearing in each
54 county encompassed in said draft siting plan for the
55 purpose of receiving public comment thereon. The
56 authority shall provide notice of such public hearings and
57 encourage and solicit other public participation in the
58 preparation of the siting plan as required by the rules
59 promulgated by the solid waste management board for
60 this purpose. Upon completion of the siting plan, the
61 county or regional solid waste authority shall file said plan
62 with the solid waste management board.

63 (d) The siting plan takes effect upon approval by the
64 solid waste management board pursuant to the rules
65 promulgated for this purpose. Upon approval of said
66 plan, the solid waste management board shall transmit a
67 copy thereof to the director of the division of
68 environmental protection and to the clerk of the county
69 commission of the county encompassed by said plan
70 which county clerk shall file the plan in an appropriate
71 manner and shall make the plan available for inspection
72 by the public.

73 (e) Effective upon approval of the siting plan by the
74 solid waste management board, it is unlawful for any
75 person to establish, construct, install or operate a
76 commercial solid waste facility at a site not authorized by
77 the siting plan: *Provided*, That an existing commercial
78 solid waste facility which, on the eighth day of April, one
79 thousand nine hundred eighty-nine, held a valid solid
80 waste permit or compliance order issued by the division of
81 natural resources pursuant to the former provisions of
82 article five-f, chapter twenty of this code may continue to
83 operate but may not expand the spatial land area of the
84 said facility beyond that authorized by said solid waste

85 permit or compliance order, and may not increase the
86 aggregate monthly solid waste capacity in excess of ten
87 thousand tons monthly unless such a facility is authorized
88 by the siting plan.

89 (f) The county or regional solid waste authority may,
90 from time to time, amend the siting plan in a manner
91 consistent with the requirements of this section for
92 completing the initial siting plan and the rules
93 promulgated by the solid waste management board for the
94 purpose of such amendments.

95 (g) Notwithstanding any provision of this code to the
96 contrary, upon application from a person who has filed a
97 pre-siting notice pursuant to section thirteen, article
98 fifteen, chapter twenty-two of this code, the county or
99 regional solid waste authority or county commission, as
100 appropriate, may amend the siting plan by redesignating a
101 zone that has been designated as an area where a
102 commercial solid waste facility is tentatively prohibited to
103 an area where one is authorized. In such case, the person
104 seeking the change has the burden to affirmatively and
105 clearly demonstrate, based on the criteria set forth in
106 subsection (b) of this section, that a solid waste facility
107 could be appropriately operated in the public interest at
108 such location. The solid waste management board shall
109 provide, within available resources, technical support to a
110 county or regional solid waste authority, or county
111 commission as appropriate, when requested by such
112 authority or commission to assist it in reviewing an
113 application for any such amendment.

114 (h) The solid waste management board shall prepare
115 and adopt a siting plan for any county or regional solid
116 waste authority which does not complete and file with the
117 said state authority such a siting plan in compliance with
118 the provisions of this section and the rules promulgated
119 thereunder. Any siting plan adopted by the solid waste
120 management board pursuant to this subsection shall
121 comply with the provisions of this section, and the rules
122 promulgated thereunder, and has the same effect as a
123 siting plan prepared by a county or regional solid waste

124 authority and approved by the solid waste management
125 board.

126 (i) The siting plan adopted pursuant to this section
127 shall incorporate the provisions of the litter and solid waste
128 control plan, as approved by the solid waste management
129 board pursuant to section eight of this article, regarding
130 collection and disposal of solid waste and the
131 requirements, if any, for additional commercial solid waste
132 facility capacity.

133 (j) The solid waste management board is authorized
134 and directed to promulgate rules specifying the public
135 participation process, content, format, amendment, review
136 and approval of siting plans for the purposes of this
137 section.

138 (k) To the extent that current solid waste plans
139 approved by the board are approved as provided for in
140 this section, and in place on the effective date of this
141 article, provisions which limit approval for new or
142 expanded solid waste facilities based solely on local solid
143 waste disposal needs without consideration for national
144 waste disposal needs are disallowed as being in conflict
145 with the public policy of this article: *Provided*, That all
146 other portions of the solid waste management plans as
147 established in the litter and solid waste control plan as
148 provided for in this section and the comprehensive
149 recycling plan as provided for in section four, article
150 eleven, chapter twenty of the code, are continued in full
151 force and effect to the extent that those provisions do not
152 conflict with the provisions of this article.

**§22C-4-25. Siting approval for solid waste facilities; effect on
facilities with prior approval.**

1 (a) It is the intent of the Legislature that all
2 commercial solid waste facilities operating in this state
3 must receive site approval at the local level, except for
4 recycling facilities, as defined in section two, article fifteen,
5 chapter twenty-two of this code, that are specifically
6 exempted by section twelve, article eleven, chapter twenty
7 of this code. Notwithstanding said intent, facilities which
8 obtained such approval from either a county or regional
9 solid waste authority, or from a county commission, under

10 any prior enactment of this code, and facilities which were
11 otherwise exempted from local site approval under any
12 prior enactment of this code, shall be deemed to have
13 satisfied such requirement. All other facilities, including
14 facilities which received such local approval but which
15 seek to expand spatial area or to convert from a Class B
16 facility to a Class A facility, shall obtain such approval
17 only in the manner specified in sections twenty-six,
18 twenty-seven and twenty-eight of this article.

19 (b) In considering whether to issue or deny the
20 certificate of site approval as specified in sections
21 twenty-six, twenty-seven and twenty-eight of this article,
22 the county or regional solid waste authority shall base its
23 determination upon the following criteria: The efficient
24 disposal of solid waste anticipated to be received or
25 processed at the facility, including solid waste generated
26 within the county or region, economic development,
27 transportation infrastructure, property values, groundwater
28 and surface waters, geological and hydrological
29 conditions, aesthetic and environmental quality, historic or
30 cultural resources, the present or potential land uses for
31 residential, commercial, recreational, industrial or
32 environmental conservation purposes and the public
33 health, welfare and convenience.

34 (c) The county or regional solid waste authority shall
35 complete findings of fact and conclusions relating to the
36 criteria authorized in subsection (b) hereof which support
37 its decision to issue or deny a certificate of site approval.

38 (d) The siting approval requirements for composting
39 facilities, materials recovery facilities and mixed waste
40 processing facilities shall be the same as those for other
41 solid waste facilities.

**§22C-4-26. Approval of new Class A facilities by solid waste
authorities.**

1 Except as provided below with respect to Class B
2 facilities, from and after the tenth day of March, one
3 thousand nine hundred ninety, in order to obtain approval
4 to operate a new Class A facility, an applicant shall:

5 (1) File an application for a certificate of need with,
6 and obtain approval from, the public service commission
7 in the manner specified in section one-c, article two,
8 chapter twenty-four of this code and in section thirteen,
9 article fifteen, chapter twenty-two of this code;

10 (2) File an application for a certificate of site approval
11 with, and obtain approval from, the county or regional
12 solid waste authority for the county or counties in which
13 the facility is proposed. Such application shall be
14 submitted on forms prescribed by the solid waste
15 management board. The county or regional solid waste
16 authority shall act on such application and either grant or
17 deny it within thirty days after the application is
18 determined by the county or regional solid waste authority
19 to be filed in a completed manner.

**§22C-4-27. Approval of conversion from Class B facility to
Class A facility.**

1 From and after the eighteenth day of October, one
2 thousand nine hundred ninety-one, in order to obtain
3 approval to operate as a Class A facility at a site previously
4 permitted to operate as a Class B facility, an applicant
5 shall:

6 (1) File an application for a certificate of need with,
7 and obtain approval from, the public service commission
8 in the manner specified in section one-c, article two,
9 chapter twenty-four of this code, and in section thirteen,
10 article fifteen, chapter twenty-two of this code; and

11 (2) File an application for a certificate of site approval
12 with, and obtain approval from, the county or regional
13 solid waste authority for the county or counties in which
14 the facility is located or proposed. Such application shall
15 be submitted on forms prescribed by the solid waste
16 management board. The county or regional solid waste
17 authority shall act on such application and either grant or
18 deny it within thirty days after the application is
19 determined by the county or regional solid waste authority
20 to be filed in a completed manner.

**§22C-4-28. Approval of increase in maximum allowable
monthly tonnage of Class A facilities.**

1 From and after the eighteenth day of October, one
2 thousand nine hundred ninety-one, in order to increase
3 the maximum allowable monthly tonnage handled at a
4 Class A facility by an aggregate amount of more than ten
5 percent of the facility's permit tonnage limitation within a
6 two-year period, the permittee shall:

7 (1) File an application for approval with, and obtain
8 approval from, the county or regional solid waste
9 authority for the county or counties in which the facility is
10 located. Such application shall be a modification of the
11 Class A facility's certificate of site approval. The county
12 or regional solid waste authority shall act upon such
13 application and either grant or deny it within thirty days
14 after the application is determined by the county or
15 regional solid waste authority to be filed in a completed
16 manner; and

17 (2) File an application for approval with, and obtain
18 approval from, the public service commission to modify
19 the certificate of need in the manner set forth in section
20 one-c, article two, chapter twenty-four of this code.

ARTICLE 4A. LOCAL PARTICIPATION; REFERENDUM.

§22C-4A-1. Local participation, legislative findings and purposes;
referendum.

§22C-4A-2. Approval of new Class A facility.

§22C-4A-3. Referendum for approval of conversion of a Class B facility to a
Class A facility.

§22C-4A-4. Approval of increase in maximum allowable monthly tonnage
of Class A facilities.

§22C-4A-1. Local participation, legislative findings and purposes; referendum.

1 (a) The Legislature finds that the potential impacts of
2 commercial solid waste disposal facilities have a
3 deleterious and debilitating effect upon the transportation
4 network, property values, economic growth, environmental
5 quality, other land uses, and the public health and welfare.
6 These impacts are borne predominantly by the local
7 residents in the communities where the facilities are
8 located. The Legislature also recognizes that economic
9 benefits exist for having a solid waste facility, including

10 new jobs in the local community and increased tax and fee
11 revenues for the state. The largest of facilities authorized
12 to operate in West Virginia, Class A facilities, receive up to
13 thirty thousand tons of solid waste per month. Class A
14 facilities inevitably cause the most severe impacts to the
15 local area. The Legislature further finds that Class A
16 facilities cause significant impact on the local community
17 above and beyond those of smaller landfills, that this
18 impact requires the local community be afforded the
19 opportunity to participate in the decision of locating a
20 landfill of this size in their community. Further, local
21 citizens need governmental entities to assure and verify
22 that the Class A facility will be developed and operated in
23 a manner that complies with all laws, rules and regulations
24 which regulate landfills, and that the local infrastructure
25 and environment are appropriately suited for a Class A
26 facility. As a result, the Legislature finds that a
27 mechanism must be in place to allow for the local
28 community to be a significant participant in the Class A
29 facility siting and expansion decision-making process.

30 (b) Therefore, it is the purpose of the Legislature to
31 allow the local decision for location of new Class A
32 landfills by county referendum, and further that a petition
33 process be established to allow demand for a county
34 referendum for expansion of an existing Class A landfill
35 or redesignation of a Class B landfill to Class A.

§22C-4A-2. Approval of new Class A facility.

1 (a) The purpose of the mandatory referendum for
2 approval of new Class A facilities is to verify for the local
3 community that the local infrastructure and environment
4 are appropriate for a new Class A facility and to assure
5 that the local community accepts the associated benefits
6 and detriments of having a new Class A facility located in
7 their county.

8 (b) Following receipt of a certificate of need from the
9 public service commission as required by section one-c,
10 article two, chapter twenty-four of this code, and local
11 solid waste approval as required in section twenty-six,
12 article four of this chapter for a new Class A facility, the
13 county commission shall cause a referendum to be placed

14 on the ballot not less than fifty-six days before the next
15 primary, general or other countywide election:

16 (1) Such referendum is to determine whether it is the
17 will of the voters of the county that a new Class A facility
18 be constructed. Any election at which such question of
19 locating a solid waste facility is voted upon shall be held at
20 the voting precincts established for holding primary or
21 general elections. All of the provisions of the general
22 election laws, when not in conflict with the provisions of
23 this article, apply to voting and elections hereunder,
24 insofar as practicable.

25 (2) The ballot, or the ballot labels where voting
26 machines are used, shall have printed thereon substantially
27 the following:

28 "The West Virginia Legislature has found that the
29 location of a Class A solid waste facility has impact upon
30 the county in which it will be located, and further that
31 local citizens should be given the opportunity to
32 participate in the decision of locating a new Class A
33 facility in their community. A Class A facility is
34 authorized to receive between ten and thirty thousand tons
35 of solid waste per month.

36 The _____ county commission finds the
37 following:

38 I. The _____ (name of
39 applicant) has obtained site approval for a Class A
40 commercial facility from the _____ (name
41 of the county or regional solid waste authority). The
42 authority has determined that the proposed landfill meets
43 all local siting plan requirements. The local siting plan
44 evaluates local environmental conditions and other factors
45 and authorizes commercial landfills in areas of a county
46 where a commercial landfill can be appropriately located.

47 II. The West Virginia public service commission has
48 issued a certificate of need, and has approved the
49 operation of the Class A landfill. The public service
50 commission has determined that the landfill complies with
51 the state solid waste management plan and based on the
52 anticipated volume of garbage expected to be received at

53 the landfill, that the proposal is consistent with public
54 convenience and necessity.

55 Please vote whether to approve construction of the
56 facility by responding to the following question:

57 Shall the _____ commercial solid waste facility
58 located within _____ County, be permitted to handle
59 between ten and thirty thousand tons of solid waste per
60 month?

61 For the facility

62 Against the facility

63 (Place a cross mark in the square opposite your
64 choice.)"

65 (3) If a majority of the legal votes cast upon the
66 question is against the facility, the division of
67 environmental protection shall not proceed any further
68 with the application. If a majority of the legal votes cast
69 upon the question be for the facility, then the application
70 process as set forth in this article and article fifteen,
71 chapter twenty-two of this code may proceed: *Provided,*
72 That such vote is not binding on nor does it require the
73 division of environmental protection to issue the permit.
74 If the majority of the legal votes cast is against the
75 question, the question may be submitted to a vote at any
76 subsequent election in the manner herein specified:
77 *Provided, however,* That the question may not be
78 resubmitted to a vote until two years after the date of the
79 previous referendum.

**§22C-4A-3. Referendum for approval of conversion of a
Class B facility to a Class A facility.**

1 (a) The purpose of the petition and referendum for
2 approval of conversions of Class B facilities to Class A
3 facilities is to allow the local community an opportunity to
4 participate in the decision of whether the local
5 infrastructure and environment are appropriate for
6 expansion of a Class B facility to a Class A facility, and to
7 assure that the local community accepts the associated
8 benefits and detriments of having a Class A facility located
9 in their county.

10 (b) Within twenty-one days following receipt of a
11 certificate of need from the public service commission as
12 required by section one-c, article two, chapter twenty-four
13 of this code, and local solid waste authority approval as
14 required in section twenty-six, article four of this chapter,
15 the county commission shall complete publication of a
16 Class II legal advertisement in compliance with the
17 provisions of article three, chapter fifty-nine of this code,
18 in the qualified newspaper of general circulation in the
19 county wherein the solid waste facility is located.
20 Registered voters residing in the county may petition the
21 county commission to place the issue of whether a Class B
22 facility be expanded to a Class A facility be placed on the
23 ballot at the next primary, general or other countywide
24 election held not less than one hundred days after the
25 deadline for filing the petition. The petition shall be in
26 writing, in the form prescribed by the secretary of state,
27 and shall include the printed name, residence address and
28 date of birth of each person whose signature appears on
29 the petition. The petition shall be filed with the county
30 commission not less than sixty days after the last date of
31 publication of the notice provided in this section. Upon
32 receipt of completed petition forms, the county
33 commission shall immediately forward those forms to the
34 clerk of the county commission for verification of the
35 signatures and the voter registration of the persons named
36 on the petition. If a primary, general or other countywide
37 election is scheduled not more than one hundred twenty
38 days and not less than one hundred days following the
39 deadline for filing the petitions, the clerk of the county
40 commission shall complete the verification of the
41 signatures within thirty days and shall report the number
42 of valid signatures to the county commission. In all other
43 cases, the clerk of the county commission shall complete
44 verification in a timely manner. Upon verification of the
45 signatures of registered voters residing in the county equal
46 to not less than fifteen percent of the number of votes cast
47 within the county for governor at the preceding
48 gubernatorial election, and not less than seventy days
49 before the election, the county commission shall order a
50 referendum be placed upon the ballot:

51 (1) Such referendum is to determine whether it is the
52 will of the voters of the county that the Class B facility be
53 converted to a Class A facility. Any election at which such
54 question of locating a solid waste facility is voted upon
55 shall be held at the voting precincts established for
56 holding primary or general elections. All of the
57 provisions of the general election laws, when not in
58 conflict with the provisions of this article, apply to voting
59 and elections hereunder, insofar as practicable. The
60 secretary of state shall prescribe the form of the petition
61 which shall include the printed name, address and date of
62 birth of each person whose signature appears on the
63 petition. Should the petition fail to meet the requirements
64 set forth above, the application process as set forth in this
65 article and article fifteen, chapter twenty-two of this code,
66 may proceed.

67 (2) The ballot, or the ballot labels where voting
68 machines are used, shall have printed thereon substantially
69 the following:

70 "The West Virginia Legislature finds that expansion of
71 a Class B solid waste facility to a Class A solid waste
72 facility has impact to the county in which it will be located,
73 and further that local citizens should be afforded the
74 opportunity to participate in the decision of locating a
75 Class A facility in their community. A Class A facility is
76 authorized to receive between ten and thirty thousand tons
77 of solid waste per month. Fifteen percent of the registered
78 voters in _____ county have signed a
79 petition to cause a referendum to determine the following
80 question:

81 The _____ county commission finds the
82 following:

83 I. The _____(name of applicant) has
84 obtained site approval for a Class A commercial facility
85 from the _____(name of the county or
86 regional solid waste authority). The authority has
87 determined that the proposed landfill meets all local siting
88 plan requirements. The local siting plan evaluates local
89 environmental conditions and other factors and authorizes

90 commercial landfills where a commercial landfill can be
91 appropriately located.

92 II. The West Virginia public service commission has
93 issued a certificate of need, and has approved the
94 operation of the Class A landfill. The public service
95 commission has determined that the landfill complies with
96 the state solid waste management plan and that based on
97 the anticipated volume of garbage expected to be received
98 at the landfill, that the proposal is consistent with public
99 convenience and necessity.

100 Please vote whether to approve construction of the
101 facility by responding to the following question:

102 Shall the _____ solid waste
103 facility, located within _____
104 County, West Virginia, be permitted to handle between ten
105 and thirty thousand tons of solid waste per month?

106 For conversion of the facility

107 Against conversion of the facility

108 (Place a cross mark in the square opposite your
109 choice.)"

110 (3) If a majority of the legal votes cast upon the
111 question is against the facility, then the division of
112 environmental protection shall not proceed any further
113 with the application. If a majority of the legal votes cast
114 upon the question be for the facility, then the application
115 process as set forth in this article and article fifteen,
116 chapter twenty-two of this code may proceed: *Provided*,
117 That such vote is not binding on nor does it require the
118 division of environmental protection to modify the permit.
119 If the majority of the legal votes cast is against the
120 question, the question may be submitted to a vote at any
121 subsequent election in the manner herein specified:
122 *Provided, however*, That the question may not be
123 resubmitted to a vote until two years after the date of the
124 previous referendum.

**§22C-4A-4. Approval of increase in maximum allowable
monthly tonnage of Class A facilities.**

1 (a) The purpose of the petition and referendum for
2 approval of modification of Class A facilities is to allow
3 the local community an opportunity to participate in the
4 decision of whether the local infrastructure and
5 environment are appropriately suited for expansion of the
6 Class A facility, and to assure that the local community
7 accepts the associated benefits and deterrents of having a
8 Class A facility located in their county.

9 (b) The referendum provisions contained herein must
10 be met in order to increase the maximum allowable
11 monthly tonnage handled at a Class A facility by an
12 aggregate amount of more than ten percent of the
13 facility's permit tonnage limitation within a two-year
14 period.

15 (c) Within twenty-one days following receipt of a
16 certificate of need from the public service commission as
17 required by section one-c, article two, chapter twenty-four
18 of this code, and local solid waste approval as required in
19 section twenty-six, article four of this chapter, the county
20 commission shall complete publication of a Class II legal
21 advertisement in compliance with the provisions of article
22 three, chapter fifty-nine of this code, in the qualified
23 newspaper of general circulation in the county wherein the
24 solid waste facility is located. Registered voters residing in
25 the county may petition the county commission to place
26 the issue of whether a Class A facility be permitted to
27 increase the maximum tonnage allowed to be received at
28 the facility be placed on the ballot at the next primary,
29 general or other countywide election held not less than
30 one hundred days after the deadline for filing the petition.
31 The petition shall be in writing, in the form prescribed by
32 the secretary of state, and shall include the printed name,
33 residence address and date of birth of each person whose
34 signature appears on the petition. The petition shall be
35 filed with the county commission not less than sixty days
36 after the last date of publication of the notice provided in
37 this section. Upon receipt of completed petition forms,
38 the county commission shall immediately forward those
39 forms to the clerk of the county commission for
40 verification of the signatures and the voter registration of
41 the persons named on the petition. If a primary, general

42 or other countywide election is scheduled not more than
43 one hundred twenty days and not less than one hundred
44 days following the deadline for filing the petitions, the
45 clerk of the county commission shall complete the
46 verification of the signatures within thirty days and shall
47 report the number of valid signatures to the county
48 commission. In all other cases, the clerk of the county
49 commission shall complete verification in a timely
50 manner. Upon verification of the signatures of registered
51 voters residing in the county equal to not less than fifteen
52 percent of the number of votes cast within the county for
53 governor at the preceding gubernatorial election, and not
54 less than seventy days before the election, the county
55 commission shall order a referendum be placed upon the
56 ballot:

57 (1) Such referendum is to determine whether it is the
58 will of the voters of the county that the Class A facility
59 applicant be permitted to increase the maximum tonnage
60 allowed to be received at the facility not to exceed thirty
61 thousand tons per month. Any election at which such
62 question is voted upon shall be held at the voting precincts
63 established for holding primary or general elections. All
64 of the provisions of the general election laws, when not in
65 conflict with the provisions of this article, apply to voting
66 and elections hereunder, insofar as practicable. The
67 secretary of state shall prescribe the form of the petition
68 which shall include the printed name, address and date of
69 birth of each person whose signature appears on the
70 petition. Should the petition fail to meet the requirements
71 set forth above, the application process as set forth in this
72 article and article fifteen, chapter twenty-two of this code,
73 may proceed.

74 (2) The ballot, or the ballot labels where voting
75 machines are used, shall have printed thereon substantially
76 the following:

77 "The West Virginia Legislature finds that expansion of
78 a Class A solid waste facility has significant impact to the
79 community in which it will be located, and further that
80 local citizens should be afforded the opportunity to
81 participate in the decision of locating a Class A facility in

82 their community. The _____ facility is currently
83 authorized to receive _____ thousand tons of solid
84 waste per month. The _____ facility is proposing
85 to be authorized to receive _____ thousand tons of
86 solid waste per month. Fifteen percent of the registered
87 voters in _____ county have signed a
88 petition to cause a referendum to determine the following
89 question:

90 The _____ county commission finds the
91 following:

92 I. The _____ (name of applicant) has
93 obtained site approval to expand a Class A commercial
94 facility from the _____ (name of the
95 county or regional solid waste authority). The authority
96 has determined that the proposed landfill meets all local
97 siting plan requirements. The local siting plan evaluates
98 local environmental conditions and other factors and
99 authorizes commercial landfills where a commercial
100 landfill can be appropriately located.

101 II. The West Virginia public service commission has
102 issued a certificate of need, and has approved the
103 expansion of the Class A landfill. The public service
104 commission has determined that the landfill complies with
105 the state solid waste management plan and that based on
106 the anticipated volume of garbage expected to be received
107 at the landfill, that the proposal is consistent with public
108 convenience and necessity.

109 Please vote whether to approve construction of the
110 facility by responding to the following question:

111 Shall the _____ solid waste facility located
112 within _____ County, West Virginia, be allowed to
113 handle a maximum of _____ solid waste per
114 month?

115 For the increase in maximum allowable tonnage

116 Against the increase in maximum allowable tonnage

117 (Place a cross mark in the square opposite your
1 8 choice "

119 (3) If a majority of the legal votes cast upon the
120 question is against allowing the Class A facility to increase
121 the maximum tonnage of solid waste allowed to be
122 received per month at the facility, then the division of
123 environmental protection shall not proceed to modify the
124 Class A facility permit to increase the maximum allowable
125 tonnage. If a majority of the legal votes cast upon the
126 question is for allowing the Class A facility to increase the
127 maximum tonnage of solid waste allowed to be received
128 per month at such facility, then the application process as
129 set forth in this article and article fifteen, chapter
130 twenty-two of this code may proceed: *Provided*, That
131 such vote is not binding on nor does it require the county
132 or regional solid waste authority or the division of
133 environmental protection to approve an application to
134 modify the permit. If the majority of the legal votes cast
135 is against the question, that does not prevent the question
136 from again being submitted to a vote at any subsequent
137 election in the manner provided for in this section:
138 *Provided, however*, That an applicant may not resubmit
139 the question for a vote prior to a period of two years from
140 the date of the previous referendum herein described.

CHAPTER 24. PUBLIC SERVICE COMMISSION.

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

§24-2-1c. Certificates of need required for solid waste facilities.

1 (a) Any person applying for a permit to construct,
2 operate or expand a commercial solid waste facility as
3 defined in section two, article fifteen, chapter twenty-two
4 of this code, or any person seeking a major permit
5 modification for a commercial solid waste facility from
6 the division of environmental protection first shall obtain a
7 certificate of need from the public service commission.
8 Application for such certificate shall be submitted on
9 forms prescribed by the commission. The commission
10 shall grant or deny a certificate of need, in accordance
11 with provisions set forth in this chapter. If the commission
12 grants a certificate of need, the commission may include
13 conditions not inconsistent with the criteria set forth in
14 section.

15 (b) For purposes of subsection (a) of this section, a
16 complete application consists of the following and
17 notwithstanding any other provision of this chapter to the
18 contrary, such information contained in the application
19 provided by the applicant is not confidential and may be
20 disclosed pursuant to the provisions of chapter
21 twenty-nine-b of this code:

22 (1) The names of the owners or operators of the
23 facility including any officer, director, manager, person
24 owning five percent or more interest or other person
25 conducting or managing the affairs of the applicant as to
26 the proposed facility;

27 (2) The location of the facility;

28 (3) A description of the geographic area to be served
29 by the facility;

30 (4) The anticipated total number of citizens to be
31 served by the facility;

32 (5) The average monthly tonnage of solid waste
33 anticipated to be disposed of by the facility;

34 (6) The total monthly tonnage of solid waste for which
35 the facility is seeking a permit from the division of
36 environmental protection;

37 (7) The anticipated life span and closure date of the
38 facility; and

39 (8) Any other information requested on the forms
40 prescribed by the commission.

41 (c) In considering whether to grant a certificate of
42 need the commission shall consider, but is not limited to
43 considering, the following factors:

44 (1) The total tonnage of solid waste, regardless of
45 geographic origin, that is likely to be delivered each
46 month to the facility if the certificate is granted;

47 (2) The current capacity and life-span of other solid
48 waste facilities that are likely to compete with the
49 applicant's facility;

50 (3) The life span of the proposed or existing facility;

51 (4) The cost of transporting solid waste from the
52 points of generation to the disposal facility;

53 (5) The impact of the proposed or existing facility on
54 needs and criteria contained in the statewide solid waste
55 management plan; and

56 (6) Any other criteria which the commission regularly
57 utilizes in making such determinations.

58 (d) The public service commission shall deny a
59 certificate of need upon one or more of the following
60 findings:

61 (1) The proposed capacity is unreasonable in light of
62 the total tonnage of solid waste that is likely to be
63 delivered each month to the facility if the certificate is
64 granted;

65 (2) The location of the facility is inconsistent with the
66 statewide solid waste management plan;

67 (3) The location of the facility is inconsistent with any
68 applicable county or regional solid waste management
69 plan;

70 (4) The proposed facility is not reasonably cost
71 effective in light of alternative disposal sites;

72 (5) The proposal, taken as a whole, is inconsistent with
73 the needs and criteria contained in the statewide solid
74 waste management plan; or

75 (6) The proposal, taken as a whole, is inconsistent with
76 the public convenience and necessity.

77 (e) An application for a certificate of need shall be
78 submitted prior to submitting an application for certificate
79 of site approval in accordance with section twenty-four,
80 article four, chapter twenty-two-c of this code. Upon the
81 decision of the commission to grant or deny a certificate
82 of need, the commission shall immediately notify the solid
83 waste management board and the division of
84 environmental protection.

85 (f) Any party aggrieved by a decision of the
86 commission granting or denying a certificate of need may
87 obtain judicial review thereof in the same manner
88 provided in section one, article five of this chapter.

89 (g) No person may sell, lease or transfer a certificate of
90 need without first obtaining the consent and approval of
91 the commission pursuant to the provisions of section
92 twelve, article two of this chapter.

93 (h) The commission shall promulgate rules relating to
94 the types of commercial solid waste facility modification
95 or construction that require certificates of need.

CHAPTER 255

(S. B. 600—By Senators Oliverio, Ball, Bowman, Dittmar, Hunter,
Kessler, Ross, Schoonover, Snyder, White, Deem and Scott)

[Passed March 14, 1998; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections ten and eleven, article sixteen, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating generally to solid waste landfill closure assistance; providing for application for closure assistance; and allowing certain landfills to apply for assistance.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 16. SOLID WASTE LANDFILL CLOSURE ASSISTANCE PROGRAM.

§22-16-10. Limitation on assistance.

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

§22-16-10. Limitation on assistance.

1 The director may provide closure assistance only to
2 permittees who meet the following requirements:

3 (1) The permittee of a landfill that does not have a
4 liner and ceases accepting solid waste on or before the
5 thirtieth day of November, one thousand nine hundred
6 ninety-one, except for those landfills allowed to accept
7 solid waste pursuant to the provisions of section seventeen,
8 article fifteen of this chapter and ceases accepting solid
9 waste on or before the extension deadline as determined
10 by the director; or the permittee of a landfill that has only
11 a single liner and ceases accepting solid waste on or before
12 the thirtieth day of September, one thousand nine hundred
13 ninety-three, or the permittee of a landfill as provided for
14 in subsection (g), section twelve, article sixteen of this
15 chapter;

16 (2) The permittee of the landfill must demonstrate to
17 the satisfaction of the director that it does not have the
18 financial resources on hand or the ability to generate the
19 amounts needed to comply, in a timely manner, with the
20 closure requirements provided in article fifteen of this
21 chapter and any rules promulgated pursuant thereto:
22 *Provided*, That any permittee required to close a landfill,
23 or any portion thereof, due to the lack of an approved
24 composite liner system, who collects solid waste within this
25 state which is disposed outside this state, shall not be
26 eligible for closure assistance: *Provided, however*, That
27 any permittee which is a Class I municipality shall be
28 eligible for closure assistance when the permittee elects to
29 and pays the solid waste assessment fee which would
30 otherwise be levied and imposed upon the disposal of the
31 solid waste by subsection (a), section four of this article, if
32 the solid waste was disposed of within the state; and

33 (3) The permittee must maintain a permit for the
34 landfill pursuant to the provisions of section ten, article
35 fifteen of this chapter and maintain the full amount of the
36 bond required to be submitted pursuant to section twelve
37 of said article.

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

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

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

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

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

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

CHAPTER 256

(H. B. 2800—By Delegates Beach, Kelley, Prunty,
Heck, Riggs, Boggs and Evans)

[Passed March 10, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article eleven-c, relating to the southern dairy compact; declaring purpose, policy and findings; creating definitions; establishing a

commission to implement and enforce the compact; setting forth voting requirements for compact pricing orders; establishing commission administrative powers including the right to borrow, acquisition of real and/or personal property, investigatory powers; permitting rule-making powers; providing for milk pricing orders; authorizing the examination of books and records of regulated persons; establishing criminal penalty for disclosure of confidential information not to exceed fine of \$1000 and/or confinement of one year; providing for subpoena powers; establishing civil penalties for violation of commission orders; financing the commission by assessment of milk handlers; establishing judicial enforcement jurisdiction with respective states or federal district; setting forth accounting procedures; providing for the enactment of compact effective only after approval by three regional states and U. S. Congress; providing for withdrawal from compact; permitting the commissioner of agriculture to administer compact for West Virginia; and authorizing the commissioner of agriculture to appoint state delegation.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 11C. SOUTHERN DAIRY COMPACT.

§19-11C-1. Enactment of compact.

§19-11C-2. Compact administrator.

§19-11C-3. Appointment of delegation.

§19-11C-4. Effective date.

§19-11C-1. Enactment of compact.

1 The southern dairy compact is hereby entered into on
2 behalf of the state of West Virginia. The southern dairy
3 compact shall become effective when enacted into law by
4 a majority of the states within the compact group of states
5 and when the consent of Congress has been obtained. The
6 full text of the southern dairy compact is as follows:

SOUTHERN DAIRY COMPACT

**ARTICLE I. STATEMENT OF PURPOSE, FINDINGS AND
DECLARATION OF POLICY.**

**§1. STATEMENT OF PURPOSE, FINDINGS AND
DECLARATION OF POLICY.**

1 The purpose of this compact is to recognize the
2 interstate character of the southern dairy industry and the
3 prerogative of the states under the United States
4 Constitution to form an interstate commission for the
5 southern region. The mission of the commission is to take
6 such steps as are necessary to assure the continued
7 viability of dairy farming in the south, and to assure
8 consumers of an adequate, local supply of pure and
9 wholesome milk.

10 The participating states find and declare that the dairy
11 industry is an essential agricultural activity of the south.
12 Dairy farms, and associated suppliers, marketers,
13 processors and retailers, are an integral component of the
14 region's economy. Their ability to provide a stable, local
15 supply of pure, wholesome milk is a matter of great
16 importance to the health and welfare of the region.

17 The participating states further find that dairy farms
18 are essential and they are an integral part of the region's
19 rural communities. The farms preserve land for
20 agricultural purposes and provide needed economic
21 stimuli for rural communities.

22 By entering into this compact, the participating states
23 affirm that their ability to regulate the price which
24 southern dairy farmers receive for their product is
25 essential to the public interest. Assurance of a fair and
26 equitable price for dairy farmers ensures their ability to
27 provide milk to the market and the vitality of the southern
28 dairy industry, with all the associated benefits.

29 Recent, dramatic price fluctuations, with a pronounced
30 downward trend, threaten the viability and stability of the
31 southern dairy region. Historically, individual state
32 regulatory action had been an effective emergency
33 remedy available to farmers confronting a distressed
34 market. The federal order system, implemented by the

35 Agricultural Marketing Agreement Act of 1937,
36 establishes only minimum prices paid to producers for raw
37 milk, without preempting the power of states to regulate
38 milk prices above the minimum levels so established.

39 In today's regional dairy marketplace, cooperative,
40 rather than individual state action is needed to more
41 effectively address the market disarray. Under our
42 constitutional system, properly authorized states acting
43 cooperatively may exercise more power to regulate
44 interstate commerce than they may assert individually
45 without such authority. For this reason, the participating
46 states invoke their authority to act in common agreement,
47 with the consent of Congress, under the compact clause of
48 the Constitution.

49 In establishing their constitutional regulatory authority
50 over the region's fluid milk market by this compact, the
51 participating states declare their purpose that this compact
52 neither displace the federal order system nor encourage
53 the merging of federal orders. Specific provisions of the
54 compact itself set forth this basic principle.

55 Designed as a flexible mechanism able to adjust to
56 changes in a regulated marketplace, the compact also
57 contains a contingency provision should the federal order
58 system be discontinued. In that event, the interstate
59 commission is authorized to regulate the marketplace in
60 replacement of the order system. This contingent
61 authority does not anticipate such a change, however, and
62 should not be so construed. It is only provided should
63 developments in the market other than establishment of
64 this compact result in discontinuance of the order system.

ARTICLE II. DEFINITIONS AND RULES OF CONSTRUCTION.

§2. DEFINITIONS.

1 For the purposes of this compact, and of any
2 supplemental or concurring legislation enacted pursuant
3 thereto, except as may be otherwise required by the
4 context:

5 (a) "Class I milk" means milk disposed of in fluid
6 form or as a fluid milk product, subject to further

7 definition in accordance with the principles expressed in
8 subdivision (b) of section three.

9 (b) "Commission" means the Southern Dairy
10 Compact Commission established by this compact.

11 (c) "Commission marketing order" means
12 regulations adopted by the commission pursuant to
13 sections nine and ten of this compact in place of a
14 terminated federal marketing order or state dairy
15 regulation. Such order may apply throughout the region
16 or in any part or parts thereof as defined in the regulations
17 of the commission. Such order may establish minimum
18 prices for any or all classes of milk.

19 (d) "Compact" means this interstate compact.

20 (e) "Compact over-order price" means a minimum
21 price required to be paid to producers for Class I milk
22 established by the commission in regulations adopted
23 pursuant to sections nine and ten of this compact, which is
24 above the price established in federal marketing orders or
25 by state farm price regulation in the regulated area. Such
26 price may apply throughout the region or in any part or
27 parts thereof as defined in the regulations of the
28 commission.

29 (f) "Milk" means the lacteal secretion of cows and
30 includes all skim, butterfat, or other constituents obtained
31 from separation or any other process. The term is used in
32 its broadest sense and may be further defined by the
33 commission for regulatory purposes.

34 (g) "Partially regulated plant" means a milk plant not
35 located in a regulated area but having Class I distribution
36 within such area. Commission regulations may exempt
37 plants having such distribution or receipts in amounts less
38 than the limits defined therein.

39 (h) "Participating state" means a state which has
40 become a party to this compact by the enactment of
41 concurring legislation.

42 (i) "Pool plant" means any milk plant located in a
43 regulated area.

44 (j) "Region" means the territorial limits of the states
45 which are parties to this compact.

46 (k) "Regulated area" means any area within the
47 region governed by and defined in regulations
48 establishing a compact over-order price or commission
49 marketing order.

50 (l) "State dairy regulation" means any state
51 regulation of dairy prices, and associated assessments,
52 whether by statute, marketing order or otherwise.

§3. RULES OF CONSTRUCTION.

1 (a) This compact shall not be construed to displace
2 existing federal milk marketing orders or state dairy
3 regulation in the region but to supplement them. In the
4 event some or all federal orders in the region are
5 discontinued, the compact shall be construed to provide
6 the commission the option to replace them with one or
7 more commission marketing orders pursuant to this
8 compact.

9 (b) This compact shall be construed liberally in order
10 to achieve the purposes and intent enunciated in section
11 one. It is the intent of this compact to establish a basic
12 structure by which the commission may achieve those
13 purposes through the application, adaptation and
14 development of the regulatory techniques historically
15 associated with milk marketing and to afford the
16 commission broad flexibility to devise regulatory
17 mechanisms to achieve the purposes of this compact. In
18 accordance with this intent, the technical terms which are
19 associated with market order regulation and which have
20 acquired commonly understood general meanings are not
21 defined herein but the commission may further define the
22 terms used in this compact and develop additional
23 concepts and define additional terms as it may find
24 appropriate to achieve its purposes.

ARTICLE III. COMMISSION ESTABLISHED.

§4. COMMISSION ESTABLISHED.

1 There is hereby created a commission to administer
2 the compact, composed of delegations from each state in
3 the region. The commission shall be known as the
4 Southern Dairy Compact Commission. A delegation shall
5 include not less than three or more than five persons.
6 Each delegation shall include at least one dairy farmer
7 who is engaged in the production of milk at the time of
8 appointment or reappointment, and one consumer
9 representative. Delegation members shall be residents and
10 voters of, and subject to such confirmation process as is
11 provided for in, the appointing state. Delegation members
12 shall serve no more than three consecutive terms with no
13 single term of more than four years, and be subject to
14 removal for cause. In all other respects, delegation
15 members shall serve in accordance with the laws of the
16 state represented. The compensation, if any, of the
17 members of a state delegation shall be determined and
18 paid by each state, but their expenses shall be paid by the
19 commission.

§5. VOTING REQUIREMENTS.

1 All actions taken by the commission, except for the
2 establishment or termination of an over-order price or
3 commission marketing order, and the adoption,
4 amendment or rescission of the commission's bylaws,
5 shall be by majority vote of the delegations present. Each
6 state delegation shall be entitled to one vote in the conduct
7 of the commission's affairs. Establishment or termination
8 of an over-order price or commission marketing order
9 shall require at least a two-thirds vote of the delegations
10 present. The establishment of a regulated area which
11 covers all or part of a participating state shall require also
12 the affirmative vote of that state's delegation. A majority
13 of the delegations from the participating states shall
14 constitute a quorum for the conduct of the commission's
15 business.

§6. ADMINISTRATION AND MANAGEMENT.

1 (a) The commission shall elect annually from among
2 the members of the participating state delegations a
3 chairperson, a vice-chairperson, and a treasurer. The
4 commission shall appoint an executive director and fix his

5 or her duties and compensation. The executive director
6 shall serve at the pleasure of the commission and, together
7 with the treasurer, shall be bonded in an amount
8 determined by the commission. The commission may
9 establish through its bylaws an executive committee
10 composed of one member elected by each delegation.

11 (b) The commission shall adopt bylaws for the
12 conduct of its business by a two-thirds vote, and shall have
13 the power by the same vote to amend and rescind these
14 bylaws. The commission shall publish its bylaws in
15 convenient form with the appropriate agency or officer in
16 each of the participating states. The bylaws shall provide
17 for appropriate notice to the delegations of all commission
18 meetings and hearings and of the business to be transacted
19 at such meetings or hearings. Notice also shall be given to
20 other agencies or officers of participating states as
21 provided by the laws of those states.

22 (c) The commission shall file an annual report with
23 the Secretary of Agriculture of the United States, and with
24 each of the participating states by submitting copies to the
25 governor, both houses of the Legislature, and the head of
26 the state department having responsibilities for agriculture.

27 (d) In addition to the powers and duties elsewhere
28 prescribed in this compact, the commission shall have the
29 power:

30 (1) To sue and be sued in any state or federal court;

31 (2) To have a seal and alter the same at pleasure;

32 (3) To acquire, hold and dispose of real and personal
33 property by gift, purchase, lease, license or other similar
34 manner, for its corporate purposes;

35 (4) To borrow money and to issue notes, to provide
36 for the rights of the holders thereof and to pledge the
37 revenue of the commission as security therefore, subject to
38 the provisions of section eighteen of this compact;

39 (5) To appoint such officers, agents and employees as
40 it may deem necessary, prescribe their powers, duties and
41 qualifications; and

42 (6) To create and abolish such offices, employments
43 and positions as it deems necessary for the purpose of the
44 compact and provide for the removal, term, tenure,
45 compensation, fringe benefits, pension and retirement
46 rights of its officers and employees. The commission may
47 also retain personal services on a contract basis.

§7. RULE-MAKING POWER.

1 In addition to the power to promulgate a compact
2 over-order price or commission marketing orders as
3 provided by this compact, the commission is further
4 empowered to make and enforce such additional rules and
5 regulations as it deems necessary to implement any
6 provisions of this compact, or to effectuate in any other
7 respect the purpose of this compact.

ARTICLE IV. POWERS OF THE COMMISSION.

§8. POWERS TO PROMOTE REGULATORY UNIFORMITY, SIMPLICITY AND INTERSTATE COOPERATION.

- 1 The commission is hereby empowered to:
- 2 (a) Investigate or provide for investigations or research
3 projects designed to review the existing laws and
4 regulations of the participating states, to consider their
5 administration and costs, to measure their impact on the
6 production and marketing of milk and their effects on the
7 shipment of milk and milk products within the region.
- 8 (b) Study and recommend to the participating states
9 joint or cooperative programs for the administration of the
10 dairy marketing laws and regulations and to prepare
11 estimates of cost savings and benefits of such programs.
- 12 (c) Encourage the harmonious relationships between
13 the various elements in the industry for the solution of
14 their material problems. Conduct symposia or
15 conferences designed to improve industry relations, or a
16 better understanding of problems.
- 17 (d) Prepare and release periodic reports on activities
18 and results of the commission's efforts to the participating
19 states.

- 20 (e) Review the existing marketing system for milk and
21 milk products and recommend changes in the existing
22 structure for assembly and distribution of milk which may
23 assist, improve or promote more efficient assembly and
24 distribution of milk.
- 25 (f) Investigate costs and charges for producing,
26 hauling, handling, processing, distributing, selling and for
27 all other services performed with respect to milk.
- 28 (g) Examine current economic forces affecting
29 producers, probable trends in production and
30 consumption, the level of dairy farm prices in relation to
31 costs, the financial conditions of dairy farmers and the
32 need for an emergency order to relieve critical conditions
33 on dairy farms.

§9. EQUITABLE FARM PRICES.

- 1 (a) The powers granted in this section and section ten
2 shall apply only to the establishment of a compact over-
3 order price, so long as federal milk marketing orders
4 remain in effect in the region. In the event that any or all
5 such orders are terminated, this article shall authorize the
6 commission to establish one or more commission
7 marketing orders, as herein provided, in the region or
8 parts thereof as defined in the order.
- 9 (b) A compact over-order price established pursuant
10 to this section shall apply only to Class I milk. Such
11 compact over-order price shall not exceed one dollar and
12 fifty cents per gallon at Atlanta, GA; however, this
13 compact over-order price shall be adjusted upward or
14 downward at other locations in the region to reflect
15 differences in minimum federal order prices. Beginning
16 in one thousand nine hundred ninety, and using that year
17 as a base, the foregoing one dollar fifty cents per gallon
18 maximum shall be adjusted annually by the rate of change
19 in the Consumer Price Index as reported by the Bureau of
20 Labor Statistics of the United States Department of Labor.
21 For purposes of the pooling and equalization of an over-
22 order price, the value of milk used in other use
23 classifications shall be calculated at the appropriate class
24 price established pursuant to the applicable federal order

25 or state dairy regulation and the value of unregulated milk
26 shall be calculated in relation to the nearest prevailing
27 class price in accordance with and subject to such
28 adjustments as the commission may prescribe in
29 regulations.

30 (c) A commission marketing order shall apply to all
31 classes and uses of milk.

32 (d) The commission is hereby empowered to establish
33 a compact over-order price for milk to be paid by pool
34 plants and partially regulated plants. The commission is
35 also empowered to establish a compact over-order price to
36 be paid by all other handlers receiving milk from
37 producers located in a regulated area. This price shall be
38 established either as a compact over-order price or by one
39 or more commission marketing orders. Whenever such a
40 price has been established by either type of regulation, the
41 legal obligation to pay such price shall be determined
42 solely by the terms and purposes of the regulation without
43 regard to the status of the transfer of title, possession or
44 any other factors not related to the purposes of the
45 regulation and this compact. Producer-handlers as
46 defined in an applicable federal market order shall not be
47 subject to a compact over-order price. The commission
48 shall provide for similar treatment of producer-handlers
49 under commission marketing orders.

50 (e) In determining the price, the commission shall
51 consider the balance between production and
52 consumption of milk and milk products in the regulated
53 area, the costs of production including, but not limited to,
54 the price of feed, the cost of labor including the
55 reasonable value of the producer's own labor and
56 management, machinery expense, and interest expense, the
57 prevailing price for milk outside the regulated area, the
58 purchasing power of the public and the price necessary to
59 yield a reasonable return to the producer and distributor.

60 (f) When establishing a compact over-order price, the
61 commission shall take such other action as is necessary
62 and feasible to help ensure that the over-order price does
63 not cause or compensate producers so as to generate local
64 production of milk in excess of those quantities necessary

65 to assure consumers of an adequate supply for fluid
66 purposes.

67 (g) The commission shall whenever possible enter into
68 agreements with the state or federal agencies for exchange
69 of information or services for the purpose of reducing
70 regulatory burden and cost of administering the compact.
71 The commission may reimburse other agencies for the
72 reasonable cost of providing these services.

§10. OPTIONAL PROVISIONS FOR PRICING ORDER.

1 Regulations establishing a compact over-order price or
2 a commission marketing order may contain, but shall not
3 be limited to, any of the following:

4 (1) Provisions classifying milk in accordance with the
5 form in which or purpose for which it is used, or creating
6 a fault pricing program;

7 (2) With respect to a commission marketing order
8 only, provisions establishing or providing a method for
9 establishing separate minimum prices for each use
10 classification prescribed by the commission, or a single
11 minimum price for milk purchased from producers or
12 associations of producers;

13 (3) With respect to an over-order minimum price
14 provisions establishing or providing a method for
15 establishing such minimum price for Class I milk;

16 (4) Provisions for establishing either an over-order
17 price or a commission marketing order may make use of
18 any reasonable method for establishing such price or
19 prices including flat pricing and formula pricing.
20 Provision may also be made for location adjustments, zone
21 differentials and for competitive credits with respect to
22 regulated handlers who market outside the regulated area.

23 (5) Provisions for the payment to all producers and
24 associations of producers delivering milk to all handlers of
25 uniform prices for all milk so delivered, irrespective of the
26 uses made of such milk by the individual handler to whom
27 it is delivered, or for the payment of producers delivering

28 milk to the same handler or uniform prices for all milk
29 delivered by them.

30 (a) With respect to regulations establishing a compact
31 over-order price, the commission may establish one
32 equalization pool within the regulated area for the sole
33 purpose of equalizing returns to producers throughout the
34 regulated area.

35 (b) With respect to any commission marketing order,
36 as defined in Article II, section two, subdivision (c) of this
37 compact, which replaces one or more terminated federal
38 orders or state dairy regulation, the marketing area of now
39 separate state or federal orders shall not be merged
40 without its delegation, which is partly or wholly included
41 within any such new marketing area.

42 (6) Provisions requiring persons who bring Class I
43 milk into the regulated area to make compensatory
44 payments with respect to all such milk to the extent
45 necessary to equalize the cost of milk purchased by
46 handlers subject to a compact over-order price or
47 commission marketing order. No such provisions shall
48 discriminate against milk producers outside the regulated
49 area. The provisions for compensatory payments may
50 require to be paid for such milk in the state of production
51 by a federal milk marketing order or state dairy regulation
52 and the Class I price established by the compact over-
53 order price or commission marketing order.

54 (7) Provisions specially governing the pricing and
55 pooling of milk handled by partially required plants.

56 (8) Provisions requiring that the account of any
57 person regulated under the compact over-order price shall
58 be adjusted for any payments made to or received by such
59 persons with respect to a producer settlement fund of any
60 federal or state milk marketing order or other state dairy
61 regulation within the regulated area.

62 (9) Provisions requiring the payment by handlers of
63 an assessment to cover the costs of the administration and
64 enforcement of such order pursuant to Article VII, Section
65 18(a).

66 (10) Provisions for reimbursement to participants of
67 the Women, Infants and Children Special Supplement
68 Food Program of the United States Child Nutrition Act of
69 1966.

70 (11) Other provisions and requirements as the
71 commission may find are necessary or appropriate to
72 effectuate the purposes of this compact and to provide for
73 the payment of fair and equitable minimum prices to
74 producers.

ARTICLE V. RULE-MAKING PROCEDURE.

§11. RULE-MAKING PROCEDURE.

1 Before promulgation of any regulations establishing a
2 compact over-order price or commission marketing order,
3 including any provision with respect to milk supply under
4 subsection 9(f), or amendment thereof, as provided in
5 Article IV, the commission shall conduct an informal rule-
6 making proceeding to provide interested persons with an
7 opportunity to present data and views. Such rule-making
8 proceeding shall be governed by section four of the
9 Federal Administrative Procedure Act, as amended (5
10 U.S.C. §553). In addition, the commission shall, to the
11 extent practicable, publish notice of rule-making
12 proceedings in the official register of each participating
13 state. Before the initial adoption of regulations
14 establishing a compact over-order price or a commission
15 marketing order and thereafter before any amendment
16 with regard to prices or assessments, the commission shall
17 hold a public hearing. The commission may commence a
18 rule-making proceeding on its own initiative or may in its
19 sole discretion act upon the petition of any person
20 including individual milk producers, any organization of
21 milk producers or handlers, general farm organizations,
22 consumer or public interest groups, and local, state or
23 federal officials.

§12. FINDINGS AND REFERENDUM.

1 (a) In addition to the concise general statement of
2 basis and purpose required by section 4(b) of the Federal
3 Administrative Procedure Act, as amended (5 U.S.C.

4 §553(c)), the commission shall make findings of fact with
5 respect to:

6 (1) Whether the public interest will be served by the
7 establishment of minimum milk prices to dairy farmers
8 under Article IV;

9 (2) What level or prices will assure that producers
10 receive a price sufficient to cover their costs of production
11 and will elicit an adequate supply of milk for the
12 inhabitants of the regulated area and for manufacturing
13 purposes;

14 (3) Whether the major provisions of the order, other
15 than those fixing minimum milk prices, are in the public
16 interest and are reasonably designed to achieve the
17 purposes of the order;

18 (4) Whether the terms of the proposed regional order
19 or amendment are approved by producers as provided in
20 section thirteen.

§13. PRODUCER REFERENDUM.

1 (a) For the purpose of ascertaining whether the
2 issuance or amendment of regulations establishing a
3 compact over-order price or a commission marketing
4 order, including any provision with respect to milk supply
5 under subsection 9(f), is approved by producers, the
6 commission shall conduct a referendum among
7 producers. The referendum shall be held in a timely
8 manner, as determined by regulation of the commission.
9 The terms and conditions of the proposed order or
10 amendment shall be described by the commission in the
11 ballot used in the conduct of the referendum, but the
12 nature, content, or extent of such description shall not be a
13 basis for attacking the legality of the order or any action
14 relating thereto.

15 (b) An order or amendment shall be deemed approved
16 by producers if the commission determines that it is
17 approved by at least two thirds of the voting producers
18 who, during a representative period determined by the
19 commission, have been engaged in the production of milk

20 the price of which would be regulated under the proposed
21 order of amendment.

22 (c) For purposes of any referendum, the commission
23 shall consider the approval or disapproval by any
24 cooperative association of producers, qualified under the
25 provisions of the Act of Congress of February 18, 1922, as
26 amended, known as the Capper-Volstead Act, bona fide
27 engaged in marketing milk, or in rendering services for
28 or advancing the interests of producers of such
29 commodity as the approval or disapproval of the
30 producers who are members or stockholders in, or under
31 contract with, such cooperative association of producers,
32 except as provided in subdivision (1) hereof and subject to
33 the provision of subdivisions (2) through (5) hereof.

34 (1) No cooperative which has been formed to act as a
35 common marketing agency for both cooperatives and
36 individual producers shall be qualified to block vote for
37 either.

38 (2) Any cooperative which is qualified to block vote
39 shall, before submitting its approval or disapproval in any
40 referendum, give prior written notice to each of its
41 members as to whether and how it intends to cast its vote.
42 The notice shall be given in a timely manner as
43 established, and in the form prescribed, by the
44 commission.

45 (3) Any producer may obtain a ballot from the
46 commission in order to register approval or disapproval of
47 the proposed order.

48 (4) A producer who is a member of a cooperative
49 which has provided notice of its intent to approve or not to
50 approve a proposed order, and who obtains a ballot and
51 with such ballot expresses his approval or disapproval of
52 the proposed order, shall notify the commission as to the
53 name of the cooperative of which he or she is a member,
54 and the commission shall remove such producer's name
55 from the list certified by such cooperative with its
56 corporate vote.

57 (5) In order to insure that all milk producers are
58 informed regarding a proposed order, the commission
59 shall notify all milk producers that an order is being
60 considered and that each producer may register his
61 approval or disapproval with the commission either
62 directly or through his or her cooperative.

**§14. TERMINATION OF OVER-ORDER PRICE OR
MARKETING ORDER.**

1 (a) The commission shall terminate any regulations
2 establishing an over-order price or commission marketing
3 order issued under this article whenever it finds that such
4 order or price obstructs or does not tend to effectuate the
5 declared policy of this compact.

6 (b) The commission shall terminate any regulations
7 establishing an over-order price or a commission
8 marketing order issued under this article whenever it finds
9 that such termination is favored by a majority of the
10 producers who, during a representative period determined
11 by the commission, have been engaged in the production
12 of milk the price of which is regulated by such order; but
13 such termination shall be effective only if announced on
14 or before such date as may be specified in such marketing
15 agreement or order.

16 (c) The termination or suspension of any order or
17 provision thereof, shall not be considered an order within
18 the meaning of this article and shall require no hearing,
19 but shall comply with the requirements for informal rule-
20 making prescribed by section four of the Federal
21 Administrative Procedure Act, as amended (5 U.S.C.
22 §553).

ARTICLE VI. ENFORCEMENT.

§15. RECORDS, REPORTS, ACCESS TO PREMISES.

1 (a) The commission may by rule and regulation
2 prescribe recordkeeping and reporting requirements for
3 all regulated persons. For purposes of the administration
4 and enforcement of this compact, the commission is
5 authorized to examine the books and records of any
6 regulated person relating to his or her milk business and

7 for that purpose, the commission's properly designated
8 officers, employees or agents shall have full access during
9 normal business hours to the premises and records of all
10 regulated persons.

11 (b) Information furnished to or acquired by the
12 commission officers, employees or its agents pursuant to
13 this section shall be confidential and not subject to
14 disclosure except to the extent that the commission deems
15 disclosure to be necessary in any administrative or judicial
16 proceeding involving the administration or enforcement
17 of this compact, an over-order price, a compact marketing
18 order or other regulations of the commission. The
19 commission may promulgate regulations further defining
20 the confidentiality of information pursuant to this section.
21 Nothing in this section shall be deemed to prohibit: (i)
22 The issuance of general statements based upon the reports
23 of a number of handlers, which do not identify the
24 information furnished by any person; or (ii) the
25 publication by direction of the commission of the name of
26 any person violating any regulation of the commission,
27 together with a statement of the particular provisions
28 violated by such person.

29 (c) No officer, employee or agent of the commission
30 shall intentionally disclose information, by inference or
31 otherwise, which is made confidential pursuant to this
32 section. Any person violating the provisions of this
33 section shall, upon conviction, be subject to a fine of not
34 more than \$1,000 or to imprisonment for not more than
35 one year, or to both, and shall be removed from office.
36 The commission shall refer any allegation of a violation of
37 this section to the appropriate state enforcement authority
38 or United States Attorney.

§16. SUBPOENA, HEARINGS AND JUDICIAL REVIEW.

1 (a) The commission is hereby authorized and
2 empowered by its members and its properly designated
3 officers to administer oaths and issue subpoenas
4 throughout all signatory states to compel the attendance of
5 witnesses and the giving of testimony and the production
6 of other evidence.

7 (b) Any handler subject to an order may file a written
8 petition with the commission stating that any such order or

9 any provision of any such order or any obligation
10 imposed in connection therewith is not in accordance with
11 law and praying for a modification thereof or to be
12 exempted therefrom. He shall thereupon be given an
13 opportunity for a hearing upon such petition, in
14 accordance with regulations made by the commission.
15 After such hearing, the commission shall make a ruling
16 upon the prayer of such petition which shall be final, if in
17 accordance with law.

18 (c) The district courts or the United States in any
19 district in which such handler is an inhabitant, or has his
20 principal place of business, are hereby vested with
21 jurisdiction to review such ruling, provided a complaint
22 for that purpose is filed within thirty days from the date of
23 the entry of such ruling. Service of process in such
24 proceedings may be had upon the commission by
25 delivering to it a copy of the complaint. If the court
26 determines that such ruling is not in accordance with law,
27 it shall remand such proceedings to the commission with
28 directions either: (1) To make such ruling as the court
29 shall determine to be in accordance with law, or (2) To
30 take such further proceedings as, in its opinion, the law
31 requires. The pendency of proceedings instituted
32 pursuant to this subdivision shall not impede, hinder or
33 delay the commission from obtaining relief pursuant to
34 section seventeen. Any proceedings brought pursuant to
35 section seventeen, except where brought by way of
36 counterclaim in proceedings instituted pursuant to this
37 section, shall abate whenever a final decree has been
38 rendered in proceedings between the same parties, and
39 covering the same subject matter, instituted pursuant to
40 this section.

§17. ENFORCEMENT WITH RESPECT TO HANDLERS.

1 (a) Any violation by a handler of the provisions of
2 regulations establishing an over-order price or a
3 commission marketing order, or other regulations adopted
4 pursuant to this compact shall:

5 (1) Constitute a violation of the laws of each of the
6 signatory states. Such violation shall render the violator
7 subject to a civil penalty in an amount as may be
8 prescribed by the laws of each of the participating states,

9 recoverable in any state or federal court of competent
10 jurisdiction. Each day such violation continues shall
11 constitute a separate violation;

12 (2) Constitute grounds for the revocation of license or
13 permit to engage in the milk business under the applicable
14 laws of the participating states.

15 (b) With respect to handlers, the commission shall
16 enforce the provision of this compact, regulations
17 establishing an over-order price, a commission marketing
18 order or other regulations adopted hereunder by:

19 (1) Commencing an action for legal or equitable relief
20 brought in the name of the commission in any state or
21 federal court of competent jurisdiction; or

22 (2) Referral to the state agency for enforcement by
23 judicial or administrative remedy with the agreement of
24 the appropriate state agency of a participating state.

25 (c) With respect to handlers, the commission may
26 bring an action for injunction to enforce the provisions of
27 this compact or the order or regulations adopted
28 thereunder without being compelled to allege or prove
29 that an adequate remedy of law does not exist.

ARTICLE VII. FINANCE.

§18. FINANCE OF START-UP AND REGULAR COSTS.

1 (a) To provide for its start-up costs, the commission
2 may borrow money pursuant to its general power under
3 section six, subdivision (d), paragraph four. In order to
4 finance the costs of administration and enforcement of
5 this compact, including payback of start-up costs, the
6 commission is hereby empowered to collect an assessment
7 from each handler who purchases milk from producers
8 within the region. If imposed, this assessment shall be
9 collected on a monthly basis for up to one year from the
10 date the commission convenes, in an amount not to exceed
11 \$.015 per hundredweight of milk purchased from
12 producers during the period of the assessment. The initial
13 assessment may apply to the projected purchase of
14 handlers for the two-month period following the date the
15 commission convenes. In addition, if regulations
16 establishing an over-order price or a compact marketing

17 order are adopted, they may include an assessment for the
18 specific purpose of their administration. These
19 regulations shall provide for establishment of a reserve for
20 the commissioner's ongoing operating expenses.

21 (b) The commission shall not pledge the credit of a
22 participating state or of the United States. Notes issued by
23 the commission and all other financial obligations
24 incurred by it, shall be its sole responsibility and no
25 participating state or the United States shall be liable
26 therefor.

§19. AUDIT AND ACCOUNTS.

1 (a) The commission shall keep accurate accounts of all
2 receipts and disbursements, which shall be subject to the
3 audit and accounting procedures established under its
4 rules. In addition, all receipts and disbursements of funds
5 handled by the commission shall be audited yearly by a
6 qualified public accountant and the report of the audit
7 shall be included in and become part of the annual report
8 of the commissioner.

9 (b) The accounts of the commission shall be open at
10 any reasonable time for inspection by duly constituted
11 officers of the participating states and by any persons
12 authorized by the commission.

13 (c) Nothing contained in this article shall be construed
14 to prevent commission compliance with laws relating to
15 audit or inspection of accounts by or on behalf of any
16 participating state or of the United States.

ARTICLE VIII. ENTRY INTO FORCE; ADDITIONAL MEMBERS AND WITHDRAWAL.

§20. ENTRY INTO FORCE; ADDITIONAL MEMBERS.

1 The compact shall enter into force effective when
2 enacted into law by any three states of the group of states
3 composed of Alabama, Arkansas, Florida, Georgia,
4 Kentucky, Louisiana, Maryland, Mississippi, North
5 Carolina, Oklahoma, South Carolina, Tennessee, Texas,
6 Virginia and West Virginia and when the consent of
7 Congress has been obtained.

§21. WITHDRAWAL FROM COMPACT.

1 Any participating state may withdraw from this
2 compact by enacting a statute repealing the same, but no
3 such withdrawal shall take effect until one year after notice
4 in writing of the withdrawal is given to the commission
5 and the governors of all other participating states. No
6 withdrawal shall affect any liability already incurred by or
7 chargeable to a participating state prior to the time of such
8 withdrawal.

§22. SEVERABILITY.

1 If any part or provision of this compact is adjudged
2 invalid by any court, such judgment shall be confined in
3 its operation to the part or provision directly involved in
4 the controversy in which such judgment shall have been
5 rendered and shall not affect or impair the validity of the
6 remainder of this compact. In the event Congress
7 consents to this compact subject to conditions, said
8 conditions shall not impair the validity of this compact
9 when said conditions are accepted by three or more
10 compacting states. A compacting state may accept the
11 conditions of Congress by implementation of this
12 compact.

§19-11C-2. Compact administrator.

1 The compact administrator of this state is the
2 commissioner of agriculture. The duties of the compact
3 administrator are deemed a regular part of the duties of
4 his office.

§19-11C-3. Appointment of delegation.

1 There shall be five delegates from this state to the
2 compact commission, and these delegates shall be
3 appointed by the commissioner of agriculture. At least
4 one of the delegates shall be a dairy farmer who is
5 engaged in the production of milk at the time of
6 appointment or reappointment, at least one delegate shall
7 be a consumer representative, one delegate shall be a
8 processor, one delegate shall be a retailer representative
9 from a border county and one delegate at large.
10 Delegates shall serve for a term of four years. Vacancies
11 in the state delegation will be filled in the same manner as
12 the appointment of delegates, and shall be for the term of
13 the position vacated.

§19-11C-4. Effective date.

- 1 This article shall become effective at such time as a
- 2 majority of the contiguous states have passed legislation
- 3 permitting that state to become a participating state and
- 4 the consent of Congress has been obtained.

CHAPTER 257

(S. B. 399—By Senators Wooton, Ball, Bowman, Dittmar, Hunter,
Kessler, Oliverio, Schoonover, Snyder and White)

[Passed March 12, 1998; in effect July 1, 1998. Approved by the Governor.]

AN ACT to amend chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article four-a, relating to establishing an office for the receipt and referral of reports of suspected fraud, misappropriation, mismanagement or waste of state funds for the state of West Virginia; authorizing employment of a staff; procedures; and confidentiality.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4A. CENTRALIZED MANAGEMENT OF COMPLAINTS.

- §12-4A-1. Legislative findings.
- §12-4A-2. General purpose.
- §12-4A-3. Duties generally.
- §12-4A-4. Enforcement.

§12-4A-1. Legislative findings.

- 1 The Legislature finds that there is no centralized state
- 2 authority responsible for receiving and referring reports
- 3 of possible fraud, misappropriation of, mismanagement or

4 waste of state funds. It is the intent of the Legislature to
5 see that all state funds are utilized for the maximum
6 benefit of the people of the state of West Virginia. The
7 Legislature finds that it is important to provide the people
8 of this state with both a forum and an opportunity to
9 report suspected fraud, waste or abuse of state funds, and
10 to have those reports properly investigated.

§12-4A-2. General purpose.

1 The state auditor shall have authority to receive reports
2 of possible fraud, misappropriation, mismanagement or
3 waste of state funds of the state of West Virginia and to
4 refer such reports to the commission on special
5 investigations, county prosecutors and law-enforcement
6 agencies.

§12-4A-3. Duties generally.

1 (a) The state auditor may employ a forensic
2 accountant to receive and review reports of suspected
3 fraud, misappropriation, mismanagement or waste of state
4 funds which shall be filed in that office. Such reports
5 shall be confidential, except that the state auditor or his or
6 her designee may supply information necessary to
7 effectuate this article to the appropriate governmental
8 entities.

9 (b) The state auditor shall establish modes of
10 communication sufficient to receive reports of suspected
11 fraud, misappropriation of, mismanagement or waste of
12 state funds. Reports of suspected fraud, misappropriation,
13 mismanagement or waste may be filed by any citizen or
14 employee of the state of West Virginia.

15 (c) Nothing in this article shall be construed to limit
16 the authority of any other governmental entity to conduct
17 an internal investigation of suspected fraud,
18 misappropriation, mismanagement or waste.

§12-4A-4. Enforcement.

1 (a) The authority to enforce the provisions of this
2 article shall be vested in the state auditor. The state
3 auditor shall promptly forward any evidence of suspected
4 fraud, misappropriation of, mismanagement or waste of
5 state funds to the commission on special investigations

6 and, if potentially criminal in nature, to the prosecuting
 7 attorney of the county in which such is alleged to have
 8 taken place, to the law-enforcement agency with
 9 jurisdiction in the area as well as to the commission on
 10 special investigations.

11 (b) If such reports are made about an agency that has
 12 its own investigative body, then the state auditor may refer
 13 evidence of the fraud, misappropriation, mismanagement
 14 or waste to that investigative body.

CHAPTER 258

(Com. Sub. for H. B. 4016—By Delegates Martin and Michael)

[Passed March 3, 1998; in effect July 1, 1998. Approved by the Governor.]

AN ACT to amend and reenact sections three and four, article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the structure of the state police; increasing the number of principal supervisors who may be appointed by the state police superintendent from eleven to fifteen.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. WEST VIRGINIA STATE POLICE.

§15-2-3. State police structure; how established.

§15-2-4. Appointment of commissioned officers, noncommissioned officers, other members; temporary and permanent positions.

§15-2-3. State police structure; how established.

1 The superintendent shall create, appoint and equip the
 2 state police which shall consist of the number of troops,
 3 districts and detachments required for the proper
 4 administration of the state police. Each troop, district or

5 detachment shall be composed of the number of officers
6 and members the superintendent determines are necessary
7 to meet operational needs and are required for the
8 efficient operation of the state police. The superintendent
9 shall establish the general organizational structure of the
10 state police by interpretive rule in accordance with the
11 provisions of article three, chapter twenty-nine-a of this
12 code. The superintendent shall provide adequate facilities
13 for the training of all members of the state police and shall
14 prescribe basic training requirements for newly enlisted
15 members. He or she shall also provide advanced or in-
16 service training from time to time for all members of the
17 state police. The superintendent shall hold training classes
18 for other peace officers in the state without cost to those
19 officers, except actual expenses for food, lodging and
20 school supplies.

**§15-2-4. Appointment of commissioned officers, noncom-
missioned officers, other members; temporary
and permanent positions.**

1 (a) The superintendent shall appoint, from the enlisted
2 membership of the state police, a deputy superintendent
3 who shall hold the rank of lieutenant colonel and be next
4 in authority to the superintendent. The superintendent
5 shall appoint, from the enlisted membership of the state
6 police, the number of other officers and members he or
7 she considers necessary to operate and maintain the
8 executive offices, training school, and forensic laboratory;
9 and to keep records relating to crimes and criminals,
10 coordinate traffic safety activities, maintain a system of
11 supplies and accounting and perform other necessary
12 services.

13 (b) The ranks within the membership of the state
14 police shall be colonel, lieutenant colonel, major, captain,
15 first lieutenant, second lieutenant, first sergeant, sergeant,
16 corporal, trooper first class, senior trooper, trooper, or
17 cadet trooper. Each member while in uniform shall wear
18 the insignia of rank as provided by law and written state
19 police policies. Members assigned to the forensic
20 laboratory shall hold the title of trooper, be classified as
21 criminalists and wear the insignia of classification as
22 provided by written state police policies.

23 The superintendent may appoint from the
24 membership of the state police fifteen principal
25 supervisors who shall receive the compensation and hold
26 the temporary rank of lieutenant colonel, major or captain
27 at the will and pleasure of the superintendent.
28 Appointments are exempt from any eligibility
29 requirements established by the career progression system.
30 Any person appointed to a temporary rank under the
31 provisions of this article remains eligible for promotion or
32 reclassification under the provisions of the career
33 progression system if his or her permanent rank is below
34 that of first lieutenant. Upon the termination of a
35 temporary appointment by the superintendent, the
36 member may not be reduced to a rank or classification
37 below his or her permanent rank or classification, unless
38 the reduction results from disciplinary action, and remains
39 eligible for subsequent appointment to a temporary rank.

CHAPTER 259

(S. B. 362—By Senators Tomblin, Mr. President, and Buckalew,
By Request of the Executive)

[Passed March 12, 1998; in effect July 1, 1998. Approved by the Governor.]

AN ACT to amend and reenact section five, article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to salaries of members of the West Virginia state police.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. WEST VIRGINIA STATE POLICE.

§15-2-5. Career progression system; salaries; exclusion from wage and hour law, with supplemental payment;

bond; leave time for members called to duty in guard or reserves.

1 (a) The superintendent shall establish within the West
2 Virginia state police a system to provide for: The
3 promotion of members to the supervisory ranks of
4 sergeant, first sergeant, second lieutenant and first
5 lieutenant; the classification of nonsupervisory members
6 within the field operations force to the ranks of trooper,
7 senior trooper, trooper first class or corporal; the
8 classification of members assigned to the forensic
9 laboratory as criminalist I-VII; and the temporary
10 reclassification of members assigned to administrative
11 duties as administrative support specialist I-VIII.

12 (b) The superintendent is authorized to propose
13 legislative rules for promulgation in accordance with
14 article three, chapter twenty-nine-a of this code for the
15 purpose of ensuring consistency, predictability and
16 independent review of any system developed under the
17 provisions of this section.

18 (c) The superintendent shall provide to each member a
19 written manual governing any system established under
20 the provisions of this section and specific procedures shall
21 be identified for the evaluation and testing of members for
22 promotion or reclassification and the subsequent
23 placement of any members on a promotional eligibility or
24 reclassification recommendation list.

25 (d) Members shall receive annual salaries as follows:

26 ANNUAL SALARY SCHEDULE (BASE PAY)
27 SUPERVISORY AND NONSUPERVISORY RANKS

28	Cadet During Training	\$1,684 Mo.	\$20,208
29	Cadet Trooper After Training	1,799 Mo.	21,588
30	Trooper Second Year		21,984
31	Trooper Third Year		22,308
32	Trooper Fourth & Fifth Year		22,560
33	Senior Trooper		24,360

34	Trooper First Class	26,160
35	Corporal	27,960
36	Sergeant	31,560
37	First Sergeant	33,360
38	Second Lieutenant	35,160
39	First Lieutenant	36,960
40	Captain	38,760
41	Major	40,560
42	Lieutenant Colonel	42,360
43	ANNUAL SALARY SCHEDULE (BASE PAY)	
44	ADMINISTRATION	
45	SUPPORT SPECIALIST CLASSIFICATION	
46	I	22,560
47	II	24,360
48	III	26,160
49	IV	27,960
50	V	31,560
51	VI	33,360
52	VII	35,160
53	VIII	36,960
54	ANNUAL SALARY SCHEDULE (BASE PAY)	
55	CRIMINALIST CLASSIFICATION	
56	I	22,560
57	II	24,360
58	III	26,160
59	IV	27,960
60	V	31,560
61	VI	33,360
62	VII	35,160

63 (e) Each member of the West Virginia state police
64 whose salary is fixed and specified pursuant to this section
65 shall receive and is entitled to an increase in salary over
66 that set forth in subsection (d) of this section, for grade in
67 rank, based on length of service, including that service
68 served before and after the effective date of this section
69 with the West Virginia state police as follows: At the end
70 of five years of service with the West Virginia state police,
71 the member shall receive a salary increase of three
72 hundred dollars to be effective during his or her next
73 three years of service and a like increase at three-year
74 intervals thereafter, with the increases to be cumulative.

75 (f) In applying the salary schedules set forth in this
76 section where salary increases are provided for length of
77 service, members of the West Virginia state police in
78 service at the time the schedules become effective shall be
79 given credit for prior service and shall be paid such
80 salaries as the same length of service entitles them to
81 receive under the provisions of this section.

82 (g) The Legislature finds and declares that because of
83 the unique duties of members of the West Virginia state
84 police, it is not appropriate to apply the provisions of state
85 wage and hour laws to them. Accordingly, members of
86 the West Virginia state police are excluded from the
87 provisions of state wage and hour law. This express
88 exclusion shall not be construed as any indication that the
89 members were or were not covered by the wage and hour
90 law prior to this exclusion.

91 In lieu of any overtime pay they might otherwise have
92 received under the wage and hour law, and in addition to
93 their salaries and increases for length of service, members
94 who have completed basic training and who are exempt
95 from federal Fair Labor Standards Act guidelines may
96 receive supplemental pay as provided in this section.

97 The superintendent shall, within thirty days after the
98 effective date of this section, propose a legislative rule for
99 promulgation in accordance with article three, chapter
100 twenty-nine-a of this code to establish the number of
101 hours per month which constitute the standard work
102 month for the members of the West Virginia state police.

103 The rule shall further establish, on a graduated hourly
 104 basis, the criteria for receipt of a portion or all of
 105 supplemental payment when hours are worked in excess
 106 of the standard work month. The superintendent shall
 107 certify monthly to the West Virginia state police's payroll
 108 officer the names of those members who have worked in
 109 excess of the standard work month and the amount of
 110 their entitlement to supplemental payment.

111 The supplemental payment may not exceed two
 112 hundred thirty-six dollars monthly. The superintendent
 113 and civilian employees of the West Virginia state police
 114 are not eligible for any supplemental payments.

115 (h) Each member of the West Virginia state police,
 116 except the superintendent and civilian employees, shall
 117 execute, before entering upon the discharge of his or her
 118 duties, a bond with security in the sum of five thousand
 119 dollars payable to the state of West Virginia, conditioned
 120 upon the faithful performance of his or her duties, and the
 121 bond shall be approved as to form by the attorney general
 122 and as to sufficiency by the governor.

123 (i) Any member of the West Virginia state police who
 124 is called to perform active duty for training or inactive
 125 duty training in the national guard or any reserve
 126 component of the armed forces of the United States
 127 annually shall be granted, upon request, leave time not to
 128 exceed thirty calendar days for the purpose of performing
 129 the active duty for training or inactive duty training and
 130 the time granted may not be deducted from any leave
 131 accumulated as a member of the West Virginia state
 132 police.

133 (j) Beginning on the first day of July, one thousand
 134 nine hundred ninety-eight, and continuing thereafter,
 135 members shall receive annual salaries as follows:

136 AMENDED ANNUAL SALARY SCHEDULE		
137 (BASE PAY)		
138 SUPERVISORY AND NONSUPERVISORY RANKS		
139	Cadet During Training	\$1,747 Mo. \$20,964
140	Cadet Trooper After Training	2,150 Mo. 25,800

141	Trooper Second Year	26,256
142	Trooper Third Year	26,628
143	Trooper Fourth & Fifth Year	26,928
144	Senior Trooper	29,016
145	Trooper First Class	31,104
146	Corporal	33,192
147	Sergeant	37,368
148	First Sergeant	39,456
149	Second Lieutenant	41,544
150	First Lieutenant	43,632
151	Captain	45,720
152	Major	47,808
153	Lieutenant Colonel	49,896
154	AMENDED ANNUAL SALARY SCHEDULE	
155	(BASE PAY) ADMINISTRATION	
156	SUPPORT SPECIALIST CLASSIFICATION	
157	I	26,928
158	II	29,016
159	III	31,104
160	IV	33,192
161	V	37,368
162	VI	39,456
163	VII	41,544
164	VIII	43,632
165	AMENDED ANNUAL SALARY SCHEDULE	
166	(BASE PAY)	
167	CRIMINALIST CLASSIFICATION	
168	I	26,928

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169	II	29,016
170	III	31,104
171	IV	33,192
172	V	37,368
173	VI	39,456
174	VII	41,544
175	Each member of the West Virginia state police whose		
176	salary is fixed and specified in the amended annual salary		
177	schedules is entitled to the length of service increases set		
178	forth in subsection (f) of this section and supplemental		
179	pay as provided in subsection (h) of this section.		

CHAPTER 260

(H. B. 4698—By Delegates Douglas, Collins, Claypole,
Prunty, Tucker, Capito and Stalnaker)

[Passed March 14, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections four, four-a, five and five-a, article ten, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to changing termination dates pursuant to the West Virginia sunset law.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10. THE WEST VIRGINIA SUNSET LAW.

§4-10-4. Termination of agencies following full performance evaluations.

§4-10-4a. Termination of agencies previously subject to full performance evaluations following compliance monitoring and further inquiry updates.

§4-10-5. Termination of agencies following preliminary performance reviews.

§4-10-5a. Termination of agencies previously subject to preliminary performance reviews following compliance monitoring and further inquiry updates.

§4-10-4. Termination of agencies following full performance evaluations.

1 The following agencies shall be terminated on the date
2 indicated, but no agency may be terminated under this
3 section unless a full performance evaluation has been
4 conducted upon such agency:

5 (1) On the first day of July, one thousand nine
6 hundred ninety-nine: West Virginia parkways, economic
7 development and tourism authority; workers'
8 compensation; department of health and human resources;
9 purchasing division within the department of
10 administration.

11 (2) On the first day of July, two thousand: Division of
12 corrections; division of environmental protection.

13 (3) On the first day of July, two thousand one:
14 Division of natural resources.

15 (4) On the first day of July, two thousand two:
16 Division of highways; division of labor.

17 (5) On the first day of July, two thousand three:
18 Division of culture and history; school building authority.

19 (6) On the first day of July, two thousand four:
20 Division of personnel; division of rehabilitation services.

§4-10-4a. Termination of agencies previously subject to full performance evaluations following compliance monitoring and further inquiry updates.

1 The following agencies shall be terminated on the date
2 indicated, but no agency may be terminated under this
3 section unless a compliance monitoring and further
4 inquiry update has been completed on the agency
5 subsequent to the prior completion of a full performance
6 evaluation:

7 On the first day of July, one thousand nine hundred
8 ninety-nine: Tourism functions within the West Virginia
9 development office; office of judges of workers'
10 compensation.

§4-10-5. Termination of agencies following preliminary performance reviews.

1 The following agencies shall be terminated on the date
2 indicated, but no agency may be terminated under this
3 section unless a preliminary performance review has been
4 conducted upon such agency:

5 (1) On the first day of July, one thousand nine
6 hundred ninety-six: Juvenile facilities review panel.

7 (2) On the first day of July, one thousand nine
8 hundred ninety-seven: Public employees insurance agency
9 advisory board; cable television advisory board.

10 (3) On the first day of July, one thousand nine
11 hundred ninety-nine: Public service commission; tree fruit
12 industry self improvement assessment program; capitol
13 building commission; board of banking and financial
14 institutions; state building commission; West Virginia state
15 police; women's commission; soil conservation committee
16 of the department of agriculture; family law master
17 system; board of examiners in speech pathology and
18 audiology; board of social work examiners; West Virginia
19 lending and credit rate board; public defender services;
20 racing commission; West Virginia commission for the deaf
21 and hard of hearing.

22 (4) On the first day of July, two thousand: Family
23 protection services board; environmental quality board;
24 West Virginia's membership in the Ohio River valley water
25 sanitation commission; ethics commission; oil and gas
26 inspector's examining board; veterans' council; West
27 Virginia's membership in the southern regional education
28 board; board of respiratory care practitioners; board of
29 examiners in counseling; educational broadcasting
30 authority; West Virginia state rail authority.

31 (5) On the first day of July, two thousand one: Real
32 estate commission; marketing and development division of
33 the department of agriculture; board of architects; public
34 employees insurance agency; public employees insurance

35 agency finance board; center for professional
36 development; rural health advisory panel; oil and gas
37 conservation commission; state fire commission.

38 (6) On the first day of July, two thousand two:
39 Whitewater commission within the division of natural
40 resources; state geological and economic survey;
41 unemployment compensation; West Virginia contractor
42 licensing board.

43 (7) On the first day of July, two thousand three:
44 Driver's licensing advisory board; West Virginia
45 commission for national and community service.

46 (8) On the first day of July, two thousand four: Meat
47 inspection program of the department of agriculture; state
48 board of risk and insurance management; board of
49 examiners of land surveyors; interstate commission on
50 uniform state laws; interstate commission on the Potomac
51 River basin.

§4-10-5a. Termination of agencies previously subject to preliminary performance reviews following compliance monitoring and further inquiry updates.

1 The following agencies shall be terminated on the date
2 indicated, but no agency may be terminated under this
3 section unless a compliance monitoring and further
4 inquiry update has been completed on the agency
5 subsequent to the prior completion of a preliminary
6 performance review:

7 (1) On the first day of July, one thousand nine
8 hundred ninety-nine: Office of water resources of the
9 division of environmental protection; office of
10 environmental advocate of the division of environmental
11 protection; governor's cabinet on children and families;
12 West Virginia health care cost review authority; West
13 Virginia investment management board; emergency
14 medical services advisory council; parks section and parks
15 functions of the division of natural resources.

16 (2) On the first day of July, two thousand: Child
17 support enforcement division; human rights commission.

18 (3) On the first day of July, two thousand one: State
19 lottery commission.

CHAPTER 261

(S. B. 537—By Senators Bowman, Bailey, Ball, Jackson, Kessler, Plymale, Schoonover, White, Boley, Minear and Scott)

[Passed March 2, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article eleven, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the West Virginia human rights commission.

Be it enacted by the Legislature of West Virginia:

That section four, article eleven, 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 11. HUMAN RIGHTS COMMISSION.

***§5-11-4. Human rights commission continued; status, powers and objects.**

1 The West Virginia human rights commission,
2 heretofore created, is hereby continued. The commission
3 shall have the power and authority and shall perform the
4 functions and services as in this article prescribed and as
5 otherwise provided by law. The commission shall
6 encourage and endeavor to bring about mutual
7 understanding and respect among all racial, religious and
8 ethnic groups within the state and shall strive to eliminate
9 all discrimination in employment and places of public
10 accommodations by virtue of race, religion, color, national
11 origin, ancestry, sex, age, blindness or handicap and shall
12 strive to eliminate all discrimination in the sale, purchase,
13 lease, rental or financing of housing and other real
14 property by virtue of race, religion, color, national origin,
15 ancestry, sex, blindness, handicap or familial status.

16 Pursuant to the provisions of article ten, chapter four
17 of this code, the West Virginia human rights commission
18 shall continue to exist until the first day of July, two
19 thousand.

***Clerk's Note:** This section was also amended by HB 4545 (Chapter 178), which passed subsequent to this act.

CHAPTER 262

(H. B. 4346—By Delegates Douglas, Collins, Stalnaker,
Capito, Claypole, Prunty and Tucker)

[Passed March 2, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article fourteen, chapter five 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 continuing the West Virginia commission for the deaf and hard-of-hearing.

Be it enacted by the Legislature of West Virginia:

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

**ARTICLE 14. WEST VIRGINIA COMMISSION FOR THE DEAF
AND HARD-OF-HEARING.**

**§5-14-12. Termination of the West Virginia commission for the
deaf and hard-of-hearing.**

- 1 Pursuant to the provisions of article ten, chapter four
- 2 of this code, the West Virginia commission for the deaf
- 3 and hard-of-hearing shall continue to exist until the first
- 4 day of July, one thousand nine hundred ninety-nine.

CHAPTER 263

(S. B. 413—By Senators Bowman, Bailey, Ball, Kessler,
Plymale, White, Boley, Buckalew and Minear)

[Passed February 23, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one-a, article two, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the department of health and human resources; and providing for the continuation of the division of human services and its statutory functions within that department.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. DEPARTMENT OF HEALTH AND HUMAN RESOURCES, AND OFFICE OF COMMISSIONER OF HUMAN SERVICES; POWERS, DUTIES AND RESPONSIBILITIES GENERALLY.

§9-2-1a. Department of welfare renamed division of human services; continuation of the department of health and human resources and the division of human services.

1 The state department of welfare, created pursuant to
2 the provisions of chapter nine of this code, is hereby
3 continued as an official department of the state of West
4 Virginia, but effective the twenty-ninth day of May, one
5 thousand nine hundred eighty-three, its name shall be the
6 division of human services. All references in the code to
7 the department of welfare shall mean the division of
8 human services, and all references to the commissioner of
9 the department of welfare shall mean the commissioner of
10 the division of human services and for all other legal
11 purposes the department of welfare shall continue as the
12 division of human services.

13 The department of health and human resources and
14 the division of human services within that department shall
15 be charged with the administration of this chapter. The
16 department of health and human resources shall continue
17 to exist and the division of human services shall continue
18 to exist within the department of health and human
19 resources until the first day of July, one thousand nine
20 hundred ninety-nine, to permit a review of their functions
21 to be undertaken by the joint committee on government
22 operations as part of the full performance evaluation of
23 the department of health and human resources scheduled
24 to continue during the interim of the Legislature in the
25 year one thousand nine hundred ninety-nine.

CHAPTER 264

(H. B. 4116—By Delegates Douglas, Collins,
Stalnaker, Tucker and Capito)

[Passed February 17, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article six, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty, relating to continuing the West Virginia investment management board.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. WEST VIRGINIA INVESTMENT MANAGEMENT BOARD.

§12-6-20. Termination of board.

1 Pursuant to the provisions of article ten, chapter four
2 of this code, the West Virginia investment management
3 board shall continue to exist until the first day of July, one
4 thousand nine hundred ninety-nine.

CHAPTER 265

(H. B. 4258—By Delegates Douglas, Collins, Claypole,
Prunty, Stalnaker, Tucker and Capito)

[Passed February 23, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article four-c, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, continuing the emergency medical services advisory council.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4C. EMERGENCY MEDICAL SERVICES ACT.

§16-4C-5. Emergency medical services advisory council; duties, composition, appointment, meetings, compensation and expenses; continuation.

1 The emergency medical services advisory council,
2 heretofore created and established by former section seven
3 of this article, shall be continued for the purpose of
4 developing, with the commissioner, standards for
5 emergency medical service personnel and for the purpose
6 of providing advice to the office of emergency medical
7 services and the commissioner with respect to reviewing
8 and making recommendations for and providing
9 assistance to the establishment and maintenance of
10 adequate emergency medical services for all portions of
11 this state.

12 The council shall have the duty to advise the
13 commissioner in all matters pertaining to his or her duties
14 and functions in relation to carrying out the purposes of
15 this article.

16 The council shall be composed of fifteen members
17 appointed by the governor by and with the advice and
18 consent of the Senate. The mountain state emergency

19 medical services association shall submit to the governor a
20 list of six names of representatives from their association
21 and a list of three names shall be submitted to the
22 governor of representatives of their respective
23 organizations by the county commissioners' association of
24 West Virginia, the West Virginia state firemen's association,
25 the West Virginia hospital association, the West Virginia
26 chapter of the American college of emergency physicians,
27 the West Virginia emergency medical services
28 administrators association, the West Virginia emergency
29 medical services coalition, the ambulance association of
30 West Virginia, the county commissioner's association and
31 the state department of education. The governor shall
32 appoint from the respective lists submitted, two persons
33 who represent the mountain state emergency medical
34 services association, one of whom shall be a paramedic
35 and one of whom shall be an emergency medical
36 technician-basic, and one person from the county
37 commissioners' association of West Virginia, the West
38 Virginia state firemen's association, the West Virginia
39 hospital association, the West Virginia chapter of the
40 American college of emergency physicians, the West
41 Virginia emergency medical services administrators
42 association, the West Virginia emergency medical services
43 coalition, the ambulance association of West Virginia and
44 the state department of education. In addition the
45 governor shall appoint one person to represent emergency
46 medical service providers operating within the state, one
47 person to represent small emergency medical service
48 providers operating within this state and three persons to
49 represent the general public. Not more than six of the
50 members may be appointed from any one congressional
51 district.

52 The current advisory council members' terms shall end
53 on the thirtieth day of June, one thousand nine hundred
54 ninety-six, and, pursuant to the provisions of this section,
55 the governor shall appoint an advisory council on the first
56 day of July, one thousand nine hundred ninety-six. Of
57 those first appointed, one-third shall serve for one year,
58 one-third shall serve for two years and one-third shall
59 serve for three years. Each subsequent term is to be for
60 three years and no member may serve more than four
61 consecutive terms.

62 The council shall choose its own chairman and meet at
63 the call of the commissioner at least twice a year.

64 The members of the council shall receive
65 compensation and expense reimbursement in an amount
66 not to exceed the same compensation and expense
67 reimbursement as is paid to members of the Legislature
68 for their interim duties as recommended by the citizens
69 legislative compensation commission and authorized by
70 law, for each day or substantial portion thereof engaged in
71 the performance of official duties.

72 Pursuant to the provisions of article ten, chapter four
73 of this code, the emergency medical services advisory
74 council shall continue to exist until the first day of July,
75 one thousand nine hundred ninety-nine.

CHAPTER 266

(S. B. 412—By Senators Bowman, Bailey, Ball, Jackson, Kessler,
Plymale, Schoonover, Boley, Buckalew and Minear)

[Passed February 23, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article ten-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the division of rehabilitation services.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10A. VOCATIONAL REHABILITATION.

§18-10A-2. Division of rehabilitation services.

1 The division of rehabilitation services is hereby
2 transferred to the department of education and the arts
3 created in article one, chapter five-f of this code. The
4 secretary shall appoint any such board, commission or
5 council over the division to the extent required by federal

6 law to qualify for federal funds for providing
7 rehabilitation services for disabled persons. The secretary
8 and such boards, commissions or councils as he or she is
9 required by federal law to appoint are authorized and
10 directed to cooperate with the federal government to the
11 fullest extent in an effort to provide rehabilitation services
12 for disabled persons.

13 References in this article or article ten-b of this chapter
14 to the state board of vocational education, the state board
15 of rehabilitation or the state board as the governing board
16 of vocational or other rehabilitation services or facilities
17 means the secretary of education and the arts. All
18 references in the code to the division of vocational
19 rehabilitation means the division of rehabilitation services
20 and all references to the director of the division of
21 vocational rehabilitation means the director of the division
22 of rehabilitation services.

23 Pursuant to the provisions of article ten, chapter four
24 of this code, the division of rehabilitation services shall
25 continue to exist until the first day of July, two thousand
26 four.

CHAPTER 267

(H. B. 4115—By Delegates Douglas, Collins,
Stalnaker, Tucker and Capito)

[Passed February 17, 1998: in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article two-b, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, continuing the meat inspection division of the department of agriculture.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2B. INSPECTION OF MEAT AND POULTRY.

§19-2B-1. Purpose and construction; continuation of meat and poultry inspection program.

1 Subject to the provisions of section seven of this
 2 article, the basic purpose of this article is to provide for the
 3 inspection, labeling and disposition of animals, poultry,
 4 carcasses, meat products and poultry products which are to
 5 be sold or offered for sale through commercial outlets for
 6 human consumption, the licensing of commercial
 7 slaughterers, custom slaughterers and processors, and the
 8 inspection of slaughterhouses and processing plants
 9 located in the state of West Virginia. This article, being
 10 intended to protect the health of the citizens of West
 11 Virginia, shall be liberally construed.

12 After having conducted a preliminary performance
 13 review through its joint committee on government
 14 operations, pursuant to article ten, chapter four of this
 15 code, the Legislature hereby finds and declares that the
 16 meat inspection program should be continued and
 17 reestablished. Accordingly, notwithstanding the provisions
 18 of article ten, chapter four of this code, the meat and
 19 poultry inspection program shall continue to exist until
 20 the first day of July, two thousand four.

CHAPTER 268

(H. B. 4345—By Delegates Douglas, Collins, Stalnaker,
 Capito, Claypole, Prunty and Tucker)

[Passed March 2, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article twenty-one-a, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, continuing the state soil conservation committee.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 21A. SOIL CONSERVATION DISTRICTS.

§19-21A-4. State soil conservation committee; continuation.

1 (a) The state soil conservation committee is continued.
2 It is to serve as an agency of the state and to perform the
3 functions conferred upon it in this article. The committee
4 shall consist of seven members. The following shall serve,
5 ex officio, as members of the committee: The director of
6 the state cooperative extension service; the director of the
7 state agricultural experiment station; the director of the
8 division of environmental protection; and the state
9 commissioner of agriculture, who shall be chairman of the
10 committee.

11 The governor shall appoint as additional members of
12 the committee three representative citizens. The term of
13 members thus appointed shall be four years, except that of
14 the first members so appointed, one shall be appointed for
15 a term of two years, one for a term of three years, and one
16 for a term of four years. In the event of a vacancy,
17 appointment shall be for the unexpired term.

18 The committee may invite the secretary of agriculture
19 of the United States of America to appoint one person to
20 serve with the committee as an advisory member.

21 The committee shall keep a record of its official
22 actions, shall adopt a seal, which seal shall be judicially
23 noticed, and may perform such acts, hold such public
24 hearings and promulgate such rules as may be necessary
25 for the execution of its functions under this article.

26 (b) The state soil conservation committee may employ
27 an administrative officer and such technical experts and
28 such other agents and employees, permanent and
29 temporary, as it may require, and shall determine their
30 qualifications, duties and compensation. The committee
31 may call upon the attorney general of the state for such
32 legal services as it may require. It shall have authority to
33 delegate to its chairman, to one or more of its members, or

34 to one or more agents or employees, such powers and
35 duties as it may deem proper. The committee is
36 empowered to secure necessary and suitable office
37 accommodations, and the necessary supplies and
38 equipment. Upon request of the committee, for the
39 purpose of carrying out any of its functions, the
40 supervising officer of any state agency, or of any state
41 institution of learning shall, insofar as may be possible,
42 under available appropriations, and having due regard to
43 the needs of the agency to which the request is directed,
44 assign or detail to the committee, members of the staff or
45 personnel of such agency or institution of learning, and
46 make such special reports, surveys or studies as the
47 committee may request.

48 (c) A member of the committee shall hold office so
49 long as he shall retain the office by virtue of which he
50 shall be serving on the committee. A majority of the
51 committee shall constitute a quorum, and the concurrence
52 of a majority in any matter within their duties shall be
53 required for its determination. The chairman and
54 members of the committee shall receive no compensation
55 for their services on the committee, but shall be entitled to
56 expenses, including traveling expenses, necessarily
57 incurred in the discharge of their duties on the committee.
58 The committee shall provide for the execution of surety
59 bonds for all employees and officers who shall be
60 entrusted with funds or property; shall provide for the
61 keeping of a full and accurate public record of all
62 proceedings and of all resolutions, rules and orders issued
63 or adopted; and shall provide for an annual audit of the
64 accounts of receipts and disbursements.

65 (d) In addition to the duties and powers hereinafter
66 conferred upon the state soil conservation committee, it
67 shall have the following duties and powers:

68 (1) To offer such assistance as may be appropriate to
69 the supervisors of soil conservation districts, organized as
70 provided hereinafter, in the carrying out of any of their
71 powers and programs;

72 (2) To keep the supervisors of each of the several
73 districts, organized under the provisions of this article,
74 informed of the activities and experience of all other

75 districts organized hereunder, and to facilitate an
76 interchange of advice and experience between such
77 districts and cooperation between them;

78 (3) To coordinate the programs of the several soil
79 conservation districts organized hereunder so far as this
80 may be done by advice and consultation;

81 (4) To secure the cooperation and assistance of the
82 United States and any of its agencies, and of agencies of
83 this state, in the work of such districts;

84 (5) To disseminate information throughout the state
85 concerning the activities and programs of the soil
86 conservation districts organized hereunder, and to
87 encourage the formation of such districts in areas where
88 their organization is desirable;

89 (6) To accept and receive donations, gifts,
90 contributions, grants and appropriations in money,
91 services, materials or otherwise, from the United States or
92 any of its agencies, from the state of West Virginia, or
93 from other sources, and to use or expend such money,
94 services, materials or other contributions in carrying out
95 the policy and provisions of this article, including the right
96 to allocate such money, services or materials in part to the
97 various soil conservation districts created by this article in
98 order to assist them in carrying on their operations; and

99 (7) To obtain options upon and to acquire by
100 purchase, exchange, lease, gift, grant, bequest, devise or
101 otherwise, any property, real or personal, or rights or
102 interests therein; to maintain, administer, operate and
103 improve any properties acquired, to receive and retain
104 income from such property and to expend such income as
105 required for operation, maintenance, administration or
106 improvement of such properties or in otherwise carrying
107 out the purposes and provisions of this article; and to sell,
108 lease or otherwise dispose of any of its property or
109 interests therein in furtherance of the purposes and the
110 provisions of this article. Money received from the sale of
111 land acquired in the small watershed program shall be
112 deposited in the special account of the state soil
113 conservation committee and expended as herein provided.

114 After having conducted a performance audit through
115 its joint committee on government operations, pursuant to
116 article ten, chapter four of this code, the Legislature
117 hereby finds and declares that the state soil conservation
118 committee should be continued and reestablished.
119 Accordingly, pursuant to the provisions of section five of
120 said article, the state soil conservation committee shall
121 continue to exist until the first day of July, one thousand
122 nine hundred ninety-nine.

CHAPTER 269

(H. B. 4347—By Delegates Douglas, Collins, Stalnaker,
Capito, Claypole, Tucker and Kuhn)

[Passed March 3, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article twenty-three, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section thirty, relating to continuing the racing commission.

Be it enacted by the Legislature of West Virginia:

That article twenty-three, 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 thirty, to read as follows:

ARTICLE 23. HORSE AND DOG RACING.

§19-23-30. Termination of the racing commission.

1 Pursuant to the provisions of article ten, chapter four
2 of this code, the racing commission shall continue to exist
3 until the first day of July, one thousand nine hundred
4 ninety-nine.

CHAPTER 270

(S. B. 414—By Senators Bowman, Bailey, Ball, Jackson, Kessler,
Plymale, White, Boley, Buckalew and Minear)

[Passed February 17, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article one, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the parks section and the parks functions of the division of natural resources.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. ORGANIZATION AND ADMINISTRATION.

§20-1-3. **Division of natural resources, office of director and commission established; termination date for division of natural resources and for parks section of division of natural resources.**

1 A division of natural resources, the office of director
2 of the division of natural resources and a natural resources
3 commission are hereby created and established in the state
4 government with jurisdiction, powers, functions, services
5 and enforcement processes as provided in this chapter and
6 elsewhere by law.

7 Pursuant to the provisions of article ten, chapter four
8 of this code, the division of natural resources shall
9 continue to exist until the first day of July, two thousand
10 one.

11 Pursuant to the provisions of article ten, chapter four
12 of this code, the parks section and parks functions of the
13 division of natural resources, transferred to the division of
14 natural resources pursuant to the provisions of section
15 twelve, article one, chapter five-b of this code, shall
16 continue to exist within the division of natural resources
17 until the first day of July, one thousand nine hundred
18 ninety-nine.

CHAPTER 271

(S. B. 415—By Senators Bowman, Bailey, Ball, Jackson,
Kessler, White, Boley, Buckalew and Minear)

[Passed February 23, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article one, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the division of environmental protection.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. DIVISION OF ENVIRONMENTAL PROTECTION.

§22-1-4. Division of environmental protection continued.

- 1 Pursuant to the provisions of article ten, chapter four
- 2 of this code, the division of environmental protection shall
- 3 continue to exist until the first day of July, two thousand.

CHAPTER 272

(S. B. 251—By Senators Bowman, Bailey, Ball, Kessler,
Plymale, White, Boley, Buckalew, Minear and Scott)

[Passed February 16, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article eleven, chapter twenty-two-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the commission on Potomac River basin.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 11. INTERSTATE COMMISSION ON THE POTOMAC RIVER BASIN.**§22C-11-4. Effective date; findings; termination date.**

1 This article shall become effective upon the adoption
2 of substantially similar amendments to the interstate
3 compact by each of the signatory states to the compact,
4 and upon the approval of the amendments to the compact
5 by the Congress of the United States.

6 Pursuant to article ten, chapter four of this code, West
7 Virginia shall continue to be a member of this compact
8 until the first day of July, two thousand four.

CHAPTER 273

(S. B. 250—By Senators Bowman, Bailey, Ball, Kessler, Plymale,
White, Wooton, Boley, Buckalew, Minear and Scott)

[Passed February 17, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article one-a, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuation of the commission on uniform state laws.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1A. COMMISSION ON UNIFORM STATE LAWS.**§29-1A-5. Reestablishment of commission.**

1 After having conducted a preliminary performance
2 review through its joint committee on government
3 operations, pursuant to article ten, chapter four of this
4 code, the Legislature hereby finds and declares that the
5 commission on uniform state laws should be continued
6 and reestablished. Accordingly, notwithstanding the
7 provisions of article ten, chapter four of this code, the
8 commission on uniform state laws shall continue to exist
9 until the first day of July, two thousand four.

CHAPTER 274

(H. B. 4690—By Delegates Douglas, Collins,
Stalnaker, Capito and Butcher)

[Passed March 14, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article three, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section thirty-one, relating to continuing the state fire commission.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. FIRE PREVENTION AND CONTROL ACT.

§29-3-31. Termination of the state commission.

- 1 Pursuant to the provisions of article ten, chapter four
- 2 of this code, the state fire commission shall continue to
- 3 exist until the first day of July, two thousand one.

CHAPTER 275

(H. B. 4349—By Delegates Douglas, Collins, Stalnaker,
Capito, Claypole, Prunty and Tucker)

[Passed March 3, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five-a, article six, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, continuing the division of personnel.

Be it enacted by the Legislature of West Virginia:

That section five-a, article six, 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 6. CIVIL SERVICE COMMISSION.

§29-6-5a. Termination of division.

- 1 Pursuant to the provisions of article ten, chapter four
- 2 of this code, the division of personnel shall continue to
- 3 exist until the first day of July, two thousand four.

CHAPTER 276

(H. B. 4257—By Delegates Douglas, Collins, Claypole,
Prunty, Stalnaker, Tucker and Capito)

[Passed February 23, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twelve, article twelve, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, continuing the board of risk and insurance management.

Be it enacted by the Legislature of West Virginia:

That section twelve, article twelve, 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 12. STATE INSURANCE.

§29-12-12. Reestablishment of board as state board of risk and insurance management.

- 1 After having conducted a performance and fiscal audit
- 2 through its joint committee on government operations,
- 3 pursuant to section nine, article ten, chapter four of this
- 4 code, the Legislature hereby finds and declares that the
- 5 state board of insurance should be continued and
- 6 reestablished but shall be known and referred to as the
- 7 state board of risk and insurance management.

8 Accordingly, notwithstanding the provisions of section
 9 four, article ten, chapter four of this code, the state board
 10 of insurance shall continue to exist until the first day of
 11 July, two thousand four, but shall be known and referred
 12 to as the state board of risk and insurance management.

CHAPTER 277

(H. B. 4114—By Delegates Douglas, Collins,
 Tucker, Capito, Thompson and Varner)

[Passed February 18, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article twenty,
 chapter twenty-nine of the code of West Virginia, one
 thousand nine hundred thirty-one, as amended, continuing
 the West Virginia women's commission.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 20. WOMEN'S COMMISSION.

**§29-20-1. Continuation; membership; appointment and terms
 of members; organization; reimbursement for
 expenses.**

1 The West Virginia commission on the status of women
 2 is hereby abolished, and there is hereby continued within
 3 the department of health and human resources the West
 4 Virginia women's commission, to consist of eighteen
 5 members, seven of whom shall be ex officio members, not
 6 entitled to vote: The attorney general, the state
 7 superintendent of schools, the commissioner of labor, the
 8 commissioner of the bureau of human resources of the
 9 department of health and human resources, the director of
 10 the human rights commission, the director of the division
 11 of personnel and the chancellor of the board of directors

12 of the state college system. Each ex officio member may
13 designate one representative employed by his or her
14 department to meet with the commission in his or her
15 absence. The governor shall appoint the additional eleven
16 members, by and with the advice and consent of the
17 Senate, from among the citizens of the state. The
18 governor shall designate the chairman and vice chairman
19 of the commission and the commission may elect such
20 other officers as it deems necessary. The members shall
21 serve a term beginning the first day of July, one thousand
22 nine hundred seventy-seven, three to serve for a term of
23 one year, four to serve for a term of two years and the
24 remaining four to serve for a term of three years. The
25 successors of the members initially appointed as provided
26 herein shall be appointed for a term of three years each in
27 the same manner as the members initially appointed under
28 this article, except that any person appointed to fill a
29 vacancy occurring prior to the expiration of the term for
30 which his or her predecessor was appointed shall be
31 appointed for the remainder of such term. Each member
32 shall serve until the appointment and qualification of his
33 or her successor.

34 No member may receive any salary for his or her
35 services, but each may be reimbursed for actual and
36 necessary expenses incurred in the performance of his or
37 her duties out of funds received by the commission under
38 section four of this article, except that in the event the
39 expenses are paid, or are to be paid, by a third party, the
40 members shall not be reimbursed by the commission.

41 After having conducted a performance audit through
42 its joint committee on government operations, pursuant to
43 section nine, article ten, chapter four of this code, the
44 Legislature hereby finds and declares that the West
45 Virginia women's commission should be continued and
46 reestablished. Accordingly, notwithstanding the provisions
47 of section four, article ten, chapter four of this code, the
48 West Virginia women's commission shall continue to exist
49 until the first day of July, one thousand nine hundred
50 ninety-nine.

CHAPTER 278

(S. B. 536—By Senators Bowman, Bailey, Ball, Jackson, Kessler, Plymale, Schoonover, Boley and Minear)

[Passed March 2, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article twenty-one, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing public defender services.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 21. PUBLIC DEFENDER SERVICES.

§29-21-3. Establishment of public defender services, termination date.

1 There is hereby created an executive agency known as
 2 public defender services. The agency shall administer,
 3 coordinate and evaluate programs by which the state
 4 provides legal representation to indigent persons, monitor
 5 the progress of various delivery systems, and recommend
 6 improvements. The agency shall maintain its office at the
 7 state capital.

8 Pursuant to the provisions of article ten, chapter four
 9 of this code, public defender services shall continue to
 10 exist until the first day of July, one thousand nine hundred
 11 ninety-nine.

CHAPTER 279

(H. B. 4255—By Delegates Douglas, Collins, Claypole,
Prunty, Stalnaker, Tucker and Capito)

[Passed February 23, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-six, article twenty-two, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the state lottery commission.

Be it enacted by the Legislature of West Virginia:

That section twenty-six, article twenty-two, 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 22. STATE LOTTERY ACT.

§29-22-26. Continuation of state lottery commission.

1 After having conducted a performance audit through
2 its joint committee on government operations, pursuant to
3 section nine, article ten, chapter four of this code, the
4 Legislature hereby finds and declares that the state lottery
5 commission should be continued and reestablished.
6 Accordingly, notwithstanding the provisions of section
7 four, article ten, chapter four of this code, the state lottery
8 commission shall continue to exist until the first day of
9 July, two thousand one.

CHAPTER 280

(H. B. 4256—By Delegates Douglas, Collins, Claypole,
Prunty, Stalnaker and Capito)

[Passed February 23, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article thirteen-a, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the continuation of the board of examiners of land surveyors.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 13A. LAND SURVEYORS.

§30-13A-3. Board of examiners of land surveyors created; appointment, terms, removal, etc., of members; officers; meetings; quorum; compensation and expenses.

1 (a) There is hereby created the state board of
2 examiners of land surveyors which shall be composed of
3 three members appointed by the governor by and with the
4 advice and consent of the Senate. Each member shall
5 have been actively engaged in the practice of land
6 surveying for at least ten years and shall be the holder of a
7 license under the provisions of this article.

8 (b) The members of the board shall be appointed for
9 overlapping terms of three years each ending on the
10 thirtieth day of June, and until their respective successors
11 have been appointed and qualified. Members may be
12 reappointed for any number of terms. Before entering
13 upon the performance of his duties, each member shall
14 take and subscribe to the oath required by section five,

15 article IV of the constitution of this state. Vacancies shall
16 be filled by appointment by the governor for the
17 unexpired term of the member whose office shall be
18 vacant and such appointment shall be made within sixty
19 days of the occurrence of such vacancy. Any member
20 may be removed by the governor in case of
21 incompetency, neglect of duty, gross immorality or
22 malfeasance in office.

23 (c) The board shall elect from its membership a
24 chairman and secretary-treasurer. A majority of the
25 members of the board shall constitute a quorum and
26 meetings shall be held at the call of the chairman or upon
27 the written request of two members at such time and place
28 as designated in such call or request, and, in any event, the
29 board shall meet at least once annually to conduct the
30 examination hereinafter provided for and to transact such
31 other business as may come before it.

32 (d) Members shall be paid such reasonable
33 compensation as the board may from time to time
34 determine, and in addition may be reimbursed for all
35 reasonable and necessary expenses actually incurred in the
36 performance of their duties, which compensation and
37 expenses shall be paid in accordance with the provisions
38 of subsection (b), section four of this article.

39 (e) After having conducted a performance audit
40 through its joint committee on government operations,
41 pursuant to section nine, article ten, chapter four of this
42 code, the Legislature hereby finds and declares that the
43 board of examiners of land surveyors should be continued
44 and reestablished. Accordingly, notwithstanding the
45 provisions of section four of said article, the board of
46 examiners of land surveyors shall continue to exist until
47 the first day of July, two thousand four.

CHAPTER 281

(S. B. 416—By Senators Bowman, Bailey, Ball, Jackson,
Kessler, Plymale, White, Buckalew and Minear)

[Passed February 23, 1998: in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article thirty, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the board of social work examiners.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 30. SOCIAL WORKERS.

§30-30-3. Board of social work examiners.

1 (a) For the purpose of carrying out the provisions of
2 this article, there is hereby created a West Virginia board
3 of social work examiners, consisting of seven members
4 who shall be appointed by the governor, subject to the
5 following requirements:

6 (1) No person may be excluded from serving on the
7 board by reason of race, sex or national origin;

8 (2) One member shall be an independent clinical
9 social worker, two members shall be certified social
10 workers, one member shall be a graduate social worker
11 and two members shall be social workers. All such
12 members must be licensed under the provisions of this
13 article in accordance with their respective titles. In
14 addition, there shall be one member of the board chosen
15 from the general public: *Provided*, That those members
16 who are appointed by the governor to serve as the first
17 board after the effective date of this article shall be
18 persons eligible for the licensing required under this
19 article: *Provided, however*, That the member from the

20 general public shall never be required to be eligible for
21 licensing;

22 (3) The members of the first board to serve after the
23 effective date of this article shall be appointed within
24 ninety days thereof;

25 (4) The term of office for each member of the board
26 shall be three years: *Provided*, That one of the members
27 of the first board to serve after the effective date of this
28 article shall serve a term of two years, three of them shall
29 serve a term of three years and the remaining three shall
30 serve a term of four years; and

31 (5) The governor shall, whenever there is a vacancy on
32 the board due to circumstances other than the expiration
33 of the term of a member, appoint another member with
34 the same qualifications as the member who has vacated to
35 serve the duration of the unexpired term.

36 For the purpose of accepting nominations for the
37 replacement of a member, the governor shall cause a
38 notice of the vacancy to be published at least thirty days
39 prior to an announcement of the replacement member, as
40 a Class I-0 legal advertisement, in accordance with the
41 provisions of section two, article three, chapter fifty-nine
42 of this code. The publication area shall be statewide.

43 If the governor fails to make appointment in ninety
44 days after expiration of any term, the board shall make the
45 necessary appointment. Each member shall hold office
46 until the expiration of the term for which such member is
47 appointed and until a successor shall have been duly
48 appointed and qualified.

49 (b) Any members of the board may be removed from
50 office for cause, in accordance with procedures set forth in
51 this code for the removal of public officials from office.

52 (c) The board shall pay each member the same
53 compensation as is paid to members of the Legislature for
54 their interim duties as recommended by the citizens
55 legislative compensation commission and authorized by
56 law for each day or portion thereof engaged in the
57 discharge of official duties and shall reimburse each

58 member for actual and necessary expenses incurred in the
59 discharge of official duties: *Provided*, That such
60 compensation and such expenses shall not exceed the
61 amount received by the board from licensing fees and
62 penalties imposed under subdivision (4), subsection (e) of
63 this section.

64 (d) The board shall hold an annual election for the
65 purpose of electing a chairman, vice chairman and
66 secretary. The requirements for meetings and
67 management of the board shall be established in
68 regulations promulgated by the board as required by this
69 article.

70 (e) In addition to the duties set forth in other
71 provisions of this article, the board shall:

72 (1) Recommend to the Legislature any proposed
73 modifications to this article;

74 (2) Report to county prosecutors any suspected
75 violations of this article: *Provided*, That no report shall be
76 made until the board has given the suspected violator
77 ninety days written notice of the suspected violation and
78 the violator has, within such ninety-day period, been
79 afforded an opportunity to respond to the board with
80 respect to the allegation;

81 (3) Publish an annual report and a roster listing the
82 names and addresses of all persons who have been
83 licensed in accordance with the provisions of this article as
84 an independent clinical social worker, certified social
85 worker, graduate social worker or social worker;

86 (4) Establish a fee schedule by legislative rule,
87 pursuant to the provisions of chapter twenty-nine-a of this
88 code, which schedule may include fees for the initial
89 examination, license fee, license renewal, license
90 replacement, reciprocal license, license classification
91 change, continuing education provider approval and
92 monitoring, mailing lists and requests for information and
93 reports; fees for requests for information and reports shall
94 not be greater than the cost of personnel, time and

95 supplies incurred by the board and shall not be applied to
96 the annual report;

97 (5) Establish standards and requirements by legislative
98 rule, pursuant to the provisions of chapter twenty-nine-a
99 of this code, for continuing education. In establishing
100 these requirements the board shall consult with
101 professional groups and organizations representing all
102 levels of practice provided for in this article and the board
103 shall consider recognized staff development programs,
104 continuing education programs offered by colleges and
105 universities having social work programs approved or
106 accredited by the council on social work education, and
107 continuing education programs offered by recognized
108 state and national social work bodies: *Provided*, That
109 such standards and requirements for continuing education
110 shall not be construed to alter or affect in any way the
111 standards and requirements for licensing as set forth
112 elsewhere in this article;

113 (6) Establish standards and requirements for the
114 practice of social work and the differentiation of
115 qualifications, education, training, experience, supervision,
116 responsibilities, rights, duties and privileges at the
117 independent clinical social worker, certified social worker,
118 graduate social worker and social worker license levels. In
119 establishing these standards and requirements the board
120 shall consult with professional groups and organizations
121 representing all levels of practice provided for in this
122 article. Standards and requirements may include, but are
123 not limited to, practice standards, practice parameters,
124 quality indicators, minimal standards of acceptance,
125 advanced training and certification and continuing
126 education: *Provided*, That such standards and
127 requirements for practice may not be construed to alter or
128 affect in any way the standards and requirements for
129 licensing as set forth elsewhere in this article;

130 (7) Conduct its proceedings in accordance with
131 provisions of article nine-a, chapter six of this code; and

132 (8) Employ, direct and define the duties of
133 administrative clerical support staff.

134 After having conducted a preliminary performance
135 review through its joint committee on government
136 operations, pursuant to article ten, chapter four of this
137 code, the Legislature hereby finds and declares that the
138 board of social work examiners be continued and
139 reestablished. Accordingly, notwithstanding the provisions
140 of said article, the board of social work examiners shall
141 continue to exist until the first day of July, one thousand
142 nine hundred ninety-nine.

CHAPTER 282

(S. B. 417—By Senators Bowman, Bailey, Ball, Jackson,
Kessler, Plymale, Schoonover, White, Buckalew and Minear)

[Passed February 23, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-two, article thirty-two, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the board of examiners in speech pathology.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 32. SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS.

§30-32-22. Termination of board.

1 The West Virginia board of examiners for speech-
2 language pathology and audiology shall be terminated
3 pursuant to the provisions of article ten, chapter four of
4 this code on the first day of July, one thousand nine
5 hundred ninety-nine, unless sooner terminated or unless
6 continued or reestablished pursuant to that article.

CHAPTER 283

(S. B. 535—By Senators Bowman, Bailey, Ball, Jackson, Kessler,
Plymale, Schoonover, White, Boley, Buckalew, Minear and Scott)

[Passed March 2, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article one, chapter forty-seven-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the West Virginia lending and credit rate board.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. LENDING AND CREDIT RATE BOARD.

§47A-1-1. Legislative findings; creation, membership, powers and duties of board; continuation.

1 (a) The Legislature hereby finds and declares that:

2 (1) Changes in the permissible charges on loans, credit
3 sales or transactions, forbearance or other similar
4 transactions requires specialized knowledge of the needs
5 of the citizens of West Virginia for credit for personal and
6 commercial purposes and knowledge of the availability of
7 such credit at reasonable rates to the citizens of this state
8 while affording a competitive return to persons extending
9 such credit;

10 (2) Maximum charges on loans, credit sales or
11 transactions, forbearance or other similar transactions
12 executed in this state should be prescribed from time to
13 time to reflect changed economic conditions, current
14 interest rates and finance charges throughout the United
15 States and the availability of credit within the state in order
16 to promote the making of such loans in this state; and

17 (3) The prescribing of such maximum interest rates
18 and finance charges can be accomplished most effectively
19 and flexibly by a board comprised of the heads of
20 designated government agencies, university schools of
21 business and administration and members of the public.

22 (b) In view of the foregoing findings, it is the purpose
23 of this section to establish the West Virginia lending and
24 credit rate board and authorize said board to prescribe
25 semiannually the maximum interest rates and finance
26 charges on loans, credit sales or transactions, forbearance
27 or similar transactions made pursuant to this section
28 subject to the provisions, conditions and limitations
29 hereinafter set forth and to authorize lenders, sellers and
30 other creditors to charge up to the maximum interest rates
31 or finance charges so fixed. The rates prescribed by the
32 board are alternative rates and any creditor may utilize
33 either the rate or rates set by the board or any other rate or
34 rates which the creditor is permitted to charge under any
35 other provision of this code.

36 (c) The West Virginia lending and credit rate board
37 shall be comprised of:

38 (1) The director of the governor's office of economic
39 and community development;

40 (2) The West Virginia state treasurer;

41 (3) The West Virginia banking commissioner;

42 (4) The deans of the schools of business and
43 administration at Marshall university and West Virginia
44 university;

45 (5) The director of the division of consumer
46 protection of the attorney general's office; and

47 (6) Three members of the public appointed by the
48 governor with the advice and consent of the Senate. The
49 members of the public shall be appointed for terms of six
50 years each, and until their successors are appointed and
51 qualified; except that of the members first appointed, one
52 shall be appointed for a term of two years, one for a term

53 of four years and one for a term of six years. A member
54 who has served one full term of six years shall be
55 ineligible for appointment for the next succeeding term.
56 Vacancies shall be filled by appointment of the governor
57 with the advice and consent of the Senate, or if any
58 vacancy remains unfilled for three months, by a majority
59 vote of the board. The West Virginia banking
60 commissioner shall serve as chairperson of the board and
61 the rate or rates set by the board shall be determined by a
62 majority vote of those members of the board in attendance
63 at the respective board meeting.

64 (d) The West Virginia lending and credit rate board is
65 hereby authorized and directed to meet after the thirty-
66 first day of December, one thousand nine hundred eighty-
67 three, on the first Tuesday of April and on the first
68 Tuesday of October of each year or more or less
69 frequently as required by the circumstances and to
70 prescribe by order a maximum rate of interest and finance
71 charge for the next succeeding six months, effective on
72 the first day of June and on the first day of December, for
73 any loans, credit sales or transactions, forbearance or
74 similar transactions made pursuant to this section. In
75 fixing said maximum rates of interest and finance charge,
76 the board shall take into consideration prevailing
77 economic conditions, including the monthly index of
78 long-term United States government bond yields for the
79 preceding calendar month, yields on conventional
80 commercial short-term loans and notes throughout West
81 Virginia and throughout the United States and on
82 corporate interest-bearing securities of high quality, the
83 availability of credit at reasonable rates to the citizens of
84 this state which afford a competitive return to persons
85 extending such credit and such other factors as the board
86 may determine.

87 (e) Any petition proposing a change in the prescribed
88 maximum rates of interest and finance charges must be
89 filed in the office of the banking commissioner no later
90 than the fifteenth day of February in order to be voted on
91 at the board meeting on the first Tuesday of April and no

92 later than the fifteenth day of August in order to be voted
93 on at the board meeting on the first Tuesday of October.
94 Whenever any change in the prescribed maximum rates of
95 interest and finance charges is proposed the board shall
96 schedule a hearing, at least fifteen days prior to the board
97 meeting at which the proposed rates of interest and
98 finance charge will be voted on by the members of the
99 board, and shall give all interested parties the opportunity
100 to testify and to submit information at such public hearing
101 that is relevant. Notice of the scheduled public hearing
102 shall be issued and disseminated to the public at least
103 twenty days prior to the scheduled date of the hearing.

104 (f) The board shall prescribe by order issued not later
105 than the twentieth day of April and not later than the
106 twentieth day of October, in accordance with the
107 provisions of subsection (d) of this section the maximum
108 rates of interest and finance charge for the next
109 succeeding six months for any loan, credit sale,
110 forbearance or similar transaction made pursuant to this
111 section and shall cause such maximum rate of interest and
112 finance charge to be issued and disseminated to the public,
113 such maximum rate of interest and finance charge to be
114 effective on the first day of June and the first day of
115 December for the next succeeding six months.

116 (g) Notwithstanding the other provisions of this
117 chapter, the West Virginia lending and credit rate board
118 shall not be required to meet if no petition has been filed
119 with the board requesting a hearing and interest rates and
120 economic conditions have not changed sufficiently to
121 indicate that any change in the existing rate order would
122 be required, and there are not at least two board members
123 who concur that a meeting of the board is necessary. If
124 the board does not meet, the maximum rates of interest
125 and finance charges prescribed by the board in the
126 existing rate order shall remain in full force and effect
127 until the next time the board meets and prescribes
128 different maximum rates of interest and finance charges.

129 (h) If circumstances and economic conditions require,
130 the chairperson or any three board members, at any time,
131 may call an emergency interim meeting of the West
132 Virginia lending and credit rate board, at which time the
133 chairperson shall give ten days' notice of the scheduled
134 emergency meeting to the public. All interested parties
135 shall have the opportunity to be heard and to submit
136 information at such emergency meeting that is relevant.
137 Any and all emergency rate board orders shall be effective
138 within thirty days from the date of such emergency
139 meeting.

140 (i) Each member of the board, except those whose
141 regular salary is paid by the state of West Virginia, shall
142 receive seventy-five dollars per diem while actually
143 engaged in the performance of the duties of the board.
144 Each member shall be reimbursed for all reasonable and
145 necessary expenses actually incurred during the
146 performance of their duties, except that in the event the
147 expenses are paid by a third party the members shall not
148 be reimbursed by the state. The reimbursement shall be
149 paid out of the revolving fund established by section two
150 of this article upon a requisition upon the state auditor,
151 properly certified by the banking commissioner.

152 (j) In setting the maximum interest rates and finance
153 charges, the board may set varying rates based on the type
154 of credit transaction, the term of transaction, the type of
155 debtor, the type of creditor and other factors relevant to
156 determination of such rates. In addition, the board may
157 set varying rates for ranges of principal balances within a
158 single category of credit transactions.

159 (k) Pursuant to the provisions of article ten, chapter
160 four of this code, the West Virginia lending and credit rate
161 board shall continue to exist until the first day of July, one
162 thousand nine hundred ninety-nine.

CHAPTER 284

(S. B. 249—By Senators Bowman, Bailey, Ball,
Kessler, Plymale and Buckalew)

[Passed February 16, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-four, article four, chapter forty-eight-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuation of the family law masters system.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. PROCEEDING BEFORE A MASTER.

§48A-4-24. Continuation of family law masters system.

1 After having conducted a performance and fiscal audit
2 through its joint committee on government operations,
3 pursuant to article ten, chapter four of this code, the
4 Legislature hereby finds and declares the family law
5 masters system should be continued and reestablished.
6 Accordingly, notwithstanding the provisions of said article,
7 the family law masters system shall continue to exist until
8 the first day of July, one thousand nine hundred ninety-
9 nine, so that the joint committee on government
10 operations may monitor compliance by the family law
11 masters system with the recommendations of the
12 performance audit.

CHAPTER 285

(Com. Sub. for S. B. 181—By Senators Jackson and Kessler)

[Passed March 14, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section twenty-five, article one-a, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section ten, article three of said chapter; and to amend and reenact section three, article twelve-d of said chapter, all relating generally to the assessment and taxation of real or personal property; providing for discretionary penalties for refusal to furnish proper list of property, for refusal to answer or for answering falsely questions posed by assessor or tax commissioner, or for refusal to deliver statement; requiring office of business registration or other appropriate section of the department of tax and revenue to annually provide a list of businesses registered within a county to the county assessor at no cost; limiting fee for additional lists; and making certain technical provisions.

Be it enacted by the Legislature of West Virginia:

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

Article

3. Assessments Generally.

12D. Establishment of Office of Business Registration; Creation of Centralized Records.

ARTICLE 3. ASSESSMENTS GENERALLY.

§11-3-10. Failure to list property, etc.; collection of penalties and forfeitures.

- 1 If any person, firm or corporation, including public
- 2 service corporations, whose duty it is by law to list any real

3 estate or personal property for taxation, refuses to furnish
4 a proper list thereof or refuses to list within the time
5 required by law, or if any person, firm or corporation,
6 including public service corporations, refuses to answer or
7 answers falsely any question asked by the assessor or by
8 the tax commissioner, or fails or refuses to deliver any
9 statement required by law, he, she or it may forfeit, at the
10 discretion of the assessor or the tax commissioner for
11 good cause shown, not less than twenty-five nor more than
12 one hundred dollars, and shall be denied all remedy
13 provided by law for the correction of any assessment
14 made by the assessor or by the board of public works. If
15 any person, firm or corporation, including public service
16 corporations, required by law to make return of property
17 for taxation, whether the return is to be made to the
18 assessor, the board of public works, or any other assessing
19 officer or body, fails to return a true list of all property
20 which should be assessed in this state, including notes,
21 bonds, bills and accounts receivable, stocks and any other
22 intangible personal property, the person, firm or
23 corporation, in addition to all other penalties provided by
24 law, shall forfeit one percent of the value of the property
25 not yet returned and not otherwise taxed in this state. A
26 forfeiture as to all property aforesaid may be enforced for
27 any such default occurring in any year not exceeding five
28 years immediately prior to the time the default is
29 discovered, but no liability to penalty or forfeiture as to
30 notes, bonds, bills and accounts receivable, stocks and
31 other intangible personal property arising prior to the first
32 day of January, one thousand nine hundred thirty-three, is
33 enforceable on behalf of the state or of any of its
34 subdivisions. Each failure to make a true return as herein
35 required constitutes a separate offense, and a forfeiture
36 shall apply to each of them, but all forfeitures, to which
37 the same person, firm or corporation is liable, shall be
38 enforced in one proceeding against the person, firm or
39 corporation, or against the estate of any deceased person,
40 and may not exceed five percent of the value of the
41 property not returned. Forfeitures shall be collected as
42 provided in article two, chapter eleven-a of this code, the
43 same as any tax liability, against the defaulting taxpayer,
44 or in case of a decedent, against his or her personal

45 representative. The sheriff shall apportion such fund
46 among the state, county, district, school district and
47 municipalities which would have been entitled to the taxes
48 upon the property if it had been assessed, in proportion to
49 the rates of taxation for each levying unit for the year in
50 which the judgment was obtained bears to the sum of rates
51 for all. When the list of property returned by the
52 appraisers of the estate of any deceased person shows an
53 amount greater than the last assessment list of the deceased
54 person next preceding the appraisal of his or her estate, it
55 is prima facie evidence that the deceased person returned
56 an imperfect list of his or her property: *Provided*, That
57 any person liable for the tax or his or her personal
58 representative, may always be permitted to prove by
59 competent evidence that the discrepancy between the
60 assessment list and the appraisal of the estate is caused by
61 a difference of valuation returned by the assessor and that
62 made by the appraisers of the same property or by
63 property acquired after assessment, or that any property
64 enumerated in the appraisers' list had been otherwise listed
65 for taxation, or that it was not liable for taxation. Any
66 judgment recovered under this section is a lien, from the
67 time of the service of the notice, upon all real estate and
68 personal property of the defaulting taxpayer, owned at the
69 time or subsequently acquired, in preference to any other
70 lien.

**ARTICLE 12D. ESTABLISHMENT OF OFFICE OF BUSINESS
REGISTRATION; CREATION OF CENTRAL-
IZED RECORDS.**

**§11-12D-3. Agency contact list; dispersal of data base
information to agencies; agency contact with
prospective businesses.**

1 (a) An agency contact list consisting of state
2 government agencies and offices having registration,
3 licensing or other similar statutory provisions related to
4 the initiation of new businesses in West Virginia or which
5 should otherwise have contact with a new business, will be
6 maintained by the office of business registration in
7 conjunction with the centralized records for new business
8 registration.

9 (b) Based upon the proposed location, size, number of
10 employees, type of business, standard industry code or
11 codes and other pertinent information relating to the
12 business, each prospective new business, upon having a
13 record established in the centralized records for new
14 business registration, shall be informed by the office of
15 business registration of the state agencies or offices having
16 a registration, licensing and other similar statutory
17 provisions related to the initiation of a new business in
18 West Virginia or other function relating to prospective new
19 business such that the agency or office should by law or
20 regulation be given notice of the establishment or
21 operation of a new business in West Virginia. The office
22 of business registration shall establish a record of the new
23 business in the centralized data base for the use and
24 benefit of any agency or officer of the state of West
25 Virginia having access to the data base and which should
26 by law or regulation receive notice of the establishment or
27 operation of a particular business. The record should
28 contain information necessary to fulfill the regulatory,
29 registration or licensing function of the agency, or in lieu
30 of such information, the name, address and other pertinent
31 information relating to the particular business whereby the
32 agency or office may initiate procedures or make contact
33 with the particular business as is appropriate for the
34 fulfillment of the regulatory, registration, licensing or
35 other statutory duties of the office or agency.

36 (c) The office of business registration or some other
37 appropriate section of the department of tax and revenue
38 shall provide a list of the names and addresses of all
39 registered businesses located within each county to the
40 county assessor. The list shall be provided at no cost to
41 the county assessor between the first day of July and the
42 first day of August of each year. Any additional list of
43 businesses provided to the county assessor before the next
44 annual list is provided shall be provided at no more than
45 the actual cost to reproduce the list. The production of
46 information required by the provisions of this subsection
47 shall be considered an exception to and not violative of
48 any requirement for confidentiality otherwise established
49 under the provisions of this chapter.

CHAPTER 286

(S. B. 151—By Senators Tomblin, Mr. President, and Buckalew)
[By Request of the Executive]

[Passed March 3, 1998; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two and eleven, article one-c, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article by adding thereto two new sections, designated sections eleven-a and eleven-b; and to amend article three of said chapter by adding thereto a new section, designated section five-a, all relating generally to taxation of real property; creating legislative findings and intent; adding definitions; classification of managed timberland for taxation; directing tax department to propose legislative rules relating to setting timberland tax values; requiring written report of impact of the program; setting requirements for county assessors applying certain valuations; providing for objection to assessor valuation by any person and for appeals; establishing appeal procedures for designating and changing uses of managed timberland property for tax purposes; establishing new taxing guidelines for managed timberland; collecting back taxes on property improperly classified; creating limitations and criteria for assessing back taxes; creating an appeal process for classification determinations; establishing rates and interest collected for taxes due; providing for collection and liens associated with back taxes; and establishing effective dates for the provisions of this article.

Be it enacted by the Legislature of West Virginia:

That sections two and eleven, article one-c, chapter eleven 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 two new sections, designated sections eleven-a and eleven-b; and that article three of said chapter be amended by adding thereto a new section, designated section five-a, all to read as follows:

Article**1 C. Fair and Equitable Property Valuation.****3. Assessments Generally.****ARTICLE 1C. FAIR AND EQUITABLE PROPERTY VALUATION.****§11-1C-2. Definitions.**

§11-1C-11. Managed timberland; findings, purposes and declaration of legislative intent; implementation; inspection and determination of qualification.

§11-1C-11a. Certification of managed timberland; assessment of property; penalty for failure to comply.

§11-1C-11b. Valuation; rulemaking; aggrieved person and taxpayer protests; exhaustion of remedies; compliance inspection; notice of revocation; appeal; effective date.

§11-1C-2. Definitions.

1 For the purposes of this article, the following words
2 shall have the meanings hereafter ascribed to them unless
3 the context clearly indicates otherwise:

4 (a) "Timberland" means any surface real property
5 except farm woodlots of not less than ten contiguous acres
6 which is primarily in forest and which, in consideration of
7 their size, has sufficient numbers of commercially valuable
8 species of trees to constitute at least forty percent normal
9 stocking of forest trees which are well distributed over the
10 growing site.

11 (b) "Managed timberland" means surface real
12 property, except farm woodlots, of not less than ten
13 contiguous acres which is devoted primarily to forest use
14 and which, in consideration of their size, has sufficient
15 numbers of commercially valuable species of trees to
16 constitute at least forty percent normal stocking of forest
17 trees which are well distributed over the growing site, and
18 that is managed pursuant to a plan provided for in section
19 ten of this article.

20 (c) "Tax commissioner", "commissioner" or "tax
21 department" means the state tax commissioner or a
22 designee of the state tax commissioner.

23 (d) "Valuation commission" or "commission" means
24 the commission created in section three of this article.

25 (e) "County board of education" or "board" means the
26 duly elected board of education of each county.

27 (f) "Farm woodlot" means that portion of a farm in
28 timber but may not include land used primarily for the
29 growing of timber for commercial purposes except that
30 Christmas trees, or nursery stock and woodland products,
31 such as nuts or fruits harvested for human consumption,
32 shall be considered farm products and not timber
33 products.

34 (g) "Owner" means the person who is possessed of the
35 freehold, whether in fee or for life. A person seized or
36 entitled in fee subject to a mortgage or deed of trust
37 securing a debt or liability is deemed the owner until the
38 mortgagee or trust takes possession, after which such
39 mortgagee or trustee shall be deemed the owner. A
40 person who has an equitable estate of freehold, or is a
41 purchaser of a freehold estate who is in possession before
42 transfer of legal title is also deemed the owner.

43 The definitions in subdivisions (f) and (g) of this
44 section shall apply to tax years beginning on or after the
45 first day of January, one thousand nine hundred ninety-
46 nine.

§11-1C-11. Managed timberland; findings, purposes and declaration of legislative intent; implementation; inspection and determination of qualification.

1 (a) The Legislature finds and declares that the public
2 welfare is enhanced by encouraging and sustaining the
3 abundance of high quality forest land within the state; that
4 economic pressures may force industrial, residential or
5 other land development inconsistent with sustaining the
6 forests; and that tax policy should provide an incentive for
7 private owners of forest land to preserve the character and
8 use of land as forest land and to make management
9 decisions which enhance the quality of the future forest.

10 (b) In exercising the authority granted by the
11 provisions of section fifty-three, article VI of the
12 constitution of West Virginia, the Legislature makes the
13 following declarations of its intent:

14 (1) Notwithstanding the provisions of section twenty-
15 four, article three of this chapter, timberland certified by
16 the division of forestry as managed timberland shall be
17 valued as managed timberland as provided in this article
18 when it is managed under a cooperative contract with the

19 division of forestry and the certification has not been
20 surrendered by the owner of the property or revoked by
21 the director of the division of forestry.

22 The division of forestry shall, at the time of
23 contracting, notify the owner that the owner shall incur a
24 penalty as set forth in section five-a, article three of this
25 chapter if the owner fails to provide written notice to the
26 county assessor of a change in use of the managed
27 timberland.

28 (2) Property certified as managed timberland which
29 prior to certification is properly taxed in Class II, as
30 defined in section five, article eight of this chapter and
31 section one, article X of the constitution of West Virginia,
32 may not be reclassified to Class III or Class IV, as defined
33 in section five, article eight of this chapter, merely because
34 the property is certified as managed timberland unless
35 there is some other event or change in the use of the
36 property that disqualifies it from being taxed in Class II.

37 (c) To aid the Legislature in assessing the impact of
38 the managed timberland program on the state of West
39 Virginia, the division of forestry and the tax
40 commissioner, on or before the thirty-first day of
41 December, two thousand one, and on the thirty-first day of
42 December each year thereafter, shall report in writing to
43 the joint committee on government and finance of the
44 Legislature or its designated subcommittee. The tax
45 commissioner shall include in his or her report a complete
46 and accurate assessment of the impact of the managed
47 timberland program on the tax collections of the state,
48 including projected increases or decreases in tax
49 collection. The division of forestry shall include in its
50 report detailed information on the number of acres
51 designated as managed timberland and any identified
52 impacts of the program on the state's timber industry.

**§11-1C-11a. Certification of managed timberland; assessment
of property; penalty for failure to comply.**

1 (a) Any person who owns timberland comprising ten
2 or more contiguous acres may qualify for identification as
3 managed timberland for property tax purposes as set forth
4 in subdivision (1), subsection (d), section ten of this
5 article.

6 (b) The assessor, upon receipt of an appraisal or
7 certification of the timberland from the tax commissioner,
8 shall assess the property as managed timberland beginning
9 with the next ensuing assessment year. Except as
10 otherwise provided in this section, the classification of
11 timberland included in a certified managed timberland
12 plan shall not change for property tax purposes until such
13 time as there is: (1) A change in the use of the property
14 which requires a change in classification; (2) a change in
15 the classification of the property from Class III to Class
16 IV; or (3) a change in the classification of the property
17 from Class IV to Class III.

18 (c) If the director of the division of forestry
19 determines that the owner of timberland failed to
20 implement a certified managed timberland plan within
21 twenty-four months of certifying that the property meets
22 the definition of managed timberland, the director shall
23 give written notice to the owner by certified mail, return
24 receipt requested, that such certification is removed and
25 the owner of the timberland shall pay to the sheriff of the
26 county in which the property is located a fine equal to the
27 amount of property taxes saved due to the property being
28 assessed as managed timberland plus interest calculated at
29 the rate of nine percent per year. Additionally, the
30 assessor shall reassess the property. The amount of this
31 fine is equal to the sum of the following calculations:

32 (1) For each assessment year, the county assessor shall
33 determine the market value of the property and subtract
34 from that value the value at which the property was
35 appraised as managed timberland. This amount shall be
36 multiplied by sixty percent. This result shall then be
37 multiplied by the applicable levy rate.

38 (2) Interest shall be imposed on the amount calculated
39 under subdivision (1) of this subsection at the rate of nine
40 percent per annum beginning with the first day of October
41 of the tax year in which the taxes should have been paid
42 based upon the timberland value of the property. Interest
43 shall continue to accrue until the day the fine is paid.

44 (d) The sheriff shall deposit and account for the fines
45 collected under this section in the same manner as
46 property taxes.

§11-1C-11b. Valuation; rulemaking; aggrieved person and taxpayer protests; exhaustion of remedies; compliance inspection; notice of revocation; appeal; effective date.

1 (a) The tax commissioner shall establish by legislative
2 rule two methodologies for determining the appraised
3 value of managed timberland, based upon the land's
4 potential to produce future income according to its use
5 and productive potential as managed timberland and
6 whether the property is classified as Class II property or as
7 Class III or IV property for property tax purposes. These
8 values shall be determined by discounting the potential
9 future net income of the timberland to its present value
10 utilizing a discounted cash flow model based upon
11 whether the property is classified as Class II property or as
12 Class III or IV property for property tax purposes.

13 (b) The tax commissioner shall also establish by
14 legislative rule a method to determine the appraised value
15 of timberland that is not certified as managed timberland.
16 All timberland that is not certified as managed timberland
17 shall be valued at its market value, except for farm
18 woodlots which shall be valued as part of the farm.

19 (c) Notwithstanding the provisions of section five-a of
20 this article, the legislative rules required by subsections (a)
21 and (b) of this section may be promulgated as emergency
22 legislative rules if they are filed in the state register on or
23 before the first day of July, one thousand nine hundred
24 ninety-eight.

25 (d) The value of an acre of managed timberland in a
26 county shall always be less than the value of an acre of
27 timberland of comparable soil quality in the county that is
28 not certified as managed timberland.

29 (e) Any person aggrieved by any valuation of
30 timberland may file a written objection to the valuation
31 with the county assessor on or before the fifteenth day of
32 January of the assessment year. The written objection
33 shall then be treated as a protest filed by the taxpayer
34 under section twenty-four-a, article three of this chapter.
35 If any person fails to exhaust the administrative and

36 judicial remedies provided in said section, that person shall
37 be barred from taking any further administrative or
38 judicial action regarding the classification of the property
39 for that assessment year.

40 (f) Upon request of the tax commissioner or the
41 assessor or county commission of the county in which the
42 managed timberland is located, the director of the division
43 of forestry shall inspect the property and determine
44 whether or not the property continues to qualify for
45 preferential valuation as managed timberland under this
46 article. In the event the director of forestry determines
47 that a property does not qualify as managed timberland
48 due to a change in its use, or it is discovered that a material
49 misstatement of fact was made by the owner of the
50 property in the certification of the property as managed
51 timberland under subdivision (1), subsection (d), section
52 ten of this article, or it is discovered that the property
53 owner is not complying with the terms of the managed
54 timberland plan, including any period of time for coming
55 into compliance granted the owner by the director of
56 forestry, the director shall give written notice to the owner
57 of the property by certified mail, return receipt requested,
58 the tax commissioner and the assessor of each county in
59 which the property is located that the certification of the
60 property as managed timberland is revoked.

61 (g) The aggrieved owner of the property which had its
62 managed timberland certification revoked pursuant to any
63 provision of this code may, at any time up to sixty days
64 from the date of notification from the director of forestry,
65 petition the circuit court of the county in which the
66 property is located for relief.

67 (h) The provisions of this section shall apply to tax
68 years beginning on or after the first day of January, one
69 thousand nine hundred ninety-nine.

ARTICLE 3. ASSESSMENTS GENERALLY.

§11-3-5a. Notification to assessor of changed use; independent action of director; penalties; effective date.

1 (a) Whenever property receiving preferential valuation
2 as managed timberland is converted to a use that
3 disqualifies the property from treatment as managed
4 timberland, the person converting the real estate to another
5 use shall immediately, in writing, notify the county
6 assessor of the change in use. The county assessor or tax
7 commissioner, as the case may be, shall then determine the
8 value and classification of the property based upon its new
9 use.

10 (b) If the director of the division of forestry has
11 reason to believe that managed timberland was or is being
12 converted to a use that disqualifies the property from
13 treatment as managed timberland, the director shall
14 investigate. If, upon investigation, the director determines
15 that the property no longer qualifies for treatment as
16 managed timberland, the director shall revoke the
17 property's certification as managed timberland. The
18 director shall give written notice to the owner of the
19 property by certified mail, return receipt requested, to the
20 tax commissioner and to the assessor of the county in
21 which the property is located that the property no longer
22 qualifies for valuation as managed timberland. If the
23 property is located in two or more counties, notice shall be
24 given to each assessor.

25 (c) If any person fails to give written notice of the
26 change in use of managed timberland as required in
27 subsection (a) of this section, the person owning the
28 property shall be subject to a penalty in an amount equal
29 to the amount of additional taxes the person would have
30 paid on the property if written notice had been timely
31 given, plus interest calculated at the rate of nine percent
32 per annum: *Provided*, That the maximum penalty under
33 this section shall be five years of additional taxes plus
34 interest. This penalty may be assessed in the same manner
35 as back taxes are assessed under section five of this article
36 for omitted property and interest shall accrue until the day
37 the penalty is paid.

38 (d) This section shall apply to tax years beginning on
39 or after the first day of January, one thousand nine
40 hundred ninety-nine, and to changes in use occurring on
41 or after that day.

CHAPTER 287

2(S. B. 366—By Senators Love and Kessler)

[Passed March 14, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eight, article one-c, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to additional funding for certain assessors' offices beginning on or after the first day of July, one thousand nine hundred ninety-nine; requirements imposed upon use of additional funding; and certification of level of funding by valuation commission.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1C. FAIR AND EQUITABLE PROPERTY VALUATION.

§11-1C-8. Additional funding for assessors' offices; maintenance funding.

1 (a) In order to finance the extra costs associated with
2 the valuation and training mandated by this article, there is
3 hereby created a revolving valuation fund in each county
4 which shall be used exclusively to fund the assessor's
5 office. No persons whose salary is payable from the
6 valuation fund shall be hired under this section without the
7 approval of the valuation commission, the hirings shall be
8 without regard to political favor or affiliation, and the
9 persons hired under this section are subject to the
10 provisions of the ethics act in chapter six-b of this code,
11 including, but not limited to, the conflict of interest
12 provisions under chapter six-b of this code.
13 Notwithstanding any other provisions of this code to the
14 contrary, assessors may employ citizens of any West
15 Virginia county for the purpose of performing, assessing

16 and appraising duties under this chapter upon approval of
17 the employment by the valuation commission.

18 (b) During the fiscal year commencing the first day of
19 July, one thousand nine hundred ninety-four, and
20 thereafter as necessary, any county receiving moneys
21 provided by the valuation commission under this section
22 shall use the county's valuation fund receipts which exceed
23 the total amount received in the fiscal year ending the
24 thirtieth day of June, one thousand nine hundred
25 ninety-four, and such other portion of the county's
26 valuation fund receipts that may be required by the
27 valuation commission, to repay the valuation commission
28 the money received plus accrued interest: *Provided*, That
29 the fund should not drop below one percent of the total
30 municipal, county commission and county school board
31 revenues generated by application of the respective
32 regular levy rates.

33 (c) (1) To finance the ongoing extra costs associated
34 with the valuation and training mandated by this article,
35 beginning with the fiscal year commencing on the first
36 day of July, one thousand nine hundred ninety-one, and
37 for a period of at least three consecutive years, an amount
38 equal to two percent of the previous year's projected tax
39 collections, or whatever percent is approved by the
40 valuation commission, from the regular levy set by, or for,
41 the county commission, the county school board and any
42 municipality in the county shall be prorated as to each
43 levying body, set aside and placed in the valuation fund.
44 In May of each year the sheriff of each county shall make
45 a final transfer to the assessor's valuation fund which will
46 reflect any difference in the amount of actual collections
47 in the previous fiscal year as opposed to those previously
48 projected by the chief inspector's office as the basis for the
49 contributions to the valuation fund, to bring the total
50 transfers for that year to two percent of the previous year's
51 actual collections. The two-percent payment shall
52 continue in any county where funds borrowed from the
53 state pursuant to subsection (a) of this section have not
54 been fully repaid until such moneys, together with accrued
55 interest thereon, have been fully repaid or until the first
56 day of July, one thousand nine hundred ninety-nine,

57 whichever comes last. Each year thereafter, for counties
58 with loans, and each fiscal year after the thirtieth day of
59 June, one thousand nine hundred ninety-nine, for those
60 counties without loans, the valuation fund shall be
61 continued at an annual amount not to exceed two percent,
62 as determined by the valuation commission, of the
63 previous year's projected tax collections from such regular
64 levies: *Provided*, That on and after the first day of July,
65 one thousand nine hundred ninety-nine, a valuation fund
66 of a county with a loan shall be continued at an annual
67 amount not to exceed three percent, as determined by the
68 valuation commission, and any amounts received in excess
69 of two percent of the collections shall be expended solely
70 to repay the loan and for no other purpose. No provision
71 of this subdivision shall be construed to abrogate any
72 requirement imposed under subsection (b) of this section.

73 (2) For the fiscal year beginning on the first day of
74 July, one thousand nine hundred ninety-nine, and any
75 fiscal year thereafter, the assessors, in order to receive any
76 percent of the previous year's projected tax collections for
77 their valuation funds, must submit a request to the
78 valuation commission no later than the fifteenth day of
79 December, one thousand nine hundred ninety-four, and
80 by the same date in December each year thereafter. The
81 submission shall include a projected expenditure budget,
82 including any balances expected to be carried forward,
83 with justification for the percent requested for their
84 valuation fund for the ensuing fiscal year. A copy of the
85 projected budget and justifications shall also be sent to the
86 assessor's county commission, municipalities and school
87 board. The valuation commission shall meet after the
88 fifteenth day of January but prior to the first day of
89 February each year beginning in the year one thousand
90 nine hundred ninety-five, and has authority to accept and
91 confirm up to two percent as a justifiable amount for
92 counties without loans, and to accept and confirm up to
93 three percent for counties with loans, subject to the
94 requirement of subdivision (1) of this subsection that any
95 amounts received in excess of two percent of the
96 collections shall be expended solely to repay the loan and
97 for no other purpose. The valuation commission may

98 establish whatever lower percent of the previous year's
99 projected tax collections each assessor shall receive based
100 upon the evidence at hand, and the particular reevaluation
101 needs of the county. Absent a proper application by any
102 assessor, the valuation commission may, after consultation
103 with the tax commissioner's office, set whatever allowable
104 percent it considers proper. Following its decisions, the
105 valuation commission shall certify to the chief inspector's
106 office of the department of tax and revenue and the joint
107 committee on government and finance, the percent
108 approved for each assessor's valuation fund, and the chief
109 inspector's office shall notify each affected sheriff and
110 levying body of the moneys due from their levies to their
111 respective valuation funds. County commissions, boards
112 of education and municipalities may present written
113 evidence, prior to the fifteenth day of January, one
114 thousand nine hundred ninety-five, and by the same date
115 of each year thereafter, acceptable to the valuation
116 commission showing that a lesser amount than that
117 requested by the assessor would be adequate to fund the
118 extra costs associated with the valuation mandated by
119 section seven of this article: *Provided*, That the county
120 commissions, in addition, shall fund the county assessor's
121 office at least the level of funding provided during the
122 fiscal year in which this section was initially enacted.

123 These additional funds are intended to enable
124 assessors to maintain current valuations and to perform the
125 periodic reevaluation required under section nine of this
126 article.

127 (d) Moneys due the valuation fund shall be deposited
128 by the sheriff of the county on a monthly basis as directed
129 by the chief inspector's office for the benefit of the
130 assessor and shall be available to and may be spent by the
131 assessor without prior approval of the county commission,
132 which may not exercise any control over the fund.
133 Clerical functions related to the fund shall be performed
134 in the same manner as done with other normal funding
135 provided to the assessor.

CHAPTER 288

(Com. Sub. for H. B. 4092—By Delegates Smirl, Underwood,
Damron, Leach, Johnson, Hubbard and Jenkins)

[Passed March 14, 1998; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine, article three, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to exemptions from taxation; increasing exemption for certain real estate used in connection with colleges and universities; exempting property used by fraternities and sororities as residential accommodations or dormitories from property taxes; and making the provisions effective to all cases and controversies pending on the date of such enactment.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. ASSESSMENTS GENERALLY.

§11-3-9. Property exempt from taxation.

1 (a) All property, real and personal, described in this
2 subsection, and to the extent herein limited, is exempt
3 from taxation:

4 (1) Property belonging to the United States, other than
5 property permitted by the United States to be taxed under
6 state law;

7 (2) Property belonging exclusively to the state;

8 (3) Property belonging exclusively to any county,
9 district, city, village or town in this state, and used for
10 public purposes;

11 (4) Property located in this state, belonging to any
12 city, town, village, county or any other political
13 subdivision of another state, and used for public purposes;

- 14 (5) Property used exclusively for divine worship;
- 15 (6) Parsonages and the household goods and furniture
16 pertaining thereto;
- 17 (7) Mortgages, bonds and other evidence of
18 indebtedness in the hands of bona fide owners and holders
19 hereafter issued and sold by churches and religious
20 societies for the purposes of securing money to be used in
21 the erection of church buildings used exclusively for
22 divine worship, or for the purpose of paying indebtedness
23 thereon;
- 24 (8) Cemeteries;
- 25 (9) Property belonging to, or held in trust for,
26 colleges, seminaries, academies and free schools, if used
27 for educational, literary or scientific purposes, including
28 books, apparatus, annuities and furniture;
- 29 (10) Property belonging to, or held in trust for,
30 colleges or universities located in West Virginia, or any
31 public or private nonprofit foundation or corporation
32 which receives contributions exclusively for such college
33 or university, if the property or dividends, interest, rents or
34 royalties derived therefrom are used or devoted to
35 educational purposes of such college or university;
- 36 (11) Public and family libraries;
- 37 (12) Property used for charitable purposes, and not
38 held or leased out for profit;
- 39 (13) Property used for the public purposes of
40 distributing water or natural gas, or providing sewer
41 service by a duly chartered nonprofit corporation when
42 such property is not held, leased out or used for profit;
- 43 (14) Property used for area economic development
44 purposes by nonprofit corporations when such property is
45 not leased out for profit;
- 46 (15) All real estate not exceeding one acre in extent,
47 and the buildings thereon, used exclusively by any college

48 or university society as a literary hall, or as a dormitory or
49 clubroom, if not used with a view to profit, including, but
50 not limited to, property owned by a fraternity or sorority
51 organization affiliated with a university or college, or
52 property owned by a nonprofit housing corporation or
53 similar entity on behalf of a fraternity or sorority
54 organization affiliated with a university or college, when
55 the property is used as residential accommodations, or as a
56 dormitory for members of the organization;

57 (16) All property belonging to benevolent
58 associations, not conducted for private profit;

59 (17) Property belonging to any public institution for
60 the education of the deaf, dumb or blind, or any hospital
61 not held or leased out for profit;

62 (18) Houses of refuge and lunatic or orphan asylums;

63 (19) Homes for children or for the aged, friendless or
64 infirm, not conducted for private profit;

65 (20) Fire engines and implements for extinguishing
66 fires, and property used exclusively for the safekeeping
67 thereof, and for the meeting of fire companies;

68 (21) All property on hand to be used in the
69 subsistence of livestock on hand at the commencement of
70 the assessment year;

71 (22) Household goods to the value of two hundred
72 dollars, whether or not held or used for profit;

73 (23) Bank deposits and money;

74 (24) Household goods, which for purposes of this
75 section means only personal property and household
76 goods commonly found within the house and items used
77 to care for the house and its surrounding property, when
78 not held or used for profit;

79 (25) Personal effects, which for purposes of this
80 section means only articles and items of personal property
81 commonly worn on or about the human body, or carried

82 by a person and normally thought to be associated with
83 the person when not held or used for profit;

84 (26) Dead victuals laid away for family use; and

85 (27) Any other property or security exempted by any
86 other provision of law.

87 (b) Notwithstanding the provisions of subsection (a)
88 of this section, no property is exempt from taxation which
89 has been purchased or procured for the purpose of
90 evading taxation, whether temporarily holding the same
91 over the first day of the assessment year or otherwise.

92 (c) Real property which is exempt from taxation by
93 subsection (a) of this section shall be entered upon the
94 assessor's books, together with the true and actual value
95 thereof, but no taxes may be levied upon the property or
96 extended upon the assessor's books.

97 (d) Notwithstanding any other provisions of this
98 section, this section does not exempt from taxation any
99 property owned by, or held in trust for, educational,
100 literary, scientific, religious or other charitable
101 corporations or organizations, including any public or
102 private nonprofit foundation or corporation existing for
103 the support of any college or university located in West
104 Virginia, unless such property, or the dividends, interest,
105 rents or royalties derived therefrom, is used primarily and
106 immediately for the purposes of the corporations or
107 organizations.

108 (e) The tax commissioner shall, by issuance of rules,
109 provide each assessor with guidelines to ensure uniform
110 assessment practices statewide to effect the intent of this
111 section.

112 (f) In as much as there is litigation pending regarding
113 application of this section to property held by fraternities
114 and sororities, amendments to this section enacted in the
115 year one thousand nine hundred ninety-eight shall apply
116 to all cases and controversies pending on the date of such
117 enactment.

CHAPTER 289

(H. B. 4713—By Delegates Warner, Michael, Beane, Kelley,
Laird, Proudfoot and Miller)

[Passed March 12, 1998; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article six, chapter eleven 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 seven-b; to further amend said chapter by adding thereto a new article, designated article six-g; and to amend and reenact sections ten and ten-a, article two, chapter seventeen-a of said code, all relating generally to assessment of public service businesses; returns of property to board of public works; valuation of certain classes intrastate public service corporation motor vehicle businesses either registered or not registered under a proportional registration agreement; assessment of interstate public service corporation motor vehicle businesses registered under a proportional registration agreement; valuation of certain classes intrastate public service corporation motor vehicle businesses either registered or not registered under a proportional registration agreement; interstate public service motor vehicle business; calculation of tax; form and manner of making disclosure; failure to make disclosure; criminal penalty; compelling disclosure; procuring information and tentative disclosure; failure to give information required by motor vehicles commissioner; criminal penalty; adjustment of valuation by interstate commerce appeals board; appeal from valuation by board; certification of levies to auditor; failure of officers to perform duties as to property of interstate motor vehicle corporations; injunction to restrain collection of tax; payment of assessment by owner or operator; no release of taxes assessed against such corporations; accounting for levies against interstate commercial motor vehicle corporations; certification by auditor of amount chargeable to sheriff from levies against interstate motor vehicles; payment of amount due municipality; lien of taxes; notice;

collection by suit; operating fund for interstate commerce assessment division in auditor's office; motor vehicles commissioner — reciprocal agreements with other states; severability; authorizing the entry of this state into reciprocal proportional registration agreements; payment of taxes; issuance of registration plates or markers; promulgation of rules; interagency cooperation; requirement that all registrants pay tax; intermittent interstate commerce and promulgation of rules; proportional registration agreement prevails.

Be it enacted by the Legislature of West Virginia:

That section one, article six, chapter eleven 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 seven-b; that said chapter be further amended by adding thereto a new article, designated article six-g; and that sections ten and ten-a, article two, chapter seventeen-a of said code be amended and reenacted, all to read as follows:

Chapter

11. Taxation.

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

CHAPTER 11. TAXATION.

Article

6. Assessment of Public Service Businesses.

6G. Assessment of Interstate Public Service Corporation Motor Vehicle Businesses Registered Under a Proportional Registration Agreement.

ARTICLE 6. ASSESSMENT OF PUBLIC SERVICE BUSINESSES.

§11-6-1. Returns of property to board of public works.

§11-6-7b. Valuation of certain classes intrastate public service corporation motor vehicle businesses either registered or not registered under a proportional registration agreement.

§11-6-1. Returns of property to board of public works.

1 (a) On or before the first day of May in each year a
2 return in writing shall be filed with the board of public
3 works: (1) By the owner or operator of every railroad,
4 wholly or in part, within this state; (2) by the owner or
5 operator of every railroad bridge upon which a separate
6 toll or fare is charged; (3) by the owner or operator of
7 every car or line of cars used upon any railroad within the
8 state for transportation or accommodation of freight or
9 passengers, other than the owners or operators as may own
10 or operate a railroad within the state; (4) by the owner or
11 operator of every express company or express line, wholly
12 or in part, within this state, used for the transportation by
13 steam or otherwise of freight and other articles of
14 commerce; (5) by the owner or operator of every pipeline,
15 wholly or in part, within this state, used for the
16 transportation of oil or gas or water, whether the oil or gas
17 or water be owned by the owner or operator or not, or for
18 the transmission of electrical or other power, or the
19 transmission of steam or heat and power or of articles by
20 pneumatic or other power; (6) by the owner or operator of
21 every telegraph or telephone line, wholly or in part, within
22 this state, except private lines not operated for
23 compensation; (7) by the owner and operator of every gas
24 company and electric lighting company furnishing gas or
25 electricity for lighting, heating or power purposes; (8) by
26 the owner or operator of hydroelectric companies for the
27 generation and transmission of light, heat or power; (9) by
28 the owner or operator of water companies furnishing or
29 distributing water; (10) by the owner or operator of all
30 other public service corporations or persons engaged in
31 public service business whose property is located, wholly
32 or in part, within this state; and (11) on or before the first
33 day of May, one thousand nine hundred ninety-eight,
34 and on or before the first day of May, each year
35 thereafter, by the owner or operator of every truck or
36 semitrailer used as a commercial motor vehicle in the
37 transportation of property exclusively within this state by
38 commercial motor vehicles. For the purposes of this
39 article, commercial motor vehicle is defined as those
40 vehicles that would otherwise be subject to registration
41 under a proportional registration agreement as provided in

42 section ten-a except that the vehicle is only engaged in
43 intrastate commerce.

44 (b) The words "owner or operator," as applied herein
45 to railroad companies, shall include every railroad
46 company incorporated by or under the laws of this state
47 for the purpose of constructing and operating a railroad,
48 or of operating part of a railroad within this state, whether
49 the railroad or any part of it be in operation or not; and
50 shall also include every other railroad company, or
51 persons or associations of persons, owning or operating a
52 railroad or part of a railroad in this state on which freight
53 or passengers, or both, are carried for compensation. The
54 word "railroad," as used herein includes every street, city,
55 suburban or electric or other railroad or railway.

56 (c) The words "owner or operator," as applied herein
57 to express companies, shall include every express
58 company incorporated by or under the laws of this state,
59 or doing business in this state, whether incorporated or
60 not, and any person or association of persons, owning or
61 operating any express company or express line upon any
62 railroad or otherwise, doing business partly or wholly
63 within this state.

64 (d) The words "owner or operator," as applied herein
65 to trucks or semitrailers used as a commercial motor
66 vehicle in the transportation of property, shall include
67 every company incorporated by or under the laws of this
68 state, or doing business in this state, whether incorporated
69 or not, and any person or association of persons, owning
70 or operating any truck or semitrailer used as a commercial
71 motor vehicle in the transportation of property doing
72 business wholly within this state.

73 (e) The return shall be signed and sworn to by the
74 owner or operator if a natural person, or, if the owner or
75 operator shall be a corporation, shall be signed and sworn
76 to by its president, vice president, secretary or principal
77 accounting officer.

78 (f) The return required by this section of every owner
79 or operator shall cover the year ending on the thirty-first
80 day of December, next preceding, and shall be made on

81 forms prescribed by the board of public works, which
82 board is hereby invested with full power and authority and
83 it is hereby made its duty to prescribe the forms as will
84 require from any owner or operator herein mentioned
85 information as in the judgment of the board may be of
86 use to it in determining the true and actual value of the
87 properties of the owners or operators.

§11-6-7b. Valuation of certain classes intrastate public service corporation motor vehicle businesses either registered or not registered under a proportional registration agreement.

1 On or before the first day of September, one thousand
2 nine hundred ninety-eight, the tax commissioner shall
3 propose a legislative rule for submission to the Legislature
4 pursuant to the provisions of article three, chapter twenty-
5 nine-a of this code, which rule shall describe in detail the
6 methods whereby the tax commissioner will determine the
7 market value of the following property:

8 (a) Intrastate public service corporation motor vehicle
9 businesses which may or may not be registered under a
10 proportional registration agreement but which nonetheless
11 is operated exclusively within the state of West Virginia.

12 (b) A trailer, semitrailer or road tractor operated
13 exclusively in this state or a trailer or trailer of a West
14 Virginia based interstate commerce motor vehicle business
15 registered under the provisions of section ten-a, article two,
16 chapter seventeen-a of this code, the tax shall be
17 determined by multiplying the appraised value by sixty
18 percent to obtain the assessed value which shall be
19 multiplied by the tax rate to obtain the amount of the tax.

20 (c) For purposes of equitably assessing the valuations
21 between and among interstate commercial motor vehicles
22 and intrastate commercial motor vehicles as defined in
23 section ten-a, article two, chapter seventeen-a, of this code,
24 the levy rate applied to both intrastate commercial motor
25 vehicles and interstate motor vehicles shall run one year in
26 arrears in order for the commissioner of motor vehicles to
27 provide adequate notice to the facilitator of the
28 proportional registration agreement and other jurisdictions

29 of the assessments due and for counties to supply their
30 levy rates to the state auditor.

31 As soon as such assessment is made, the secretary of
32 the board shall notify the owner or operator affected
33 thereby of the amount thereof by written notice deposited
34 in the United States post office, addressed to such owner
35 or operator at the principal office or place of business of
36 such owner or operator. Such assessment and valuation
37 shall be final and conclusive, unless the same be appealed
38 from in the manner following, within fifteen days after
39 such notice is so deposited.

40 (d) Notwithstanding any other provision of the code to
41 the contrary, the department of tax and revenue is hereby
42 authorized to promulgate an emergency rule for the
43 implementation of this section.

ARTICLE 6G. ASSESSMENT OF INTERSTATE PUBLIC SERVICE CORPORATION MOTOR VEHICLE BUSINESSES REGISTERED UNDER A PROPORTIONAL REGISTRATION AGREEMENT.

- §11-6G-1. Valuation of certain classes intrastate public service corporation motor vehicle businesses either registered or not registered under a proportional registration agreement.
- §11-6G-2. Disclosure of required information to the tax commissioner.
- §11-6G-3. Interstate public service motor vehicle business; calculation of tax.
- §11-6G-4. Form and manner of making disclosure; failure to make disclosure; criminal penalty.
- §11-6G-5. Compelling such disclosure; procuring information and tentative assessments by motor vehicles commissioner.
- §11-6G-6. Failure to give information required by motor vehicles commissioner; criminal penalty.
- §11-6G-7. Adjustment of valuation by interstate commerce appeals board.
- §11-6G-8. Appeal from valuation by board.
- §11-6G-9. Certification of levies to auditor.
- §11-6G-10. Failure of officers to perform duties as to property of interstate motor vehicle corporations.
- §11-6G-11. Injunction to restrain collection of tax.
- §11-6G-12. Payment of assessment by owner or operator.
- §11-6G-13. No release of taxes assessed against such corporations.

- §11-6G-14. Accounting for levies against interstate commercial motor vehicle corporations.
- §11-6G-15. Certification by auditor of amount chargeable to sheriff from levies against interstate motor vehicles; payment of amount due municipality.
- §11-6G-16. Lien of taxes; notice; collection by suit.
- §11-6G-17. Operating fund for interstate commerce disclosure division in auditor's office.
- §11-6G-18. Severability.

§11-6G-1. Valuation of certain classes intrastate public service corporation motor vehicle businesses either registered or not registered under a proportional registration agreement.

1 On or before the first day of September, one thousand
2 nine hundred ninety-eight, the tax commissioner shall
3 propose a legislative rule for submission to the Legislature
4 pursuant to the provisions of article three, chapter twenty-
5 nine-a of this code, which rule shall describe in detail the
6 methods whereby the tax commissioner will determine the
7 market value of the following property:

8 (a) Intrastate public service corporation motor vehicle
9 businesses which may or may not be registered under a
10 proportional registration agreement but which nonetheless
11 is operated exclusively within the state of West Virginia.

12 (b) A trailer, semitrailer or road tractor operated
13 exclusively in this state or a trailer or trailer of a West
14 Virginia based interstate motor vehicle business registered
15 under the provisions of section ten-a, article two, chapter
16 seventeen-a of this code, the tax shall be determined by
17 multiplying the appraised value by sixty percent to obtain
18 the assessed value which shall be multiplied by the tax rate
19 to obtain the amount of the tax.

20 (c) For purposes of equitably assessing the valuations
21 between and among interstate commercial motor vehicles
22 and intrastate commercial motor vehicles as defined in
23 section ten-a, article two, chapter seventeen-a, of this code,
24 the levy rate applied to both intrastate commercial motor
25 vehicles and interstate motor vehicles shall run one year in
26 arrears in order for the commissioner of motor vehicles to

27 provide adequate notice to the facilitator of the
28 proportional registration agreement and other jurisdictions
29 of the assessments due and for counties to supply their
30 levy rates to the state auditor.

31 As soon as such assessment is made, the secretary of
32 the board shall notify the owner or operator affected
33 thereby of the amount thereof by written notice deposited
34 in the United States post office, addressed to such owner
35 or operator at the principal office or place of business of
36 such owner or operator. Such assessment and valuation
37 shall be final and conclusive, unless the same be appealed
38 from in the manner following, within fifteen days after
39 such notice is so deposited.

40 (d) Notwithstanding any other provision of the code to
41 the contrary, the department of tax and revenue is hereby
42 authorized to promulgate an emergency rule for the
43 implementation of this section.

§11-6G-2. Disclosure of required information to the tax commissioner.

1 (a) "Interstate motor vehicle", for purposes of this
2 article, is defined as every truck, road tractor or semitrailer
3 used as an interstate public service corporation motor
4 vehicle registered under a proportional registration
5 agreement.

6 (b) The procedure for determining the value thereof is
7 exclusively provided for under section two of this article.

8 (c) The words "owner or operator," as applied herein
9 to trucks or semitrailers used as an interstate motor vehicle
10 in the transportation of property, shall include every
11 company incorporated by or under the laws of this state,
12 or doing business in this state, whether incorporated or
13 not, and any person or association of persons, owning or
14 operating any truck or semitrailer used as a interstate
15 motor vehicle in the transportation of property doing
16 business partly or wholly within this state.

17 (d) Every interstate commercial motor vehicle covered
18 by this article shall pay such taxes based upon the

19 assessments as are required by law pursuant to rules
20 promulgated by the tax commissioner.

**§11-6G-3. Interstate public service motor vehicle business;
calculation of tax.**

1 (a) In the case of interstate public service motor
2 vehicles used for the transportation of property and which
3 are registered under a proportional registration agreement,
4 pursuant to the provisions of section ten-a, article two,
5 chapter seventeen-a of this code, the owners, operator or
6 operators, for each interstate motor vehicle, on forms
7 prescribed by the commissioner of motor vehicles, shall
8 disclose the total miles driven in West Virginia and the
9 total miles driven in any other states as reported in the
10 most recent taxable year to the division of motor vehicles
11 pursuant to any proportional registration agreement on
12 file therewith. The return shall, additionally, show the
13 gross capital cost of the interstate motor vehicle to the
14 purchaser thereof and the year the purchaser acquired the
15 interstate motor vehicle.

16 (b) Ad valorem taxes provided for in this chapter shall,
17 notwithstanding the provisions of section five, article one-c
18 of this chapter, be determined as follows for: (1) The
19 gross capital cost of an interstate motor vehicle shall be
20 multiplied by a percentage factor representing the
21 remainder of the vehicle's value after depreciation
22 according to a depreciation schedule established by the
23 tax commissioner, which calculation shall yield the
24 appraised value of the vehicle; (2) for the interstate truck,
25 road tractor, or power unit, registered in this state as part
26 of a fleet registered under any proportional registration
27 agreement under the provisions of section ten-a, article
28 two, chapter seventeen-a of this code, the appraised value
29 shall be multiplied by the fraction comprised of a
30 numerator representing the total miles driven in West
31 Virginia (regardless whether property is being transported
32 for commercial purposes) in the taxable year and a
33 denominator representing the total miles driven in the
34 taxable year by the interstate motor vehicle operator
35 during times property was being transported for
36 commercial purposes, as reported to the division of motor

37 vehicles pursuant to any proportional registration
38 agreement on file therewith to obtain the apportioned
39 value, which apportioned value shall be multiplied by sixty
40 percent to yield the assessed value which shall be
41 multiplied by the applicable rate of tax.

**§11-6G-4. Form and manner of making disclosure; failure to
make disclosure; criminal penalty.**

1 All disclosures to be made to the motor vehicles
2 commissioner, under this chapter, shall be made in
3 conformity with any reasonable requirement of the motor
4 vehicles commissioner of which the person making the
5 disclosure shall have had notice, and shall be made upon
6 forms which may be furnished by the motor vehicles
7 commissioner, and according to instructions which the
8 motor vehicles commissioner may give relating thereto,
9 and to the description and itemizing of the property.
10 Such owner or operator, whether a natural person, or a
11 corporation or company, failing to make such disclosure
12 as herein required shall be guilty of a misdemeanor and,
13 fined one thousand dollars for each month such failure
14 continues.

**§11-6G-5. Compelling such disclosure; procuring information
and tentative assessments by motor vehicles
commissioner.**

1 (a) If any owner or operator fails to make such
2 disclosure within the time required by section one of this
3 article, it shall be the duty of the commissioner of motor
4 vehicles to take such steps as may be necessary to compel
5 such compliance, and to enforce any and all penalties
6 imposed by law for such failure, pursuant to his or her
7 authority under this article as well as section ten, article
8 two, chapter seventeen-a, and section ten-a, article two,
9 chapter seventeen-a of this code.

10 (b) The disclosure delivered to the motor vehicles
11 commissioner shall be examined by him, and if it be
12 found insufficient in form or in any respect defective,
13 imperfect or not in compliance with law, he shall compel
14 the person required to make it to do so in proper and
15 sufficient form, and in all respects as required by law.

16 (c) If any such owner or operator fails to make such
17 disclosure, the motor vehicles commissioner shall proceed,
18 in such manner as to him may seem best, to obtain the
19 facts and information required to be furnished by such
20 disclosures.

21 (d) The motor vehicles commissioner may send for
22 persons and papers, and may compel the attendance of
23 any person and the production of any paper necessary, in
24 the opinion of said motor vehicles commissioner, to
25 enable him to obtain the information required for the
26 proper discharge of his duties under this section.

27 (e) The motor vehicles commissioner shall arrange,
28 collate and tabulate such disclosures and all pertinent
29 information and data contained therein, such further
30 evidence or information as may be required by the motor
31 vehicles commissioner of such owner or operator, and all
32 other pertinent evidence, information and data he has been
33 able to procure, upon suitable work sheets, so that they
34 may be conveniently considered, and shall on or before
35 the fifteenth day of September, lay such disclosures and
36 work sheets, together with his recommendations in the
37 form of a tentative assessment of the property of each
38 such owner or operator, before the motor vehicles
39 commissioner. And as soon as the motor vehicles
40 commissioner has completed the preparation of such work
41 sheets and tentative assessments, he shall notify the owner
42 or operator affected thereby of the amount of such
43 tentative assessment by written notice deposited in the
44 United States post office, addressed to such owner or
45 operator at the principal office or place of business of
46 such owner or operator, and the motor vehicles
47 commissioner shall retain in his office true copies of such
48 work sheets which shall be available for inspection by any
49 such owner or operator or his duly authorized
50 representative.

**§11-6G-6. Failure to give information required by motor
vehicles commissioner; criminal penalty.**

1 If any person shall refuse to appear before the motor
2 vehicles commissioner when required to do so, as
3 aforesaid, or shall refuse to testify before the motor

4 vehicles commissioner in regard to any matter as to which
5 the motor vehicles commissioner may require him to
6 testify, or if any person shall refuse to produce any paper
7 in his possession or under his control, which the motor
8 vehicles commissioner may require him to produce, every
9 such person shall be guilty of a misdemeanor and fined
10 five hundred dollars, and may be imprisoned not less than
11 one nor more than six months, at the discretion of the
12 court.

**§11-6G-7. Adjustment of valuation by interstate commerce
appeals board.**

1 There is hereby created the interstate commerce
2 appeals board the membership of which shall be
3 comprised of the tax commissioner or his or her designee,
4 the motor vehicles commissioner or his or her designee,
5 and the state auditor or his or her designee. The interstate
6 commerce appeals board shall meet the first Monday in
7 July, unless the first Monday is a holiday at which time the
8 interstate commerce appeals board shall meet upon the
9 first business day thereafter. In the event of an
10 emergency, the interstate commerce appeals board may be
11 convened upon the agreement of two of the three
12 members of the board. Any time before an owner or
13 operator appeals a valuation to circuit court, as provided
14 for in section eight of this article, the interstate commerce
15 appeals board may, after consideration of all relevant facts
16 and evidence, adjust the valuation made by the interstate
17 commerce appeals board pursuant to section eleven of this
18 article.

§11-6G-8. Appeal from valuation by board.

1 Any owner or operator claiming to be aggrieved by
2 any such decision may, within the time aforesaid, apply by
3 petition in writing, duly verified, to the circuit court of
4 Kanawha County, and jurisdiction is hereby conferred
5 upon and declared to exist in such court, in which such
6 application is filed, to grant, docket and hear such appeal;
7 and such appeal, as to all of the property so charged,
8 forthwith be allowed by such court so applied to, and be
9 heard by such court as to all of such property as soon as
10 possible after the appeal is docketed, but notice in writing

11 of such petition shall be given to the motor vehicles
12 commissioner, by mailing a copy of the petition for an
13 appeal filed as aforesaid, which said petition shall recite
14 the fact that copies of such petition have been sent by
15 registered mail. Notice in writing of the hearing shall be
16 given by the motor vehicles commissioner to the state tax
17 commissioner and the state auditor at least fifteen days
18 beforehand. Upon such hearing the court shall hear all
19 such legal evidence as shall be offered on behalf of the
20 state or any other county, district or municipal corporation
21 interested, or on behalf of the appealing owner or
22 operator. If the court be satisfied that the value so
23 charged by the motor vehicles commissioner and affirmed
24 or determined by the interstate commerce appeals board,
25 is correct, it shall confirm the same, but if it be satisfied
26 that the value so fixed by the board or the motor vehicles
27 commissioner is either too high or too low, subject to the
28 assessment valuations provided for in subsection (b),
29 section eleven of this article, the court shall correct the
30 valuation so made and shall ascertain and fix the true and
31 actual value of such property according to the facts
32 proved, and shall certify such value to the auditor, motor
33 vehicles commissioner and to the tax commissioner. The
34 state or the owner or operator may appeal to the supreme
35 court of appeals if the proportional assessed value of the
36 property be fifty thousand dollars or more.

37 If the court to which an application for appeal would
38 properly be made as aforesaid shall not be in session, the
39 judge thereof in vacation shall forthwith allow the appeal,
40 and if the judge thereof be disqualified or for any reason
41 not be available, the filing of the aforesaid petition in the
42 office of the clerk of the circuit court of Kanawha County,
43 within the time of aforesaid, shall constitute sufficient
44 compliance with this section, and the appeal shall
45 thereafter be proceeded with as otherwise provided in this
46 section.

§11-6G-9. Certification of levies to auditor.

1 (a) The clerk of the county commission of every
2 county in which any property lies which was so assessed
3 shall, within thirty days after the county and district levies

4 are laid by such commission, certify to the auditor the
5 amount levied upon each one hundred dollars' value of
6 the property of each class in the county for county
7 purposes, and on each one hundred dollars of the value of
8 the property of each class in each magisterial district for
9 the district purposes. It shall be the duty of the secretary
10 of the board of education of every school district and
11 independent district in which any part of the property lies,
12 within thirty days after the levies are laid therein for free
13 school and building purposes, or either, to certify to the
14 auditor the amount so levied on each one hundred dollars'
15 value of the property of each class therein for each of
16 such purposes; and it shall be the duty of the recorder,
17 clerk or other recording officer of every municipal
18 corporation in which any part of the property lies, within
19 the same time, after levies are laid therein for any of the
20 purposes authorized by law, to certify to the auditor the
21 amount levied upon each one hundred dollars' value of
22 the property of each class therein for each and every
23 purpose.

24 (b) Such county levy rates shall be reported to the
25 auditor for use in the following taxable year's assessment
26 pursuant to the provisions of section eleven, article six-d
27 of this chapter.

28 (c) For purposes of establishing the valuation rate to
29 be supplied to the motor vehicles commissioner by the
30 auditor and the tax commissioner, the auditor shall use
31 such figures and amounts as are certified to him or her
32 under section nine, article six-g, chapter eleven of this
33 code one year in arrears.

**§11-6G-10. Failure of officers to perform duties as to property
of interstate motor vehicle corporations.**

1 Any clerk of a county commission, secretary of the
2 board of education, or recorder, clerk or other recording
3 officer of a municipal corporation, who shall fail to
4 perform any of the duties herein required of him shall be
5 guilty of a misdemeanor and, upon conviction thereof,
6 fined not less than one hundred nor more than five
7 hundred dollars. In case of the failure of any such
8 officers to furnish to the auditor the certificate herein

9 required, the auditor may obtain the rate of taxation for
10 any of said purposes from the copies of the land books on
11 file in his office, if the same be found in such books, if
12 not, in such other way or manner as he may deem
13 necessary or proper for the purpose.

§11-6G-11. Injunction to restrain collection of tax.

1 No injunction shall be awarded by any court or judge
2 to restrain the collection of the taxes, or any part of them,
3 so assessed upon the property of such owner or operator,
4 except upon the ground that the assessment thereof was in
5 violation of the constitution of the United States, or of this
6 state; or that the same were fraudulently assessed, or that
7 there was a mistake made in the amount of taxes properly
8 chargeable on the property of such owner or operator;
9 and in the latter case no such injunction shall be awarded
10 unless application be first made to the interstate commerce
11 appeals board to correct the mistake claimed, and such
12 board shall refuse to do so, which fact shall be stated in the
13 bill, nor unless the complainant pay into the treasury of
14 the state all taxes appearing by the bill of complaint to be
15 owing.

§11-6G-12. Payment of assessment by owner or operator.

1 Beginning on the first day of July, one thousand nine
2 hundred ninety-nine, it shall be the duty of such owner or
3 operator, so assessed and charged, to pay annually the
4 amount of such taxes, and such registration fees as are set
5 by the motor vehicles commissioner as are required into
6 the treasury of the state by delivering payment of the same
7 to the commissioner of motor vehicles in the form and
8 manner prescribed by him or her. If such owner or
9 operator fail to pay such taxes, and registration fees when
10 due, as prescribed, then interest thereon at the rate of nine
11 per centum per annum until paid shall be added to any
12 and all other penalties imposed by the motor vehicles
13 commissioner. The payment of such taxes by any such
14 owner or operator shall not prejudice or affect the right of
15 such owner or operator to obtain relief against the
16 assessment or valuation of its property in proceedings now
17 pending or hereafter brought under the provisions of
18 section eight of this article, or in any suit, action or

19 proceeding in which such relief may be obtainable; and if
20 under the provisions of said section eight or in any suit,
21 action or proceeding, it be ascertained that the assessment
22 or valuation of the property of such owner or operator is
23 too high and the same is accordingly corrected, it shall be
24 the duty of the auditor of the state to issue to the owner or
25 operator a certificate showing the amount of taxes and
26 which have been overpaid, and such certificate shall be
27 receivable thereafter for the amount of such overpayment
28 in payment of any taxes and assessed against the property
29 of such owner or operator, its successors or assigns. It
30 shall likewise be the duty of said auditor to certify to the
31 county commission, school districts and municipalities, the
32 amounts of the respective overpayments distributable to
33 such counties, school districts and municipalities.

34 Implementation of collection of assessments upon
35 interstate commercial motor vehicles by the commissioner
36 of motor vehicles shall begin the first day of July, one
37 thousand nine hundred ninety-nine. The motor vehicles
38 commissioner, upon receipt of funds from other
39 jurisdictions under a proportional registration agreement,
40 shall deliver such funds received to the auditor beginning
41 in August, one thousand nine hundred ninety-nine, and
42 thereafter every thirty days in arrears. All moneys received
43 by the auditor under the provisions of this section shall be
44 transmitted to the several counties within thirty days from
45 receipt thereof.

§11-6G-13. No release of taxes assessed against such corporations.

1 Neither the county commission of any county, nor
2 any board of education, nor the municipal authorities of
3 any incorporated town, shall have jurisdiction, power or
4 authority, by compromise or otherwise, to remit or release
5 any portion of the taxes so assessed upon the property of
6 any such owner or operator. It shall be the duty of the
7 motor vehicles commissioner to collect the whole thereof,
8 regardless of any order or direction of any such county
9 commission, board of education or municipal authority to
10 the contrary; and, if he fail to do so, he and his sureties in
11 his official bond, if any, shall, unless he be restrained or

12 prohibited from so doing by legal process from some
13 court having jurisdiction to issue the same, be liable
14 thereon for such taxes that he may so fail to collect, if he
15 could have collected the same by the use of due diligence.
16 Any member of the county commission or board of
17 education, or of the council of a municipal corporation,
18 who shall vote to remit or release any part of the taxes, so
19 assessed on the property of any such owner or operator,
20 shall be guilty of a misdemeanor and fined five hundred
21 dollars, and shall be removed from his office by the court
22 by which the judgment of such fine is rendered, in
23 addition to such fine.

§11-6G-14. Accounting for levies against interstate commercial motor vehicle corporations.

1 Subject to the provisions of subsection (b), section
2 eleven of this article, when such taxes are paid into the
3 treasury, the auditor shall account to the sheriff of each of
4 the counties, to which any sum so paid in for county levies
5 belongs, for the amount due such county, and may
6 arrange the same with such sheriff in any settlement for
7 state taxes in such a way as may be most convenient; and
8 the sheriff shall account to the county commission of his
9 county for the amount so received by him, in the same
10 manner as for other county levies. The amount so paid
11 for each district and independent school district shall be
12 added to the distributable share of the school fund
13 payable to such district, and shall be paid upon the
14 requisition of the county superintendent of free schools in
15 like manner as other school moneys are paid.

§11-6G-15. Certification by auditor of amount chargeable to sheriff from levies against interstate motor vehicles; payment of amount due municipality.

1 For collection year one thousand nine hundred
2 ninety-nine, the auditor shall hold such funds in an
3 interest bearing escrow account until March twentieth, two
4 thousand, when such funds collected by the motor vehicles
5 commissioner including the interest in the escrow account
6 will be disbursed to the counties per the requirements of
7 section eighteen of this article. Thereafter, the amount so
8 paid in for each municipal corporation shall, within thirty

9 days of being received by the auditor, be paid over to the
10 sheriff, or the treasurer of such municipal corporation, or
11 to such other officer of the municipality as the council
12 may designate, and the auditor shall report such payment
13 to the council. But the failure of the clerk of any county
14 commission, or the secretary of any board of education, or
15 the proper officer of any municipal corporation, to certify
16 the levies to the auditor within the time herein prescribed
17 shall not invalidate or prevent the assessment required by
18 this article, but the auditor shall make the assessment and
19 proceed to collect or certify the same to the sheriff as soon
20 as practicable after he shall have obtained the information
21 necessary to make such assessment.

§11-6G-16. Lien of taxes; notice; collection by suit.

1 The amount of taxes assessed under this article shall
2 constitute a debt due the state or county, district or
3 municipal corporation entitled thereto, and shall be a lien
4 on all of the property and assets of the taxpayer within the
5 state. The lien shall attach as of the thirty-first day of
6 December following the commencement of the assessment
7 year, and shall be prior to all other liens and charges. It
8 shall be the duty of the attorney general to enforce the
9 collection of such taxes, and for that purpose he may
10 distrain upon any personal property of such delinquent
11 taxpayer, or a sufficient amount thereof to satisfy said
12 taxes, including accrued interest, penalties and costs.

13 The attorney general may also enforce the lien created
14 by this section on the real estate of such delinquent
15 taxpayer by instituting a suit, or suits, in equity in the
16 circuit court of Kanawha County, in the name of the state,
17 in which such delinquent taxpayers shall be made
18 defendants. In the bill filed in any such suit it shall be
19 sufficient to allege that the defendant or defendants have
20 failed to pay the taxes hereunder and that each of them
21 justly owes the amount of property taxes, levies and
22 penalties stated therein, which amount shall be computed
23 up to the first day of the month in which the bill was filed.
24 No such defendant shall plead that the motor vehicles
25 commissioner failed to give notice as prescribed by this
26 section. If, upon the hearing of such suit, it shall appear to

27 the court that any defendant has failed to pay such taxes
28 and accrued penalties, the court shall enter a decree
29 against such defendant for the amount due, and if the
30 decree be not paid within ten days after made, the court
31 shall enter a decree directing a sale of the real estate
32 subject to said lien, or so much thereof as may be
33 necessary to satisfy said taxes, including interest, penalties
34 and costs. When two or more taxpayers are included in
35 one suit, the court shall apportion the cost thereof among
36 them as it may deem just.

**§11-6G-17. Operating fund for interstate commerce disclosure
division in auditor's office.**

1 The auditor shall establish a special operating fund in
2 the state treasury for the interstate commerce disclosure
3 division in his or her office. The auditor shall pay into the
4 fund three eighths of one percent of the gross receipts of
5 all moneys collected as provided for in this article. From
6 the fund, the auditor shall reimburse the department of tax
7 and revenue for the actual operating expenses incurred in
8 the performance of its duties required by this article. The
9 reimbursements to the tax department from the fund shall
10 not exceed fifty percent of the annual deposits to the
11 fund. Any moneys remaining in the special operating
12 fund after reimbursement to the tax department shall be
13 used by the auditor for funding the operation of the
14 interstate commerce disclosure division located in his
15 office.

16 The interstate commerce disclosure division is hereby
17 granted authority and required to share any and all
18 information obtained by the division in the
19 implementation of this article with state auditor, tax
20 commissioner and the commissioner of motor vehicles to
21 effectuate the collection of taxes under this article. The
22 motor vehicles commissioner is hereby authorized and
23 required to share any and all information obtained by the
24 department of motor vehicles in the implementation of
25 this article. The commissioner of motor vehicles will
26 supply to the interstate commerce disclosure division the
27 names of, location or locations of, and amount or amounts
28 paid by West Virginia corporations registered under the

29 terms of any proportional registration agreement. The tax
30 commissioner is hereby authorized and required to share
31 any and all information obtained by the department of tax
32 and revenue. The state auditor and the interstate
33 commerce disclosure division is hereby authorized and
34 required to share any and all information obtained by the
35 auditor or such division.

§11-6G-18. Severability.

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

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

ARTICLE 2. DEPARTMENT OF MOTOR VEHICLES.

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

§17A-2-10a. Same — Authorizing the entry of this state into reciprocal proportional registration agreements; payment of taxes; issuance of registration plates or markers; promulgation of rules; interagency cooperation; requirement that all registrants pay tax; intermittent interstate commerce and promulgation of rules; proportional registration agreement prevails.

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

1 The motor vehicle commissioner in cooperation with
2 the state auditor, state road commissioner, the public
3 service commission and the department of public safety
4 may enter into such reciprocal agreements as he may
5 deem proper or expedient with the proper authorities of
6 other states, regulating the use, on the roads and highways
7 of this state, of trucks, automobiles and any other vehicles

8 owned in such other states and duly licensed under the
9 laws thereof. The commissioner may confer and advise
10 with the proper officers and legislative bodies of this and
11 other states and federal districts of the United States, to
12 promote reciprocal agreements under which the
13 registration of vehicles owned in this state, and the licenses
14 of operators and chauffeurs residing in this state shall be
15 recognized by other states and federal districts.

§17A-2-10a. Same — Authorizing the entry of this state into reciprocal proportional registration agreements; payment of taxes; issuance of registration plates or markers; promulgation of rules; interagency cooperation; requirement that all registrants pay tax; intermittent interstate commerce and promulgation of rules; proportional registration agreement prevails.

1 (a) The commissioner of motor vehicles is hereby
2 authorized and empowered to enter into reciprocal
3 agreements on behalf of this state with any jurisdiction
4 which permits or requires the licensing of motor vehicles
5 in interstate or combined interstate and intrastate
6 commerce and the payment of taxes, registration, licensing
7 or other fees fixed by the motor vehicle commissioner,
8 pursuant to the execution of this article on an
9 apportionment basis commensurate with and determined
10 by the miles traveled on public roads and highways in that
11 jurisdiction, as compared with the miles traveled on public
12 roads and highways in other jurisdictions or on any other
13 equitable basis of apportionment, and if that jurisdiction
14 exempts motor vehicles registered in other jurisdictions
15 under that apportionment basis from the requirements of
16 full payment of its own registration, license or other fixed
17 fees, the commissioner, by agreement may adopt the
18 exemption as to those motor vehicles, whether owned by
19 residents or nonresidents of this state and regardless of
20 where the vehicles are registered.

21 (b) The agreements under such terms, conditions or
22 restrictions as the commissioner deems proper may
23 provide that owners of motor vehicles operated in
24 interstate or combined interstate and intrastate commerce

25 in this state shall be permitted to pay registration, license
26 or other fees fixed on an apportionment basis,
27 commensurate with and determined by the miles traveled
28 on public roads and highways in this state as compared
29 with the miles traveled on public roads and highways in
30 other jurisdictions or any other equitable basis of
31 apportionment. Such agreements shall not authorize or be
32 construed as authorizing any motor vehicle so registered
33 to be operated without complying with the provisions of
34 chapter eleven and chapter twenty-four-a of this code.

35 (c) Pursuant to the provisions of this section, the
36 commissioner is expressly authorized and empowered to
37 enter into and become a member of the international
38 registration plan or such other designation that may from
39 time to time be given to such reciprocal plan.

40 (d) The commissioner shall prescribe the substance,
41 form, color and context of any registration plate or
42 marker issued under the provisions of this section, each of
43 which shall be visually distinguishable from other
44 registration plates or markers produced by the department
45 of motor vehicles.

46 (e) The commissioner is authorized to promulgate
47 procedural rules as may be necessary to carry out the
48 provisions of any agreements entered into pursuant to this
49 section.

50 (f) The commissioner is authorized to collect and
51 receive funds under this article pursuant to the authority
52 rested in him or her under article six-g of chapter eleven
53 of this code.

54 (g) The commissioner is hereby authorized and
55 required to share with the interstate commerce disclosure
56 division of the office of the state auditor any and all
57 information acquired by the department of motor vehicles
58 pursuant to the implementation of this article. The
59 department shall provide to the interstate commerce
60 disclosure division, and the department of tax and revenue
61 the name of the location and amount paid by West
62 Virginia corporations registered under such proportional
63 registration agreement.

64 (h) The department of motor vehicles shall not permit
65 registration of any commercial vehicle without proof that
66 the public utility tax assessed against it, if any, as certified
67 by the board of public works, has been paid by
68 production of a receipt from the division of public utilities
69 in the office of the state auditor. All such registrants shall
70 pay such assessments regardless of ownership.

71 (i) For any other irregular, intermittent, or temporary
72 interstate commerce activity, the department of motor
73 vehicles is hereby empowered to promulgate rules for the
74 administration and oversight thereof.

75 (j) Notwithstanding any other provision of the code to
76 the contrary, the requirements of the proportional
77 assessment plan as contained in article six-g, chapter
78 eleven of this code, and the provisions of this chapter, shall
79 prevail in the event of any conflict with any other portion
80 of the code.

CHAPTER 290

(S. B. 766—By Senators Wooton, Ball, Dittmar, Hunter, Kessler,
Oliverio, Ross, Snyder, White, Deem and Scott)

[Passed March 14, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article six, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twelve-a, relating to authorizing the board of public works to correct erroneous assessments.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. ASSESSMENT OF PUBLIC SERVICE BUSINESSES.

§11-6-12a. Relief from erroneous assessments.

1 (a) Any owner or operator claiming to be aggrieved
2 by an assessment of the board of public works, including
3 matters relating to the valuation of property resulting from
4 a clerical error or a mistake occasioned by an
5 unintentional or inadvertent act as distinguished from a
6 mistake resulting from negligence or the exercise of poor
7 judgment may, within sixty days of the effective date of
8 this section and thereafter within one year from the date
9 upon which the board of public works has set final values
10 or within one year from the time such clerical error or
11 mistake is discovered or reasonably could have been
12 discovered, apply for relief to the board of public works as
13 provided in this section.

14 (b) Upon the discovery of any such clerical error or
15 mistake, the secretary of the board of public works shall
16 send notice to the owner or operator affected by the
17 clerical error or mistake by first class mail advising the
18 owner or operator of the right to make application for
19 relief from the erroneous assessment.

20 (c) Except as otherwise provided in subsection (a) of
21 this section, the application for relief shall be presented to
22 the secretary of the board of public works no later than
23 one year from the date upon which the error or mistake is
24 discovered.

25 (d) If the board of public works determines that the
26 applicant is entitled to relief, any excess taxes already paid
27 shall be refunded or, if the taxes are charged but not paid,
28 the applicant shall be released from the payment of such
29 excess: *Provided*, That except for an application for relief
30 filed within sixty days of the effective date of this section,
31 in the event a mistake or error is discovered more than one
32 year from the date the board has set final values, and the
33 board determines the applicant is entitled to relief, then
34 any correction under this section shall be in the form of a
35 credit against future years' taxes.

36 (e) Whenever any correction is made by the board of
37 public works, the secretary of the board of public works
38 shall direct that the adjustments be made by the state tax

39 commissioner and communicated to the auditor for
40 correction of the tax statements. The auditor shall
41 thereafter cease any attempt to collect any amounts
42 erroneously charged against the owner or operator and, if
43 already collected, shall refund any excess taxes paid:
44 *Provided*, That except for an application for relief filed
45 within sixty days of the effective date of this section, in the
46 event a mistake or error is discovered more than one year
47 from the date the board has set final values, and the board
48 determines the applicant is entitled to relief, then any
49 correction under this section shall be in the form of a
50 credit against future years' taxes.

51 (f) The provisions of this section shall not be
52 construed to authorize the board of public works to
53 consider any question involving the assessment or
54 valuation of property which has been the subject matter of
55 an appeal under the provisions of section twelve of this
56 article.

57 (g) Any owner or operator may appeal the decision of
58 the board of public works with respect to an application
59 made for relief under this section in the same manner as
60 appeals are authorized under the provisions of section
61 twelve of this article.

CHAPTER 291

(H. B. 4629—By Delegates Michael and Jenkins)

[Passed March 12, 1998; in effect from passage. Approved by the Governor.]

AN ACT to amend article ten, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section five-t, relating to the West Virginia tax procedure and administration act; authorizing electronic funds transfers procedures to be implemented; authorizing emergency rules;

and setting forth a civil penalty for failing or refusing to comply with electronic funds transfer requirements.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10. PROCEDURE AND ADMINISTRATION.

§11-10-5t. Payment by electronic funds transfers.

1 (a) The term "electronic funds transfer" means and
2 includes automated clearinghouse debit, automated
3 clearinghouse credit, wire transfer and any other means
4 recognized by the tax commissioner for payment of taxes.

5 (b) The tax commissioner may prescribe by
6 emergency rules, administrative notices, forms and
7 instructions, and the procedures and criteria to be followed
8 by certain taxpayers in order to pay taxes by electronic
9 funds transfer methods.

10 (c) The rules shall set forth the following:

11 (1) Acceptable indicia of timely payment;

12 (2) Which type of electronic filing method or methods
13 a particular type of taxpayer may or may not use;

14 (3) Which types of taxes to which electronic filing
15 requirements apply for any given tax year and
16 implementation dates: *Provided*, That the type of tax to
17 which electronic funds transfer requirements apply during
18 the first tax year is personal income tax withholding by
19 employers;

20 (4) The dollar amount of tax liability per year which,
21 when exceeded, requires or permits electronic funds
22 transfer. Unless and until a legislative rule is promulgated
23 or this section is amended, no person may be required to
24 pay any tax by electronic funds transfer if the amount

25 owed for the tax during the preceding year was less than
26 one hundred twenty thousand dollars;

27 (5) What, if any, exceptions are allowable, and
28 alternative methods of payment to be used for any
29 exceptions;

30 (6) Procedures for making voluntary electronic funds
31 transfer payments;

32 (7) Any provisions needed to implement the civil
33 penalty created by this section; and

34 (8) Any other provisions necessary to ensure the
35 timely implementation of electronic funds transfer
36 payments.

37 (d) In addition to any other additions and penalties
38 which may be applicable, there is a civil penalty for failing
39 or refusing to use an appropriate electronic funds transfer
40 method when required to do so. The amount of this
41 penalty is three percent of the total tax liability which is or
42 was to be paid by electronic funds transfer for any tax for
43 which electronic funds transfer methods are required to be
44 used by the taxpayer.

45 (e) The provisions of this section are not intended to
46 affect the provisions of other sections of this chapter
47 concerning filing of returns or any other provisions which
48 are not in direct conflict with this section.

49 (f) The state treasurer shall adopt any procedures or
50 rules necessary or convenient for implementing electronic
51 funds transfers of tax payments authorized by this section
52 and rules adopted by the tax commissioner. The treasurer
53 shall draft any procedures and rules adopted in
54 consultation with the tax commissioner and the procedures
55 and rules may not conflict with this section or rules
56 adopted by the tax commissioner.

57 (g) The provisions of this section become effective on
58 or after the first day of January, one thousand nine
59 hundred ninety-eight.

CHAPTER 292

(S. B. 653—By Senator Kessler)

[Passed March 12, 1998; to take effect July 1, 1998. Approved by the Governor.]

AN ACT to amend and reenact section seven-a, article ten, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to taxation; procedure and administration; and authorizing the commissioner to abate interest on penalties which have been abated.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10. PROCEDURE AND ADMINISTRATION.

§11-10-7a. Abatement.

1 (a) *General rule.* — The tax commissioner is
2 authorized to abate the assessment of any tax or any
3 liability in respect thereto which:

4 (1) Is void;

5 (2) Is assessed after the expiration of the period of
6 limitation properly applicable thereto; or

7 (3) Is voidable: *Provided*, That no claim for
8 abatement shall be filed by a taxpayer under this
9 subdivision if the assessment has become final.

10 (b) *Small tax balances.* — The tax commissioner is
11 authorized to abate the unpaid portion of an assessment of
12 any tax, or any liability in respect thereof, which has
13 become final, if the tax commissioner determines under
14 uniform rules promulgated by him or her that the
15 administration and collection costs involved would not
16 warrant collection of the amount due.

17 (c) *Interest on abated penalties.* — The tax
18 commissioner is authorized to abate any interest on a
19 penalty assessed on a tax, when the penalty has been
20 abated.

CHAPTER 293

(H. B. 4303—By Delegates Flanigan and Wright)

[Passed March 14, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eighteen-a, article ten, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to taxation; the penalty for underestimating individual quarterly tax payments; and increasing the minimum amount from two hundred fifty dollars to six hundred dollars before an addition to tax may be imposed.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10. PROCEDURE AND ADMINISTRATION.

§11-10-18a. Additions to tax for failure to pay estimated income or business franchise tax.

1 (a) *Additions to tax.* — Except as otherwise provided
2 in this section, in the case of any underpayment of
3 estimated tax, there shall be added to the tax due for the
4 taxable year, under article twenty-one, twenty-three or
5 twenty-four of this chapter, an amount determined by
6 applying the rate established under section seventeen or
7 seventeen-a of this article, as appropriate for the taxable
8 year, to the amount of the underpayment of estimated tax,
9 for the period of the underpayment.

10 (b) *Amount of underpayment.* — For purposes of
11 subsection (a) of this section, the amount of the
12 underpayment shall be the excess of the amount
13 determined under subdivision (1) of this subsection over
14 the amount determined under subdivision (2) of this
15 subsection.

16 (1) The amount of the installment required to be paid
17 on or before the due date for the installment, if the
18 estimated tax due for the taxable year were an amount
19 equal to ninety percent of the tax shown on the annual
20 return for the taxable year divided by the number of
21 installments taxpayer was required to make for the taxable
22 year, or, if no return was filed, ninety percent of the tax
23 for such year divided by the number of installment
24 payments taxpayer was required to make for the taxable
25 year.

26 (2) The amount, if any, of the installment paid on or
27 before the last date prescribed for payment of that
28 installment.

29 (c) *Period of underpayment.* — The period of
30 underpayment of an installment shall run from the date
31 the installment was required to be paid (due date) to
32 whichever of the following dates is the earlier:

33 (1) The due date of the annual return following the
34 close of the taxable year for which the installment was due
35 (determined without regard to any extension of time for
36 filing such annual return); or

37 (2) With respect to any portion of the underpayment,
38 the date on which such portion is paid. For purposes of
39 this subdivision, a payment of estimated tax shall be
40 credited against unpaid required installments in the order
41 in which such installments are required to be paid.

42 (d) *Exception.* — Notwithstanding the provisions of
43 the preceding subsections, the additions to tax with respect
44 to any underpayment of any installment shall not be
45 imposed if the total amount of all payments of estimated
46 tax made on or before the last date prescribed for the
47 payment of such installment equals or exceeds the amount
48 which would have been required to be paid on or before
49 such date if the estimated tax were whichever of the
50 following is lesser:

51 (1) *Prior year's tax.* — One hundred percent of the tax
52 shown on the return of the taxpayer for the preceding
53 taxable year, if a return showing a liability for tax was

54 filed by the taxpayer for the preceding taxable year and
55 such preceding year was a taxable year of twelve months;

56 (2) *Annualized tax.* — In the case of any required
57 installment, if the taxpayer establishes that the annualized
58 income installment is less than the amount determined
59 under subdivision (1) of this subsection and under
60 subsection (b) of this section, then the amount of such
61 required installment shall be the annualized income
62 installment. For purposes of this subdivision, there shall
63 be four required installments for each taxable year and the
64 "annualized income installment" is the difference (if any)
65 determined by subtracting the amount determined under
66 paragraph (B) of this subdivision from the amount
67 determined under the appropriate clause of paragraph (A)
68 of this subdivision. When making these computations, the
69 rules in paragraph (C) of this subdivision shall be
70 followed:

71 (A) (i) *Corporations.* — An amount equal to the
72 applicable percentage of the tax of a corporation for the
73 taxable year computed by placing on an annualized basis
74 its taxable income:

75 (I) For the first three months of the taxable year, in the
76 case of the first installment;

77 (II) For the first three months of or the first five
78 months of the taxable year, in the case of the second
79 installment;

80 (III) For the first six months or the first eight months
81 of the taxable year, in the case of the third installment; and

82 (IV) For the first nine months or for the first eleven
83 months of the taxable year, in the case of the fourth
84 installment.

85 (ii) *Individuals.* — An amount equal to the applicable
86 percentage of the tax of an individual for the taxable year
87 computed by placing on an annualized basis the taxable
88 income of the individual for months in the taxable year
89 ending before the due date for the installment.

90 (B) The aggregate amount of any prior required
91 installments for the taxable year.

92 (C) *Special rules.* — For purposes of this subdivision:

93 (i) *Annualization.* — Taxpayer's taxable income shall
94 be placed on an annualized basis in the same manner that
95 taxable income is annualized for federal income tax
96 purposes for the taxable year.

97 (ii) *Applicable percentage.* — The applicable
98 percentage shall be determined from the following table:

99 In the case of the following	The applicable
100 required installments:	percentage is:
101 1st	22.5
102 2nd	45
103 3rd	67.5
104 4th	90

105 (e) *Additional exceptions.* —

106 (1) *Where tax amount is small.* — No addition to tax
107 shall be imposed under subsection (a) of this section for
108 any taxable year if the tax shown on the return for such
109 taxable year (or, if no return is filed, the tax), reduced by
110 the credit allowable for withheld tax, is less than six
111 hundred dollars.

112 (2) *Where individual has no personal income tax*
113 *liability for preceding taxable year.* — No addition to tax
114 shall be imposed under subsection (a) of this section for
115 any taxable year if:

116 (A) The individual's preceding taxable year was a
117 taxable year of twelve months;

118 (B) The individual did not have any West Virginia
119 personal income tax liability for the preceding taxable
120 year;

121 (C) The individual was a citizen or resident of the
122 United States throughout the preceding taxable year; and

123 (D) The individual's West Virginia personal income
124 tax liability for the current taxable year is less than five
125 thousand dollars.

126 (3) *Waiver in certain cases.* — No addition to tax shall
127 be imposed under subsection (a) of this section with
128 respect to any underpayment if and to the extent the tax
129 commissioner determines that by reason of casualty,
130 disaster or other unusual circumstances the imposition of
131 such addition to tax would be against equity and good
132 conscience.

133 (f) *Tax computed after application of credits against*
134 *tax.* — For purposes of this section, the term "tax" means
135 the amount of any annual tax or fee administered under
136 this article that is generally payable in two or more
137 installment payments during the taxable year, minus the
138 amount of credits allowable against such tax or fee, other
139 than taxes withheld from the taxpayer under section
140 seventy-one or seventy-one-a, article twenty-one of this
141 chapter (relating to taxes withheld on wages, or from
142 distributions of pass-through income to nonresident
143 partners, S corporation shareholders or beneficiaries of an
144 estate or trust).

145 (g) *Application of section in case of personal income*
146 *tax withheld on wages.* —

147 (1) *In general.* — For purposes of applying this
148 section, the amount of the credit allowed under section
149 seventy-one, article twenty-one of this chapter, for the
150 taxable year shall be deemed a payment of estimated tax,
151 and an equal part of such amount shall be deemed to have
152 been paid on each installment payment due date for such
153 taxable year, unless the taxpayer establishes the specific
154 dates on which all amounts were actually withheld, in
155 which case the amounts so withheld shall be deemed
156 payments of estimated tax on the dates on which such
157 amounts were actually withheld.

158 (2) *Separate application.* — The taxpayer may apply
159 subdivision (1) of this subsection separately with respect
160 to:

161 (A) Wage withholding; and

162 (B) All other amounts withheld for which credit is
163 allowed under section seventy-one, article twenty-one of
164 this chapter.

165 (h) *Application of section in case of income tax*
166 *withheld by pass-through entities from distributions to*
167 *nonresidents.* — For purposes of applying this section, the
168 amount of credit allowed under section seventy-one-a,
169 article twenty-one of this chapter to a nonresident
170 distributee of a pass-through entity, shall be deemed to be
171 a payment of estimated income tax for the taxable year of
172 the nonresident distributee, and an equal part of such
173 amount shall be deemed (only for purposes of this
174 section) to have been paid on each installment due date
175 for the taxable year of the distributee, unless the
176 distributee establishes the dates on which all amounts were
177 actually withheld, in which case the amounts so withheld
178 shall be deemed payments of estimated tax on the dates on
179 which such amounts were actually withheld.

180 (i) *Special rule where personal income tax return filed*
181 *on or before the thirty-first day of January.* — If on or
182 before the last day of the first month following the end of
183 the taxable year, the taxpayer files his or her annual
184 personal income tax return for that taxable year and pays
185 in full the amount computed on the return as payable,
186 then no addition to tax shall be imposed under subsection
187 (a) of this section with respect to any underpayment of the
188 fourth required installment for that taxable year.

189 (j) *Special rules for farmers.* — For purposes of this
190 section, if an individual is a farmer for any taxable year:

191 (1) There is only one required installment for that
192 taxable year;

193 (2) The due date for such installment is the fifteenth
194 day of January of the following taxable year;

195 (3) The amount of such installment shall be equal to
196 the required annual payment determined under subsection
197 (b) of this section by substituting "sixty-six and two-thirds
198 percent" for "ninety percent"; and

- 199 (4) Subsection (h) of this section shall be applied:
- 200 (A) By substituting "the first day of March" for the
201 phrase "the thirty-first day of January"; and
- 202 (B) By treating the required installment described in
203 subdivision (1) of this subsection as the fourth required
204 installment.
- 205 (k) *Fiscal years and short years.* —
- 206 (1) *Fiscal years.* — In applying this section to a
207 taxable year beginning on any date other than the first
208 day of January, there shall be substituted, for the months
209 specified in this section, the months of the fiscal year that
210 correspond thereto.
- 211 (2) *Short taxable year.* — The application of this
212 section to taxable years of less than twelve months shall be
213 in accordance with regulations prescribed by the tax
214 commissioner.
- 215 (l) *Reserved.*
- 216 (m) *Estates and trusts.* —
- 217 (1) *In general.* — Except as otherwise provided in this
218 subsection, this section shall apply to any estate or trust.
- 219 (2) *Exception for certain estates and certain trusts.* —
220 With respect to any taxable year ending before the date
221 two years after the date of the decedent's death, this section
222 shall not apply to:
- 223 (A) The estate of such decedent; or
- 224 (B) Any trust all of which was treated for federal
225 income tax purposes as owned by the decedent and to
226 which the residue of the decedent's estate will pass under
227 his or her will (or, if no will is admitted to probate, which
228 is the trust primarily responsible for paying debts, taxes
229 and expenses of administration).
- 230 (3) *Special rule for annualizations.* — In the case of
231 any estate or trust to which this section applies, paragraph
232 (A), subdivision (2), subsection (d) of this section shall be

233 applied by substituting "ending before the date one month
234 before the due date of the installment" for the phrase
235 "ending before the due date for the installment".

236 (n) *Rules.* — The tax commissioner may prescribe
237 such rules as the commissioner deems necessary to carry
238 out the purpose of this section. This includes, but is not
239 limited to, equitable rules allowing payment of adjusted
240 seasonal installments in lieu of annualized income
241 installments when the commissioner determines, based on
242 known facts and circumstances, that payment of the
243 annualized income installment will result in significant
244 hardship to the taxpayer due to the seasonal nature of
245 taxpayer's business, and equitable rules for payment of
246 estimated personal income tax by an individual who is:
247 (1) An employee; (2) employed in another state for some
248 portion or all of the taxable year; and (3) required to pay
249 personal income taxes to such other state on (or measured
250 by) wages earned in that state, for which credit is allowed
251 under section twenty, article twenty-one of this chapter.

252 (o) *Effective date.* —

253 (1) This section, as amended in the year one thousand
254 nine hundred ninety-two, shall apply to taxable years
255 beginning after the thirtieth day of June, one thousand
256 nine hundred ninety-two, and this section as in effect on
257 the first day of January, one thousand nine hundred
258 ninety-two, is preserved and shall apply to taxable years
259 beginning before the first day of July, one thousand nine
260 hundred ninety-two.

261 (2) This section, as amended in the year one thousand
262 nine hundred ninety-three, shall apply to taxable years
263 ending after the thirtieth day of June, one thousand nine
264 hundred ninety-three. For taxable years ending on or
265 before such dates, the provisions of this section as in effect
266 for such years are fully preserved.

267 (3) This section, as amended in the year one thousand
268 nine hundred ninety-eight, shall apply to taxable years
269 ending after the thirtieth day of June, one thousand nine
270 hundred ninety-eight. For taxable years ending on or
271 before these dates, the provisions of this section as in
272 effect for those years are fully preserved.

CHAPTER 294

(Com. Sub. for H. B. 2794—By Delegates Staton and Fleischauer)

[Passed March 14, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seventeen, article eleven, chapter eleven of the code of West Virginia, one thousand nine hundred thirty one, as amended, relating to estate tax liens, and clarifying that certain estate tax liens are divested and reattach upon transfer of certain property.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 11. ESTATE TAXES.

§11-11-17. Special lien for estate tax.

1 (a) *Lien created.* — Unless the tax imposed by section
2 three of this article is sooner paid in full, or becomes
3 unenforceable by reason of lapse of time, it shall be a lien
4 for ten years after the death of the decedent upon all
5 property, real or personal, of the decedent located in this
6 state, except as provided in subsection (b), (c) or (d) of
7 this section.

8 (b) *Liability of transferees and others; divestment and*
9 *reattachment of lien.* — If the tax imposed by this article
10 is not paid when due, then the spouse, transferee, trustee
11 (except the trustee of an employees' trust which meets the
12 requirements of Section 401(a) of the Internal Revenue
13 Code of 1986, as amended), surviving tenant, person in
14 possession of the property by reason of the exercise,
15 nonexercise, or release of a power of appointment, or
16 beneficiary, who receives, or possesses on the date of the
17 decedent's death, property included in the gross estate for

18 federal estate tax purposes, to the extent of the value at the
19 time of the decedent's death of the property, shall be
20 personally liable for the tax. Any part of the property
21 transferred by (or transferred by a transferee of) the
22 spouse, transferee, trustee, surviving tenant, person in
23 possession, or beneficiary, to a purchaser or holder of a
24 security interest shall be divested of the lien provided in
25 subsection (a) of this section. However, a like lien shall
26 attach to all the property not so transferred of such spouse,
27 transferee, trustee, surviving tenant, person in possession,
28 or beneficiary, or transferee of any person.

29 (c) *Continuance after discharge of fiduciary;*
30 *divestment and reattachment of lien.* — The provisions of
31 section twenty of this article eleven (relating to discharge
32 of fiduciary from personal liability) shall not operate as a
33 release of any part of the gross estate from the lien
34 provided in subsection (a) of this section for any
35 deficiency that may thereafter be determined to be due,
36 unless such part of the gross estate (or any interest therein)
37 has been transferred to a purchaser or a holder of a
38 security interest, in which case the part (or the interest) so
39 transferred shall be divested of the lien provided in
40 subsection (a) of this section or to any claim or demand
41 for any such deficiency. However, a like lien shall attach
42 to the consideration received from the purchaser or holder
43 of a security interest, by the heirs, legatees, devisees, or
44 distributees.

45 (d) *Other Exceptions.* —

46 (1) The part of the property of the decedent as may at
47 the time be subject to the lien provided for in subsection
48 (a) of this section shall be divested of such lien to the
49 extent used for payment of charges against the estate or
50 expenses of its administration allowed by the county
51 commission or court having jurisdiction thereof.

52 (2) The part of the personal property of the decedent
53 as may at the time be subject to the lien provided for in
54 subsection (a) of this section shall be divested of the lien
55 upon the conveyance or transfer of the property to a bona

56 fide purchaser or holder of a security interest for an
57 adequate and full consideration in money or money's
58 worth. The liens shall then attach to the consideration
59 received for the property from the purchaser or holder of
60 a security interest.

61 (e) *Release of lien.* — Subject to such regulations as
62 the tax commissioner may prescribe, the tax commissioner
63 shall issue a certificate of release of any lien arising under
64 this section not later than thirty days after the day on
65 which the tax commissioner finds that the liability for the
66 amount assessed, together with all interest and applicable
67 penalties and additions to tax in respect thereof, has been
68 fully satisfied or has become legally unenforceable.

69 (f) *Certificate of discharge.* — Subject to such
70 regulations as the tax commissioner may prescribe, the tax
71 commissioner may issue a certificate of discharge of any
72 or all of the property subject to the lien imposed by this
73 section if the tax commissioner finds that the liability
74 secured by the lien has been fully satisfied or provided
75 for.

76 (g) *Effect of certificate.* —

77 (1) *Conclusiveness.* — Except as provided in
78 subdivisions (2) and (3) of this subsection, if a certificate
79 is issued pursuant to subsection (f) of this section by the
80 tax commissioner and is filed in the same office as the
81 notice of lien to which it relates (if such notice of lien has
82 been filed), the certificate shall have the following effect:

83 (A) In the case of a certificate of release, the certificate
84 shall be conclusive that the lien referred to in the
85 certificate is extinguished;

86 (B) In the case of a certificate of discharge, the
87 certificate shall be conclusive that the property covered by
88 the certificate is discharged from the lien; and

89 (C) In the case of a certificate of nonattachment, the
90 certificate shall be conclusive that the lien of the state of

91 West Virginia does not attach to the property of the person
92 referred to in the certificate.

93 (2) *Revocation of certification of release or*
94 *nonattachment.* — If the tax commissioner determines
95 that a certificate of release or nonattachment of a lien
96 imposed by this section was issued erroneously or
97 improvidently, or if a certificate of release of the lien was
98 issued pursuant to a collateral agreement entered into in
99 connection with a compromise under section five-q, article
100 ten of this chapter, which has been breached, and if the
101 period of limitation on collection after assessment has not
102 expired, the tax commissioner may revoke the certificate
103 and reinstate the lien:

104 (A) By mailing written notice, by certified mail, return
105 receipt requested, of the revocation to the person against
106 whom the tax was assessed at his or her last known
107 address; and

108 (B) By filing notice of the revocation in the same
109 office in which notice of lien to which it relates was filed
110 (if the notice of lien had been filed).

111 Such reinstated lien: (i) Shall be effective on the date
112 the notice of revocation is mailed to the taxpayer in
113 accordance with the provisions of the foregoing paragraph
114 (A), but not earlier than the date on which any required
115 filing of notice of revocation is filed in accordance with
116 the provisions of the foregoing paragraph (B); and (ii)
117 shall have the same force and effect (as of the date), until
118 the expiration of the period of limitation on collection
119 after assessment, as a lien imposed by section eleven,
120 article ten of this chapter (relating to lien for taxes).

121 (3) *Certificates void under certain conditions.* —
122 Notwithstanding any other provision of this article, any
123 lien imposed by this section shall attach to any property
124 with respect to which a certificate of discharge has been
125 issued if the person liable for payment of the tax
126 reacquires the property after the certificate has been
127 issued.

CHAPTER 295

(H. B. 4290—By Delegates Michael and Jenkins)

[Passed March 12, 1998; in effect July 1, 1998. Approved by the Governor.]

AN ACT to amend and reenact sections three, five and twenty, article twelve, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the business registration tax; changing the registration period from one to two years and the tax from fifteen to thirty dollars, beginning on the first day of July, one thousand nine hundred ninety-nine; permitting a phase-in transition for renewal registration.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 12. BUSINESS REGISTRATION TAX.

- §11-12-3. Business registration certificate required; tax levied; exemption from registration; exemption from tax.
- §11-12-5. Time for which registration certificate granted; power of tax commissioner to suspend or cancel certificate; refusal to renew.
- §11-12-20. Registration of transient vendors.

§11-12-3. Business registration certificate required; tax levied; exemption from registration; exemption from tax.

- 1 (a) *Registration required.* — No person shall, without
2 a business registration certificate, engage in or prosecute,
3 in the state of West Virginia, any business activity without
4 first obtaining a business registration certificate from the
5 tax commissioner of the state of West Virginia.
6 Additionally, before beginning business in this state, such
7 person:

8 (1) If a transient vendor, shall comply with the
9 provisions of sections twenty through twenty-five of this
10 article.

11 (2) If a collection agency, shall comply with the
12 provisions of article sixteen, chapter forty-seven of this
13 code.

14 (3) If an employment agency, shall comply with the
15 provisions of article two, chapter twenty-one of this code.

16 (4) If selling drug paraphernalia, as defined in section
17 three, article nineteen, chapter forty-seven of this code,
18 shall comply with the provisions of article nineteen,
19 chapter forty-seven of this code.

20 Persons engaging in or prosecuting other business
21 activities in this state may also be subject to other
22 provisions of this code which they must satisfy before
23 commencing or while engaging in a business activity in
24 this state.

25 (b) *Tax levied.* — The business registration tax hereby
26 levied shall be fifteen dollars for each annual business
27 registration certificate: *Provided*, That for registration
28 periods beginning on or after the first day of July, one
29 thousand nine hundred ninety-nine, the business
30 registration tax shall be thirty dollars, except as otherwise
31 provided in this article.

32 (1) A separate business registration certificate is
33 required for each fixed business location from which
34 property or services are offered for sale or lease to the
35 public as a class, or to a limited portion of the public; or at
36 which customer accounts may be opened, closed or
37 serviced.

38 (2) A separate business registration certificate is not
39 required for each coin-operated machine. A separate
40 certificate is required for each location from which
41 making coin-operated machines available to the public is
42 itself a business activity.

43 (3) A business that sells tangible personal property or
44 services from or out of one or more vehicles needs a

45 separate business registration certificate for each fixed
46 location in this state from or out of which business is
47 conducted. A copy of its business registration certificate
48 shall be carried in each vehicle and publicly displayed
49 while business is conducted from or out of the vehicle.

50 (4) A business registration certificate is required by
51 subsection (a) of this section for every person engaging in
52 purposeful revenue generating activity in this state. If that
53 activity is one for which an employment agency license or
54 a collection agency license or a license to sell drug
55 paraphernalia is required and no other business activity is
56 conducted by that person at each business location for
57 which the employment agency license or collection
58 agency license or license to sell drug paraphernalia is
59 issued, then only that license is required for each such
60 activity conducted by the licensee at each business
61 location. However, if, in addition to the activity for which
62 each license is issued, some other business activity is
63 conducted by the licensee at such business location, a
64 separate business registration certificate is required to
65 conduct the nonlicensed activity.

66 (c) *Exemption from registration.* — Any person
67 engaging in or prosecuting business activity in this state:

68 (1) Who is not required by law to collect or withhold a
69 tax administered under article ten of this chapter; and

70 (2) Who does not claim exemption from payment of
71 taxes imposed by articles fifteen and fifteen-a of this
72 chapter, shall be exempt from both registration and
73 payment of the tax imposed by this article, if such person
74 had gross income from business activity of four thousand
75 dollars or less during that person's tax year for state
76 income tax purposes immediately preceding the
77 registration period for which a registration certificate is
78 otherwise required by this article.

79 (d) *Exemptions from payment of tax.* — Any person
80 engaging in or prosecuting any business activity in this
81 state who is required by law to collect or withhold any tax
82 administered under article ten of this chapter; or who
83 claims exemption from payment of the taxes imposed by

84 articles fifteen and fifteen-a of this chapter, shall be
85 required to obtain a business registration certificate, as
86 herein before provided, but shall be exempt from payment
87 of the tax levied by subsection (b) of this section, if such
88 person is:

89 (1) A person who had gross income from business
90 activity of four thousand dollars or less during that
91 person's tax year for state income tax purposes
92 immediately preceding the registration period for which a
93 registration certificate is required under this article.

94 (2) An organization which qualifies, or would qualify,
95 for exemption from federal income taxes under section
96 501 of the Internal Revenue Code of 1986, as amended.

97 (3) This state, or a political subdivision thereof, selling
98 tangible personal property, admissions or services, when
99 those activities compete with or may compete with the
100 activities of another person.

101 (4) The United States, or an agency or instrumentality
102 thereof, which is exempt from taxation by the states.

103 (5) A person engaged in the business of agriculture
104 and farming: *Provided*, That no producer or grower
105 selling products of the farm, garden or dairy and not
106 included within the definition of business under
107 subsection (a), section two of this article shall be required
108 to obtain a business registration certificate or pay the
109 business registration tax.

110 (6) A foreign retailer who is not a "retailer engaging in
111 business in this state" as defined in section one, article
112 fifteen-a of this chapter, who enters into an agreement with
113 the tax commissioner to voluntarily collect and remit use
114 tax on sales to West Virginia customers.

115 (e) *Money penalty.* — Any person required to obtain a
116 business registration certificate under this section, who is
117 exempt from payment of the tax, as provided in
118 subsection (d) of this section, who does not obtain a
119 registration certificate shall, in lieu of paying the penalty
120 imposed by section nine of this article, pay a penalty of
121 fifteen dollars for each business location for which a

122 certificate is needed: *Provided*, That application for
123 business registration is made and the applicable money
124 penalty tendered to the tax commissioner within fifteen
125 days after such person receives written notice from the tax
126 commissioner that such person is required to obtain a
127 business registration certificate.

**§11-12-5. Time for which registration certificate granted;
power of tax commissioner to suspend or cancel
certificate; refusal to renew.**

1 (a) *Registration period.* — All business registration
2 certificates issued under the provisions of section four of
3 this article shall be for the period of one year beginning
4 the first day of July and ending the thirtieth day of the
5 following June: *Provided*, That beginning on or after the
6 first day of July, one thousand nine hundred ninety-nine,
7 all business registration certificates issued under the
8 provisions of section four of this article shall be issued for
9 two fiscal years of this state, subject to the following
10 transition rule. If the first year for which a business was
11 issued a business registration certificate under this article
12 began on the first day of July of an even-numbered
13 calendar year, then the tax commissioner may issue a
14 renewal certificate to that business for the period
15 beginning the first day of July, one thousand nine
16 hundred ninety-nine, and ending the thirtieth day of June,
17 two thousand, upon receipt of fifteen dollars for each such
18 one-year certificate. Thereafter, only certificates covering
19 two fiscal years of this state shall be issued.

20 (b) *Revocation or suspension of certificate.* —

21 (1) The tax commissioner may cancel or suspend a
22 business registration certificate at any time during a
23 registration period if:

24 (A) The registrant filed an application for a business
25 registration certificate, or an application for renewal
26 thereof, for the registration period that was false or
27 fraudulent.

28 (B) The registrant willfully refused or neglected to file
29 a tax return or to report information required by the tax

30 commissioner for any tax imposed by or pursuant to this
31 chapter.

32 (C) The registrant willfully refused or neglected to
33 pay any tax, additions to tax, penalties or interest, or any
34 part thereof, when they became due and payable under
35 this chapter, determined with regard to any authorized
36 extension of time for payment.

37 (D) The registrant neglected to pay over to the tax
38 commissioner on or before its due date, determined with
39 regard to any authorized extension of time for payment,
40 any tax imposed by this chapter which the registrant
41 collects from any person and holds in trust for this state.

42 (E) The registrant abused the privilege afforded to it
43 by article fifteen or fifteen-a of this chapter to be exempt
44 from payment of the taxes imposed by such articles on
45 some or all of the registrant's purchases for use in business
46 upon issuing to the vendor a properly executed exemption
47 certificate, by failing to timely pay use tax on taxable
48 purchase for use in business, or by failing to either pay the
49 tax or give a properly executed exemption certificate to
50 the vendor.

51 (2) Before canceling or suspending any such
52 certificate, the tax commissioner shall give written notice
53 of his or her intent to suspend or cancel the business
54 registration certificate of the taxpayer, the reason for the
55 suspension or cancellation, the effective date of the
56 cancellation or suspension, and the date, time and place
57 where the taxpayer may appear and show cause why such
58 business registration certificate should not be canceled or
59 suspended. This written notice shall be served on the
60 taxpayer in the same manner as a notice of assessment is
61 served under article ten of this chapter, not less than
62 twenty days prior to the date of such show cause informal
63 hearing. The taxpayer may appeal cancellation or
64 suspension of its business registration certificate in the
65 same manner as a notice of assessment is appealed under
66 article ten of this chapter: *Provided*, That the filing of a
67 petition for appeal shall not stay the effective date of the
68 suspension or cancellation. A stay may be granted only
69 after a hearing is held on a motion to stay filed by the

70 registrant, upon finding that state revenues will not be
71 jeopardized by the granting of the stay. The tax
72 commissioner may, in his or her discretion and upon such
73 terms as he or she may specify, agree to stay the effective
74 date of the cancellation or suspension until another date
75 certain.

76 (c) *Refusal to renew.* — The tax commissioner may
77 refuse to issue or renew a business registration certificate if
78 the registrant is delinquent in the payment of any tax
79 administered by the tax commissioner under article ten of
80 this chapter or the corporate license tax imposed by article
81 twelve-c of this chapter, until the registrant pays in full all
82 such delinquent taxes including interest and applicable
83 additions to tax and penalties. In his or her discretion and
84 upon such terms as he or she may specify, the tax
85 commissioner may enter into an installment payment
86 agreement with such taxpayer in lieu of the complete
87 payment. Failure of the taxpayer to fully comply with the
88 terms of the installment payment agreement shall render
89 the amount remaining due thereunder immediately due
90 and payable and the tax commissioner may suspend or
91 cancel the business registration certificate in the manner
92 hereinbefore provided.

§11-12-20. Registration of transient vendors.

1 (a) Prior to conducting business or otherwise
2 commencing operations within this state, a transient
3 vendor shall obtain a business registration certificate from
4 the tax commissioner and pay the tax imposed by this
5 article.

6 (b) Upon receipt of the application for business
7 registration and the posting of the bond required by
8 section twenty-one of this article, the tax commissioner
9 shall issue to the transient vendor a business registration
10 certificate, which shall be valid for the current registration
11 period, if the application is complete and the transient
12 vendor is not delinquent in the payment of any tax
13 imposed by this chapter. Upon renewal of the registration,
14 the tax commissioner shall issue a new certificate, valid for
15 the next ensuing registration period, provided he or she is
16 satisfied that the transient vendor has complied with the

17 provisions of this article and is not delinquent in the
18 payment of any tax imposed by this article.

19 (c) The transient vendor shall keep the business
20 registration certificate in his or her possession at all times
21 when conducting business within this state. He or she shall
22 publicly display the certificate whenever conducting
23 business in this state and shall exhibit the certificate upon
24 the request of an authorized employee of the tax
25 commissioner or any law-enforcement officer.

26 (d) The business registration certificate issued by the
27 tax commissioner shall constitute notice that the transient
28 vendor named therein has registered with the tax
29 commissioner, and shall provide notice to the transient
30 vendor that:

31 (1) Before entering this state to conduct business the
32 transient vendor must notify the tax commissioner, in
33 writing, of the location or locations in this state where he
34 or she intends to conduct business, and the date or dates
35 on which he or she intends to conduct such business.

36 (2) Failure to notify, or the giving of false information
37 to the tax commissioner is grounds for suspension or
38 revocation of the transient vendor's business registration
39 certificate.

40 (3) Conducting business in this state without having a
41 valid business registration certificate after such certificate
42 has been suspended or revoked, may result in criminal
43 prosecution or the imposition of fines, or other penalties,
44 or both for violation of this article.

45 (e) *Definitions.* — For purposes of this section:

46 (1) "Transient vendor" means any person who:

47 (A) Brings into this state, by automobile, truck or
48 other means of transportation, or purchases in this state,
49 tangible personal property the sale or use of which is
50 subject to one or more taxes administered by the tax
51 commissioner under article ten of this chapter;

52 (B) Offers or intends to offer such tangible personal
53 property for sale to consumers in this state; and

54 (C) Does not maintain an established office,
55 distribution house, sales house, warehouse, service
56 enterprise, residence from which business is conducted, or
57 other place of business within this state.

58 (2) The term "transient vendor" shall not include any
59 person who:

60 (A) Is a commercial traveler or selling agent who sells
61 only to persons who purchase tangible personal property
62 for purposes of resale to others;

63 (B) Only sells goods, wares or merchandise by sample
64 catalog or brochure for future delivery;

65 (C) Only sells or offers for sale crafts or other
66 handmade items that were made by the seller; or

67 (D) Only sells agricultural and farming products,
68 except nursery products and foliage plants.

CHAPTER 296

(S. B. 716—By Senators Plymale, Helmick, Ross, Minear and Anderson)

[Passed March 21, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections nine and eighteen, article thirteen-a, chapter eleven 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 sixteen-a, all relating to the severance and business privilege taxes; providing that taxpayers severing timber and taking the annual tax credit on the severance and business privilege tax may only deduct the credit on the annual return; requiring every nonresident person or company who at time of severance owns West Virginia timber to have a business registration certificate, to give the tax commissioner written notice before severance of intention to sever West Virginia timber and to prepay

estimated timber severance tax or post a corporate surety bond; setting forth certain reporting requirements; defining nonresident person; imposing sanctions and money penalties for noncompliance; and specifying effective date.

Be it enacted by the Legislature of West Virginia:

That sections nine and eighteen, article thirteen-a, chapter eleven 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 sixteen-a, all to read as follows:

ARTICLE 13A. SEVERANCE TAX.

§11-13A-9. Periodic installment payments of taxes imposed by sections three-a, three-b and three-c of this article; exceptions.

§11-13A-16a. Nonresident person severing West Virginia timber owned by the person at time of severance required to notify tax commissioner prior to severance and prepay severance tax or post bond.

§11-13A-18. Records.

§11-13A-9. Periodic installment payments of taxes imposed by sections three-a, three-b and three-c of this article; exceptions.

1 (a) *General rule.* — Except as provided in subsection
2 (b) of this section, taxes levied under section three-a,
3 three-b or three-c of this article are due and payable in
4 periodic installments as follows:

5 (1) *Tax of fifty dollars or less per month.* — If a
6 person's annual tax liability under this article is reasonably
7 expected to be fifty dollars or less per month, no
8 installment payments of tax are required under this section
9 during that taxable year.

10 (2) *Tax of more than one thousand dollars per month.*
11 — For taxpayers whose estimated tax liability under this
12 article exceeds one thousand dollars per month, the tax is
13 due and payable in monthly installments on or before the
14 last day of the month following the month in which the
15 tax accrued: *Provided,* That the installment payment
16 otherwise due under this subdivision on or before the
17 thirtieth day of June each year shall be remitted to the tax
18 commissioner on or before the fifteenth day of June each
19 year:

20 (A) Each taxpayer shall, on or before the last day of
21 each month, make out an estimate of the tax for which the
22 taxpayer is liable for the preceding month, sign the
23 estimate and mail it together with a remittance, in the form
24 prescribed by the tax commissioner, of the amount of tax
25 due to the office of the tax commissioner: *Provided*, That
26 the installment payment otherwise due under this
27 paragraph on or before the thirtieth day of June each year
28 shall be remitted to the tax commissioner on or before the
29 fifteenth day of June.

30 (B) In estimating the amount of tax due for each
31 month, the taxpayer may deduct one twelfth of any
32 applicable tax credits allowable for the taxable year, and
33 one twelfth of any annual exemption allowed for that
34 year.

35 (3) *Tax of one thousand dollars per month or less.* —
36 For taxpayers whose estimated tax liability under this
37 article is one thousand dollars per month or less, the tax is
38 due and payable in quarterly installments on or before the
39 last day of the month following the quarter in which the
40 tax accrued:

41 (A) Each taxpayer shall, on or before the last day of
42 the fourth, seventh and tenth months of the taxable year,
43 make out an estimate of the tax for which the taxpayer is
44 liable for the preceding quarter, sign the same and mail it
45 together with a remittance, in the form prescribed by the
46 tax commissioner, of the amount of tax due to the office
47 of the tax commissioner.

48 (B) In estimating the amount of tax due for each
49 quarter, the taxpayer may deduct one fourth of any
50 applicable tax credits allowable for the taxable year, and
51 one fourth of any annual exemption allowed for that year.

52 (b) *Exceptions.* — (1) Notwithstanding the provisions
53 of subsection (a) of this section, the tax commissioner, if
54 he or she considers it necessary to ensure payment of the
55 tax, may require the return and payment under this section
56 for periods of shorter duration than those prescribed in
57 subsection (a) of this section.

58 (2) Notwithstanding the provisions of subsection (a) of
59 this section, taxpayers remitting tax on the privilege of
60 severing timber may deduct the annual tax credit allowed
61 in section ten of this article only on the annual return filed

62 for any taxable year beginning on or after the first day of
63 July, one thousand nine hundred ninety-eight. These
64 taxpayers may not deduct any portion of the annual tax
65 credit when they determine the amount of periodic
66 installment payments of timber severance tax due during
67 their taxable year.

§11-13A-16a. Nonresident person severing West Virginia timber owned by the person at time of severance required to notify tax commissioner prior to severance and prepay severance tax or post bond.

1 (a) *Business registration certificate required.* — Every
2 nonresident person who owns or purchases standing West
3 Virginia timber who either directly, or indirectly through
4 the activities of others, severs that timber shall apply to the
5 tax commissioner for a business registration certificate as
6 provided in article twelve of this chapter, before beginning
7 to do business in this state, whether or not the person has a
8 permanent place of business in this state.

9 (b) *"Nonresident person" defined.* — The term
10 "nonresident person" means a "person" or "company" as
11 defined in section three of this article that, if an individual,
12 is a nonresident of this state for purposes of the tax
13 imposed by article twenty-one of this chapter and, if any
14 other person, does not have its commercial domicile in this
15 state, or during the three months preceding the date the
16 application for business registration certificate is filed with
17 the tax commissioner did not have a permanent office in
18 this state for the conduct of timbering operations in this
19 state or any other permanent place of business in this state
20 for the conduct of timbering operations as that term is
21 defined in section three, article one-b, chapter nineteen of
22 this code.

23 (c) *Notice of contract.* — Every nonresident person
24 who severs West Virginia timber, either directly or through
25 the activity of others, which that person owns, in whole or
26 in part, at the time that it is severed, shall give the tax
27 commissioner written notice of the nonresident person's
28 intent to sever the West Virginia timber identified in the
29 notice. This notice shall be given no earlier than ninety

30 days before the timbering operation begins and no later
31 than thirty days before the timbering operation begins.
32 The notification shall include all of the information
33 required by section six, article one-b, chapter nineteen of
34 this code, the estimated gross value of the timber described
35 in the notice that will be severed and any other
36 information the tax commissioner may require: *Provided*,
37 That the tax commissioner may accept as the notification
38 required by this section, a true copy of the notice the
39 nonresident person gave under section six, article eleven-b,
40 chapter nineteen of this code to the director of forestry,
41 the estimated gross value of the timber described in the
42 notice that will be severed and any additional information
43 the tax commissioner may require.

44 (d) *Prepayment of severance tax.* — If the nonresident
45 person owns, in whole or in part, the timber at the time that
46 it is severed, the nonresident person shall, at the time the
47 notice required by subsection (c) of this section is given to
48 the tax commissioner, pay to the tax commissioner four
49 percent of the estimated gross value of the timber to be
50 severed that is described in the notice: *Provided*, That the
51 estimated gross value shall not be less than the actual price
52 paid or to be paid for the stumpage. The tax
53 commissioner shall deposit this amount in a revolving
54 account in the treasurer's office to be known as the
55 "Forestry Tax Fund" pending completion of severance of
56 the timber identified in the notice given under subsection
57 (c) of this section, the filing of all required tax returns and
58 payment of all timber severance taxes due under this
59 article attributable to severance of the timber described in
60 the notice given under subsection (c) of this section,
61 including any additions to tax, penalties and interest
62 imposed for failure to timely pay the severance taxes.
63 Within thirty days after the timber identified in the notice
64 is severed, the nonresident person shall file with the tax
65 commissioner a report reconciling the amount of prepaid
66 severance tax with the amount of severance taxes actually
67 due on the gross value of the timber at the point where the
68 privilege of severing timber ends. If this report shows that
69 additional timber severance taxes are due, that amount
70 shall be paid when the report is filed with the tax

71 commissioner. If the report shows that the amount of
72 timber severance taxes prepaid exceeded the amount
73 actually due, the tax commissioner shall refund the
74 difference.

75 (e) *Surety bond.* — In lieu of the prepayment of
76 timber severance tax required by subsection (d) of this
77 section, the nonresident person may furnish to the tax
78 commissioner a corporate surety bond in an amount equal
79 to four percent of the estimated gross value of the timber
80 to be severed that is described in the notice: *Provided,*
81 That the estimated gross value shall not be less than the
82 actual price paid or to be paid for the stumpage, to
83 guarantee timely payment of the taxes due under this
84 article that may be attributable to the timber described in
85 the notice given under subsection (c) of this section. The
86 form of the bond shall be approved by the tax
87 commissioner. The surety shall be qualified to do business
88 in this state. The bond shall be conditioned that the
89 nonresident person shall pay all timber severance taxes
90 due under this article attributable to severance of the
91 timber described in the notice given under subsection (c)
92 of this section, including any additions to tax, penalties or
93 interest that may be imposed due to any failure of the
94 nonresident person to pay those taxes as they become due.

95 (f) *Conditions for surety.* — Any surety on a bond
96 furnished under subsection (e) of this section shall be
97 qualified to do business in this state. The surety shall be
98 relieved, released and discharged from all liability
99 accruing on the bond after the expiration of sixty days
100 from the date the tax commissioner receives the written
101 request of the surety to be discharged. The written request
102 for discharge may be filed with the tax commissioner by
103 personal service or by certified mail, postage prepaid,
104 addressed to the tax commissioner at his or her office in
105 Charleston, West Virginia. A request for discharge shall
106 not relieve, release or discharge the surety from liability
107 already accrued, or which shall accrue before expiration
108 of the sixty-day period. Whenever any surety seeks
109 discharge as provided in this subsection, it is the duty of
110 the principal of the bond to supply the tax commissioner
111 with another corporate surety bond.

112 (g) *Penalty for noncompliance.* — (1) A nonresident
113 person who fails to comply, in whole or in part, with the
114 requirements of this section shall forfeit the license issued
115 to that person under section four, article one-b, chapter
116 nineteen of this code for a period of one year for the first
117 offense and for a period of two years for each subsequent
118 violation of this section. When the tax commissioner
119 determines that a nonresident person is failing to comply,
120 in whole or in part, with the requirements of this section,
121 the commissioner shall certify those facts to the director of
122 forestry. Upon the facts certified by the tax
123 commissioner, or upon facts gathered by the director,
124 demonstrating failure of the nonresident person to
125 comply, in whole or in part, with the requirements of this
126 section the director shall then issue an order notifying the
127 nonresident person that the license issued under section
128 four, article one-b, chapter nineteen of this code has been
129 forfeited. A forfeiture order may be appealed as provided
130 in article one-b, chapter nineteen of this code. In addition,
131 the nonresident person shall pay a money penalty equal to
132 fifty percent of the timber severance tax that should have
133 been paid that was not timely paid. This amount shall be
134 in addition to the amount of timber severance taxes not
135 timely paid plus interest and applicable additions to tax.
136 This penalty shall be collected by the tax commissioner in
137 the same manner as taxes are collected under this article.

138 (2) If a nonresident person underestimates the amount
139 of timber severance taxes that must be prepaid under
140 subsection (d) of this section by more than twenty-five
141 percent, the nonresident person shall pay a money penalty
142 equal to fifty percent of the timber severance tax that
143 should have been prepaid that was not prepaid or
144 guaranteed by the surety bond given under subsection (e)
145 of this section. This amount shall be in addition to the
146 amount of timber severance taxes not timely paid plus
147 interest and applicable additions to tax. This penalty shall
148 be collected by the tax commissioner in the same manner
149 as taxes are collected under this article.

150 (h) *Effective date.* — The provisions of this section
151 apply to timber severed by a nonresident person on or

152 after the first day of July, one thousand nine hundred
153 ninety-eight.

§11-13A-18. Records.

1 (a) *General.* — Every taxpayer liable for reporting or
2 paying tax under this article shall keep records, receipts,
3 invoices and other pertinent papers in the form required
4 by the tax commissioner.

5 (b) *Period of retention.* — Every taxpayer shall keep
6 the records for not less than three years after the annual
7 return is filed under this article, unless the tax
8 commissioner in writing authorizes their earlier
9 destruction. An extension of time for making an
10 assessment automatically extends the time period for
11 keeping the records for all years subject to audit covered
12 in the agreement for extension of time.

13 (c) *Special rule for purchasers of standing timber or of*
14 *logs.* — In addition to the records required by subsection
15 (a) of this section, every person purchasing standing
16 timber, logs or wood products sawn or chipped in
17 conjunction with a timber harvesting operation in this state
18 delivered after the thirtieth day of June, one thousand nine
19 hundred ninety-eight, shall obtain from the person from
20 whom the standing timber, logs or wood products sawn or
21 chipped in conjunction with a timbering harvest operation
22 are purchased a true copy of the seller's then current
23 business registration certificate issued under article twelve
24 of this chapter or a copy of federal form 1099 for the
25 year of the purchase. When the seller is a person not
26 required by this chapter to have a business registration
27 certificate, the purchaser shall obtain an affidavit from the
28 seller: (1) Stating that the seller does not have a business
29 registration certificate and that the seller is not required by
30 this chapter to have a business registration certificate; (2)
31 listing the seller's social security number or federal
32 employer identification number; and (3) listing the seller's
33 current mailing address. The tax commissioner may
34 develop a form for this affidavit.

CHAPTER 297

(Com. Sub. for H. B. 4007— By Mr. Speaker, Mr. Kiss, and Delegate Ashley)
[By Request of the Executive]

[Passed March 21, 1998; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section four-a, article thirteen-c, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating generally to allowance, determination, computation and application of West Virginia corporate headquarters relocation tax credit; expanding categories of businesses eligible for credits; specifying how new jobs are determined; allowing multiple year headquarter relocation projects; permitting use of alternative apportionment methods when applying credit; adding definitions; and specifying effective date.

Be it enacted by the Legislature of West Virginia:

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

**ARTICLE 13C. BUSINESS INVESTMENT AND JOBS EXPANSION
TAX CREDIT.**

**§11-13C-4a. Credit allowed for locating corporate head-
quarters in this state.**

1 (a) *Credit allowed.* — A corporation that presently
2 has its corporate headquarters located outside this state
3 that relocates its corporate headquarters in this state and
4 employs, on a full-time basis, at its new corporate
5 headquarters location, at least fifteen people, who are
6 domiciled in this state, shall be allowed credit under this
7 article, the amount of which shall be determined as
8 provided in subsection (b). For corporate headquarters
9 relocations occurring on and after the first day of January,
10 one thousand nine hundred ninety-eight, the restrictions
11 set forth in subsection (a), section fifteen of this article
12 shall not apply to the credit allowed under this section.

13 However, the restrictions set forth in subsection (a), section
14 fifteen of this article and the exceptions thereto set forth in
15 subsection (b) of said section fifteen, shall remain fully
16 applicable and in force and effect for all other tax credits
17 provided or allowable under this article.

18 (b) *Determination of credit.* — The amount of credit
19 allowed by subsection (a) shall be determined at the
20 election of the taxpayer:

21 (1) By multiplying its adjusted qualified investment by
22 its new jobs percentage (as determined under section seven
23 of this article); or

24 (2) By multiplying its adjusted qualified investment by
25 ten percent.

26 (c) *Corporate headquarters relocations after*
27 *December 31, 1997.* — For purposes of corporate
28 headquarters relocations occurring on or after the first day
29 of January, one thousand nine hundred ninety-eight, and
30 notwithstanding any other provision of this article to the
31 contrary:

32 (1) New jobs created in this state by relocation of a
33 corporate headquarters may include jobs created in this
34 state within twelve months before or after the month in
35 which the qualified investment in the corporate
36 headquarters relocation is placed into service or use in this
37 state by:

38 (A) Relocation or transfer of employees of the
39 corporation or employees of a related corporation or
40 related person from an out-of-state location to the
41 relocated corporate headquarters in this state, who: (i) Are
42 or become employees of the corporation within twelve
43 months before or after the month in which the qualified
44 investment in the corporate headquarters is placed into
45 service or use in this state; and (ii) whose regular place of
46 work is in the corporate headquarters, or

47 (B) New employees of the corporation whose regular
48 place of work is in the corporate headquarters.

49 (2) Multiple year projects certified under section four-
50 b of this article may be allowed for corporate headquarters
51 relocations under this section.

52 (d) *Application of credit.* — The credit allowed by this
53 section shall be applied in the manner prescribed in
54 section five of this article: *Provided*, That the amount of
55 corporation net income taxes against which the credit
56 allowed by this section may be applied shall be the sum of
57 the corporation net income tax due on adjusted federal
58 taxable income allocated to this state under section seven,
59 article twenty-four of this chapter, plus that portion of the
60 corporation net income tax due on adjusted federal
61 taxable income apportioned to this state under section
62 seven, article twenty-four of this chapter, that is further
63 apportioned to the qualified investment using the payroll
64 factor provided in paragraph (1), subsection (h) of said
65 section five or an alternative means of apportionment as
66 prescribed by the tax commissioner under said section
67 five. For all other purposes, the credit allowed by this
68 section shall be treated as credit allowed by section four of
69 this article.

70 (e) *Definitions.* — For purposes of this section:

71 (1) *Adjusted qualified investment.* — The term
72 "adjusted qualified investment" means the taxpayer's
73 qualified investment in the corporate headquarters as
74 determined under section six of this article and rules of
75 the tax commissioner, plus the cost of the reasonable and
76 necessary expenses it incurred to relocate its corporate
77 headquarters at a location in this state from its present
78 location outside this state.

79 (2) *Corporate headquarters.* — The term "corporate
80 headquarters" means the place at which the corporation
81 has its commercial domicile and from which the business
82 of the corporation is primarily conducted.

83 (3) *Reasonable and necessary expenses incurred to*
84 *relocate corporate headquarters.* — The phrase "reason-
85 able and necessary expenses incurred to relocate corporate
86 headquarters" means only those expenses incurred and
87 paid by the corporation, to unrelated third parties, to move
88 its corporate headquarters and its corporate headquarters
89 employees to this state that are, upon application by the
90 corporation, determined by the tax commissioner to have
91 been both reasonable and necessary to effectuate the
92 move.

93 (4) *The corporation.* — For purposes of this section,
94 the term "the corporation" means the corporation for
95 which the corporate headquarters is relocated.

96 (f) *Effective date.* — The credit allowed by this
97 section as amended in the year one thousand nine
98 hundred ninety-eight shall be allowable for corporate
99 headquarters placed in service or use on or after the first
100 day of January, one thousand nine hundred ninety-eight.

CHAPTER 298

(H. B. 4619—By Mr. Speaker, Mr. Kiss, and Delegate Michael)

[Passed March 11, 1998; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections seven-a and fourteen, article thirteen-c, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to providing small business tax credit, specifying amount of credit allowed; specifying application of credit; specifying certification of new jobs; providing for small business tax credit projects; providing for issuance of regulations; specifying effective dates; specifying restrictions and limitations on credits allowed by said article thirteen-c; setting forth legislative findings; specifying construction; specifying nonapplication against severance taxes; setting forth transition rules; specifying treatment of successor project participants; setting forth definitions; specifying requirement for application for credit; and specifying penalty for failure to file.

Be it enacted by the Legislature of West Virginia:

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

**ARTICLE 13C. BUSINESS INVESTMENT AND JOBS EXPANSION
TAX CREDIT.**

§11-13C-7a. Small business credit.

§11-13C-14. Restrictions and limitations on credits allowed by this article.

§11-13C-7a. Small business credit.

1 (a) "*Small business*" defined. — For purposes of this
2 section, the term "small business" means a business which
3 has an annual payroll of one million five hundred
4 thousand dollars or less, or annual gross sales of not more
5 than five million dollars: *Provided*, That beginning the
6 first day of January, one thousand nine hundred
7 eighty-nine, and each first day of January thereafter, the
8 tax commissioner shall prescribe amounts which shall
9 apply in lieu of the above amounts during that calendar
10 year. These amounts shall be prescribed by increasing the
11 amount of each by the cost-of-living adjustment for such
12 calendar year. The requirements for annual payroll and
13 annual gross receipts, once met by a given taxpayer in that
14 taxable year when qualified investment is first placed in
15 service or use shall not again be applied to that same
16 taxpayer in subsequent years to defeat the small business
17 credit to which the taxpayer gained entitlement in that
18 year. However, the median compensation requirements
19 applicable to any small business, except a small business
20 entitled to a certified project credit, shall be determined
21 when qualified investment is first placed in service or use;
22 and subsequently redetermined inflation adjusted amounts
23 for median compensation for each year shall be the
24 requirements applicable to that small business for each
25 year throughout the ten-year credit period and any further
26 carryover or other extended credit period for the original
27 credit to which the requirements relate.

28 (1) *Cost-of-living adjustment*. — For purposes of
29 subsection (a), the cost-of-living adjustment for any
30 calendar year is the percentage (if any) by which:

31 (A) The consumer price index for the preceding
32 calendar year exceeds;

33 (B) The consumer price index for the calendar year
34 one thousand nine hundred eighty-seven.

35 (2) *Consumer price index for any calendar year.* —
36 For purposes of subdivision (1), the consumer price index
37 for any calendar year is the average of the federal
38 consumer price index as of the close of the twelve-month
39 period ending on the thirty-first day of August of such
40 calendar year.

41 (3) *Consumer price index.* — For purposes of
42 subdivision (2), the term "Federal Consumer Price Index"
43 means the last consumer price index for all urban
44 consumers published by the United States department of
45 labor.

46 (4) *Rounding.* — If any increase under subdivision
47 (1) is not a multiple of fifty dollars, such increase shall be
48 rounded to the next lowest multiple of fifty dollars.

49 (b) *Amount of credit allowed.*

50 (1) *Credit allowed.* — An eligible small business
51 taxpayer shall be allowed a credit against the portion of
52 taxes imposed by this state that are attributable to and the
53 direct consequence of the eligible small business
54 taxpayer's qualified investment in a new or expanded
55 business in this state which results in the creation of at least
56 ten new jobs. The amount of this credit shall be
57 determined as provided in this section.

58 (2) *Amount of credit.* — The amount of credit
59 allowable under this section is determined by dividing the
60 amount of the eligible small business taxpayer's "qualified
61 investment" (determined under section six) in "property
62 purchased for business expansion" (as defined in section
63 three) by ten. The amount of qualified investment so
64 apportioned to each year of the ten-year credit period
65 shall be the annual measure against which taxpayer's
66 annual new jobs percentage (determined under subsection
67 (d)) is applied. The product of this calculation establishes
68 the maximum amount of credit allowable each year for
69 ten consecutive years under this section due to the
70 qualified investment.

71 (3) *Application of credit.* — The annual credit
72 allowance must be taken beginning with the taxable year
73 in which the taxpayer places the qualified investment into
74 service or use in this state, unless the taxpayer elects to
75 delay the beginning of the ten-year credit period until the
76 next succeeding taxable year. This election shall be made
77 in the annual income tax return filed under this chapter by
78 the taxpayer for the taxable year in which the qualified
79 investment is placed in service or use. Once made, this
80 election cannot be revoked. The annual credit allowance
81 shall be taken and applied in the manner prescribed in
82 section five.

83 (c) *New jobs.* — The term "new jobs" has the meaning
84 ascribed to it in subdivision (14), subsection (b), section
85 three of this article: *Provided,* That the median
86 compensation of such new jobs shall not be less than
87 eleven thousand dollars per year and that beginning the
88 first day of January, one thousand nine hundred
89 eighty-nine, and each first day of January thereafter, the
90 tax commissioner shall adjust the median annual
91 compensation specified in this subsection by increasing
92 the amount thereof by the annual cost-of-living
93 adjustment determined under subsection (a).

94 (1) The term "new employee" shall have the meaning
95 ascribed to it in subdivision (13), subsection (b), section
96 three of this article: *Provided,* That such term shall not
97 include employees filling new jobs who:

98 (A) Are related individuals, as defined in subsection
99 (i), section 51 of the Internal Revenue Code of 1986, or a
100 person who owns ten percent or more of the business with
101 such ownership interest to be determined under rules set
102 forth in subsection (b), section 267 of said Internal
103 Revenue Code; or

104 (B) Worked for the taxpayer during the six-month
105 period ending on the date taxpayer's qualified investment
106 is placed in service or use and is rehired by the taxpayer
107 during the six-month period beginning on the date
108 taxpayer's qualified investment is placed in service or use.

109 (2) *When a job is attributable.* — An employee's
110 position is directly attributable to the qualified investment
111 if:

112 (A) The employee's service is performed or his or her
113 base of operations is at the new or expanded business
114 facility;

115 (B) The position did not exist prior to the
116 construction, renovation, expansion or acquisition of the
117 business facility and the making of the qualified
118 investment; and

119 (C) But for the qualified investment, the position
120 would not have existed.

121 (d) *New jobs percentage.* — The annual new jobs
122 percentage is based on the number of new jobs created in
123 this state by the taxpayer that is directly attributable to
124 taxpayer's qualified investment.

125 (1) If at least ten new jobs are created and filled
126 during the taxable year in which the qualified investment
127 is placed in service or use, the applicable new jobs
128 percentage shall be thirty percent: *Provided,* That for
129 each new job over ten, up to forty such additional new
130 jobs, the applicable new jobs percentage shall be increased
131 by adding thereto one half of one percent, with the
132 maximum new jobs percentage not to exceed fifty
133 percent.

134 (2) During each of the remaining nine years of the
135 ten-year credit period, the annual new jobs percentage
136 shall be based on the average number of new jobs that
137 were filled during that taxable year: *Provided,* That for
138 purposes of estimating the new jobs percentage that will be
139 applicable for each subsequent credit year, the taxpayer
140 shall use the new jobs percentage allowable for the taxable
141 year immediately prior thereto, and in the annual income
142 tax return filed under this chapter for the then current tax
143 year, taxpayer shall redetermine his or her allowable new
144 jobs percentage for that year based on the average number
145 of new employees employed in new jobs during that year

146 (determined on a monthly basis) created as the direct
147 result of taxpayer's qualified investment.

148 (e) *Certification of new jobs.* — With the annual
149 income tax return filed under this chapter for each taxable
150 year during the ten-year credit period, the taxpayer shall
151 certify:

152 (1) The new jobs percentage for that taxable year;

153 (2) The amount of the credit allowance for that year;

154 (3) If the business is a partnership or electing small
155 business corporation, the amount of credit allocated to the
156 partners or shareholders, as the case may be;

157 (4) That qualified investment property continue to be
158 used in the business, or if any of it was disposed of during
159 the year the date of disposition and that such property was
160 not disposed of prior to expiration of its useful life, as
161 determined under section six;

162 (5) That the new jobs created by the qualified
163 investment continue to exist and are filled by persons who
164 meet the definition of new employee (as defined in
165 subdivision (1), subsection (c) of this section) and are paid
166 an average annual compensation equal to or greater than
167 the minimum average annual compensation required by
168 this section.

169 (f) *Small business project.* — A small business may
170 apply to the tax commissioner under section four-b for
171 certification of subdivision (1), subsection (a), section
172 four-b project if that project will create at least ten new
173 jobs.

174 (g) *Regulations.* — The tax commissioner shall
175 prescribe such regulations as he or she may deem
176 necessary in order to determine the amount of credit
177 allowed under this section to a taxpayer; to verify
178 taxpayer's continued entitlement to claim such credit; and
179 to verify proper application of the credit allowed. The tax
180 commissioner may, by regulation, require a taxpayer
181 intending to claim credit under this section to file with the
182 tax commissioner a notice of intent to claim this credit,

183 before the taxpayer begins reducing his or her monthly or
184 quarterly installment payments of estimated tax for the
185 credit provided in this section.

186 (h) *Effective date.*

187 (1) The credit provided in this section shall be allowed
188 for qualified investment property purchased or leased
189 after the thirtieth day of June, one thousand nine hundred
190 eighty-seven.

191 (2) The amendments to this section, enacted in the
192 year one thousand nine hundred ninety-eight, shall be
193 retroactive to tax years beginning on or after the first day
194 of January, one thousand nine hundred ninety-five.

**§11-13C-14. Restrictions and limitations on credits allowed by
this article.**

1 (a) *Findings.* — The Legislature finds that the tax
2 credits allowed under provisions of this article heretofore
3 enacted have not effectively and efficiently increased
4 employment through investment in certain industry
5 segments; that while there has been a significant net
6 decrease in employment in the coal industry in recent
7 years the amount of credit being claimed by producers of
8 coal has significantly increased; that the increasing cost of
9 the credits allowed by this article to coal producers is
10 eroding the state's ability to reasonably fund essential state
11 services such as public education, public safety and basic
12 human services; and that this erosion will continue unless
13 remedial legislation is enacted.

14 (b) *Construction.* — The rule of statutory construction
15 codified in subsection (b), section twelve of this article, is
16 hereby replaced with a rule of reasonable construction in
17 which the burden of proof is on the taxpayer to establish
18 by clear and convincing evidence that the taxpayer is
19 entitled to the benefits allowed by this article.

20 (c) *Credit not to be applied against severance taxes.*

21 (1) Notwithstanding any provision in this chapter to
22 the contrary, no credit shall be allowed against the taxes
23 imposed by article thirteen-a of this chapter for taxable

24 years ending on or after the tenth day of March, one
25 thousand nine hundred ninety, unless one of the transition
26 rules in paragraph (2) of this subsection (c) applies.

27 (2) *Transition rules.* — The general rule stated in
28 paragraph (1) of this subsection (c) shall not apply:

29 (A) To qualified investment property placed in service
30 or use prior to the tenth day of March, one thousand nine
31 hundred ninety.

32 (B) To property purchased or leased for business
33 expansion that is placed in service or use on or after the
34 tenth day of March, one thousand nine hundred ninety, if
35 at least one of the following clauses applies to such
36 property:

37 (i) The new or expanded business facility was
38 constructed, reconstructed or erected, pursuant to a written
39 construction contract executed prior to the tenth day of
40 March, one thousand nine hundred ninety, as limited to
41 the provisions of such contract as of such date then
42 binding on the taxpayer, but only to the extent such new
43 or expanded business facility is placed in service or use
44 prior to the first day of January, one thousand nine
45 hundred ninety-two.

46 (ii) The new or expanded business facility which is
47 part of a project described in paragraph (1), subsection
48 (a), section four-b of this article, was constructed,
49 reconstructed or erected, pursuant to a written construction
50 contract executed prior to the tenth day of March, one
51 thousand nine hundred ninety, as limited to the provisions
52 of such contract as of such date then binding on the
53 taxpayer: *Provided*, That only that portion of the contract
54 price attributable to that percentage of the construction
55 contract completed prior to the first day of January, one
56 thousand nine hundred ninety-two, (determined under
57 principles set forth in Section 460(b) of the Internal
58 Revenue Code of 1986, as in effect before the tenth day of
59 March, one thousand nine hundred ninety, which is placed
60 in service or use prior to the first day of January, one
61 thousand nine hundred ninety-four, may be treated as

62 property purchased for business expansion under section
63 six of this article.

64 (iii) The new or expanded business facility was
65 purchased or leased pursuant to a written contract
66 executed prior to the tenth day of March, one thousand
67 nine hundred ninety, as limited to the provisions then
68 binding on the taxpayer as of such date, but only to the
69 extent such new or expanded business facility is placed in
70 service or use prior to the first day of January, one
71 thousand nine hundred ninety-two.

72 (iv) The machinery or equipment or other tangible
73 personal property purchased or leased for business
74 expansion at a new or expanded business facility was
75 purchased or leased by the taxpayer pursuant to a written
76 contract to purchase or lease identifiable tangible personal
77 property executed before the tenth day of March, one
78 thousand nine hundred ninety, as limited to the provisions
79 of such written contract then binding on the taxpayer, but
80 only to the extent the tangible personal property
81 purchased or leased under such contract is placed in
82 service or use before the first day of January, one
83 thousand nine hundred ninety-two: *Provided*, That when
84 such tangible personal property is purchased or leased as
85 aforesaid as part of a project described in clause (ii) of this
86 subparagraph (B), such tangible personal property must
87 be placed in service or use prior to the first day of
88 January, one thousand nine hundred ninety-four, to be
89 treated as property purchased or leased for business
90 expansion under section six of this article.

91 (C) To property purchased or leased for business
92 expansion that is placed in service or use on or after the
93 tenth day of March, one thousand nine hundred ninety, as
94 part of a project otherwise eligible for the credit under
95 subsection (a), section four-b of this article, if all of the
96 requirements of clauses (i), (ii), (iii) and (iv) of this
97 subparagraph are satisfied:

98 (i) The taxpayer and other participants in the project,
99 if any, have made investments in property purchased or
100 leased for business expansion as defined in subsection
101 (b)(19), section three of this article prior to the tenth day

102 of March, one thousand nine hundred ninety, in excess of
103 ten million dollars.

104 (ii) The investments described in clause (i) were made
105 pursuant to a plan for an integrated project to be
106 developed over a period of one or more years and with the
107 expectation of making additional investments in the
108 integrated project.

109 (iii) The portion of the project constructed, purchased
110 or leased after the tenth day of March, one thousand nine
111 hundred ninety, meets the definition of new business
112 facility in subsection (e)(3) of this section.

113 (iv) The new jobs created by the project after the
114 tenth day of March, one thousand nine hundred ninety,
115 are filled by new employees as defined in subsection (e)
116 (4) of this section.

117 (3) *Notice of claim under transition rules.*

118 (A) *Notice required.* — Any person intending to assert
119 a claim for credit based, in whole or in part, on application
120 of the transition rules in subparagraph (B) or (C),
121 paragraph (2) of this subsection (c), shall file written
122 notice of such intention with the tax commissioner on or
123 before the first day of July, one thousand nine hundred
124 ninety. In the case of a multiparticipant project, this
125 notice may be filed by the managing project participant
126 on behalf of all participants in such project. Such notice
127 shall be in a form prescribed by the tax commissioner and
128 all information required by such form shall be provided.

129 (B) *Failure to file notice.* — If any person fails to
130 timely file the notice required by this paragraph (3), such
131 person shall be precluded from claiming credit under this
132 article for such investment.

133 (d) *Treatment of successor project participants.* —
134 Whenever a participant in a project certified under
135 paragraph (2) or (3), subsection (a), section four-b of this
136 article, is replaced by another participant in that project on
137 or after the tenth day of March, one thousand nine
138 hundred ninety, the tax credits available to such successor
139 participant as a result of the transfer shall not exceed the

140 amount of credits that would have been available to the
141 predecessor participant had the transfer to the successor
142 participant not occurred: *Provided*, That if the project
143 plan provides for annual recalculation of the division of
144 the credit allowable for each year among the participants
145 in the project in order to maximize the collective use of
146 such credit by the project participants, or for any other
147 purpose, then the credit available to the successor
148 participant as a result of the transfer shall be limited each
149 year to the amount of credit actually used by the
150 predecessor participant to offset taxes for the taxable year
151 immediately preceding the taxable year in which such
152 participant's obligations or interest in the project, as
153 described in the project plan certified by the tax
154 commissioner, passed to the successor participant in the
155 project.

156 (e) *Certain terms redefined.* — Notwithstanding the
157 provisions of subsection (b), section three of this article, or
158 any other provision of this article, to the contrary, the
159 following terms have the meanings assigned to them by
160 this section.

161 (1) *Construction contract.* — The term "construction
162 contract" means any contract for the building,
163 construction, reconstruction or rehabilitation of, or the
164 installation of any integral components to, or
165 improvements of, a new or existing business facility.

166 (2) *Excluded property.* — The term "property
167 purchased or leased for business expansion" shall not
168 include:

169 (A) Property owned or leased by the taxpayer and for
170 which the taxpayer was previously allowed tax credit for
171 industrial expansion, tax credit for industrial revitalization,
172 tax credit for coal loading facilities or the tax credits
173 allowed by this article.

174 (B) Property owned or leased by the taxpayer and for
175 which the seller, lessor, or other transferor, was previously
176 allowed tax credit for industrial expansion, tax credit for
177 industrial revitalization, tax credit for coal loading
178 facilities, or the tax credits allowed by this article.

179 (C) Repair costs, including materials used in the repair,
180 unless for federal income tax purposes the cost of the
181 repair must be capitalized and not expensed.

182 (D) Airplanes.

183 (E) Property which is primarily used outside this state,
184 with use being determined based upon the amount of time
185 the property is actually used both within and without this
186 state.

187 (F) Property which is acquired incident to the
188 purchase of the stock or assets of the seller, unless for
189 good cause shown, the tax commissioner consents to
190 waiving this requirement.

191 (G) Natural resources in place purchased or leased
192 prior to the first day of March, one thousand nine
193 hundred eighty-five, or purchased or leased after such
194 date pursuant to an option to purchase or lease such
195 natural resources in place acquired prior to such date but
196 exercised, in whole or in part, on or after the tenth day of
197 March, one thousand nine hundred ninety; and natural
198 resources in place purchased or leased on or after the
199 tenth day of March, one thousand nine hundred ninety,
200 unless pursuant to a written contract to purchase or lease
201 executed prior to the passage of this section.

202 (H) Property purchased or leased on or after the tenth
203 day of March, one thousand nine hundred ninety, unless
204 pursuant to a written contract to purchase or lease
205 executed prior to the passage of this section, the cost or
206 consideration for which cannot be quantified with any
207 reasonable degree of accuracy at the time such property is
208 placed in service or use: *Provided*, That when the contract
209 of purchase or lease specifies a minimum purchase price
210 or minimum annual rent the amount thereof shall be used
211 to determine the qualified investment in such property
212 under section six of this article if the property otherwise
213 qualifies as property purchased or leased for business
214 expansion.

215 (3) *New business facility*. — The term "new business
216 facility" means a business facility which satisfies all the

217 requirements of subparagraphs (A), (B), (C) and (D) of
218 this paragraph.

219 (A) The facility is employed by the taxpayer in the
220 conduct of a business the net income of which is or would
221 be taxable under article twenty-one or twenty-four of this
222 chapter. Such facility shall not be considered a new
223 business facility in the hands of the taxpayer if the
224 taxpayer's only activity with respect to such facility is to
225 lease it to another person or persons.

226 (B) Such facility is purchased by, or leased to, the
227 taxpayer after the first day of March, one thousand nine
228 hundred eighty-five.

229 (C) The facility was not purchased or leased by the
230 taxpayer from a related person or a project participant, or
231 related person of a project participant, in any certified
232 project in which the taxpayer is a participant. The tax
233 commissioner may waive this requirement if the facility
234 was acquired from a related party for its fair market value
235 and the acquisition was not tax motivated.

236 (D) Such facility was not in service or use during the
237 ninety days immediately prior to transfer of the title to
238 such facility, or prior to the commencement of the term of
239 the lease of such facility: *Provided*, That this ninety-day
240 period may be waived by the tax commissioner if the
241 commissioner determines that persons employed at the
242 facility may be treated as "new employees" as that term is
243 defined under paragraph (4) of this subsection.

244 (4) *New Employee.*

245 (A) The term "new employee" means a person residing
246 and domiciled in this state, hired by the taxpayer to fill a
247 position or a job in this state which previously did not
248 exist in taxpayer's business enterprise in this state prior to
249 the date on which the taxpayer's qualified investment is
250 placed in service or use in this state. In no case shall the
251 number of new employees directly attributable to such
252 investment for purposes of this credit exceed the total net
253 increase in the taxpayer's employment in this state:
254 *Provided*, That with respect to taxpayers who file

255 application for certification after the tenth day of March,
256 one thousand nine hundred ninety, the tax commissioner
257 may require that the net increase in the taxpayer's
258 employment in this state be determined and certified for
259 the taxpayer's controlled group; and in the case of a
260 project involving more than one person for the controlled
261 groups of all participants, taken as a whole: *Provided,*
262 *however,* That persons filling jobs saved as a direct result
263 of taxpayer's qualified investment in property purchased
264 or leased for business expansion on or after the tenth day
265 of March, one thousand nine hundred ninety, may be
266 treated as new employees filling new jobs if the taxpayer
267 certifies the material facts to the tax commissioner and the
268 tax commissioner expressly finds that:

269 (i) But for the new employer purchasing the assets of a
270 business in bankruptcy under chapter seven or eleven of
271 the United States bankruptcy code and such new employer
272 making qualified investment in property purchased or
273 leased for business expansion, the assets would have been
274 sold by the United States bankruptcy court in a liquidation
275 sale and the jobs so saved would have been lost; or

276 (ii) But for taxpayer's qualified investment in property
277 purchased or leased for business expansion in this state,
278 taxpayer would have closed its business facility in this state
279 and the employees of the taxpayer located at such facility
280 would have lost their jobs: *Provided,* That the tax
281 commissioner shall not make this certification unless the
282 tax commissioner finds that the taxpayer is insolvent as
283 defined in 11 U.S.C. §101 (31) or that the taxpayer's
284 business facility was destroyed, in whole or in significant
285 part, by fire, flood or other act of God.

286 (B) A person shall be deemed to be a "new employee"
287 only if such person's duties in connection with the
288 operation of the business facility are on:

289 (i) A regular, full-time and permanent basis.

290 (I) "Full-time employment" means employment for at
291 least one hundred forty hours per month at a wage not less
292 than the prevailing state or federal minimum wage,

293 depending on which minimum wage provision is
294 applicable to the business;

295 (II) "Permanent employment" does not include
296 employment that is temporary or seasonal and therefore
297 the wages, salaries and other compensation paid to such
298 temporary or seasonal employees will not be considered
299 for purposes of sections five and seven of this article; or

300 (ii) A regular, part-time and permanent basis:
301 *Provided*, That such person is customarily performing
302 such duties at least twenty hours per week for at least six
303 months during the taxable year.

304 (5) *Leased property*. — The term "leased property"
305 does not include property which the taxpayer is required
306 to show on its books and records as an asset under
307 generally accepted principles of financial accounting. If
308 the taxpayer is prohibited from expensing the lease
309 payments for federal income tax purposes, the property
310 shall be treated as purchased property under this section if
311 the property was purchased on or after the tenth day of
312 March, one thousand nine hundred ninety.

313 (6) *Small business*. — The term "small business"
314 means a small business which has an annual payroll of one
315 million seven hundred thousand dollars or less, and annual
316 gross receipts of not more than five million five hundred
317 thousand dollars: *Provided*, That on or before the
318 fifteenth of January, one thousand nine hundred
319 ninety-one, and on or before each fifteenth day of
320 January thereafter, the tax commissioner shall prescribe
321 amounts which shall apply in lieu of the above amounts
322 for taxable years beginning on or after the first day of
323 January of the calendar year in which determination is
324 made. The prescribed amounts shall be determined in
325 accordance with section seven-a of this article and notice
326 thereof shall be filed in the state register. The
327 requirements for annual payroll and annual gross receipts,
328 once met by a given taxpayer in that taxable year when
329 qualified investment is first placed in service or use shall
330 not again be applied to that same taxpayer in subsequent
331 years to defeat the small business credit to which the
332 taxpayer gained entitlement in that year. However, the
333 median compensation requirements applicable to any

334 small business, except a small business entitled to a
335 certified project credit, shall be determined when qualified
336 investment is first placed in service or use; and
337 subsequently redetermined inflation adjusted amounts for
338 median compensation for each year shall be the
339 requirements applicable to that small business for each
340 year throughout the ten-year credit period and any further
341 carryover or other extended credit period for the original
342 credit to which the requirements relate. For purposes of
343 this definition:

344 (A) *Annual Payroll*. — The annual payroll of a
345 business shall include the employees of its domestic and
346 foreign affiliates, whether employed on a full-time,
347 part-time, temporary, or other basis, during the preceding
348 twelve months. If a business has not been in existence for
349 twelve months, the payroll of the business shall be divided
350 by the number of weeks, including fractions of a week,
351 that it has been in business, and the result multiplied by
352 fifty-two. That amount shall then be added to the twelve
353 month payrolls of its domestic and foreign affiliates to
354 determine the annual payroll of the business for purposes
355 of this section.

356 (B) *Annual gross receipts*. — The annual gross
357 receipts of a business shall include the annual gross
358 receipts of its foreign and domestic affiliates.

359 (i) The "annual gross receipts" of a business which has
360 been in business for three or more complete fiscal years
361 means the annual gross revenues of the business for the
362 last three fiscal years. For purposes of this definition, the
363 gross revenues of the business includes revenues from
364 sales of tangible personal property and services, interest,
365 rents, royalties, fees, commissions and receipts from any
366 other source, but less returns and allowances, sales of fixed
367 assets, interaffiliated transactions between a business and
368 its domestic and foreign affiliates, and taxes collected for
369 remittance to a third party, as shown on its books for
370 federal income tax purposes.

371 (ii) The annual receipts of a business that has been in
372 business for less than three complete fiscal years means its
373 total receipts for the period it has been in business, divided

374 by the number of weeks including fractions of a week that
375 it has been in business, and multiplied by fifty-two.

376 (C) *Affiliates.* — The term "affiliates" includes all
377 concerns which are affiliates of each other when either
378 directly or indirectly: (i) One concern controls or has the
379 power to control the other; or (ii) a third party or parties
380 controls or has the power to control both. In determining
381 whether concerns are independently owned and operated
382 and whether or not affiliation exists, consideration shall be
383 given to all appropriate factors, including common
384 ownership, common management and contractual
385 relationships.

386 (D) *Concern.* — The term "concern" means any
387 business entity organized for profit (even if its ownership
388 is in the hands of a nonprofit entity), having a place of
389 business located in this state, and which makes a
390 contribution to the economy of this state through payment
391 of taxes, or the sale or use in this state of tangible personal
392 property, or the procurement or providing of services in
393 this state, or the hiring of employees who work in this
394 state. "Concern" includes, but is not limited to, any person
395 as defined in paragraph eighteen, subsection (b), section
396 three of this article.

397 (f) *Application for credit required.*

398 (1) *Application required.* — Notwithstanding any
399 provision of this article to the contrary, no credit shall be
400 allowed or applied under this article for any qualified
401 investment property placed in service or use on or after
402 the first day of January, one thousand nine hundred
403 ninety, until the person asserting a claim for the allowance
404 of credit under this article makes written application to the
405 tax commissioner for allowance of credit as provided in
406 this subsection and receives written acknowledgment of its
407 receipt from tax commissioner: *Provided*, That in the case
408 of a multiparticipant project this notice may be filed by
409 the managing project participant on behalf of all
410 participants in that project. An application for credit shall
411 be filed no later than the last day of the due date, without
412 extensions, for filing the tax returns required under article
413 twenty-one or twenty-four of this chapter for the taxable
414 year in which the property to which the credit relates is
415 placed in service or use and all information required by
416 such form shall be provided.

417 (2) *Failure to file.* — The failure to timely apply for
418 the credit shall result in the forfeiture of fifty percent of
419 the annual credit allowance otherwise allowable under this
420 article. This penalty shall apply annually until such
421 application is filed.

422 (g) *Effective date.*

423 (1) Except as otherwise expressly provided in this
424 section, the provisions of this section shall apply to
425 property placed in service or use on or after the tenth day
426 of March, one thousand nine hundred ninety,
427 notwithstanding any provision of prior law which may be
428 in conflict with this section. In the case of any such
429 ambiguity, the provisions of this section shall control
430 resolution of such ambiguity.

431 (2) The amendments to this section enacted in the
432 year, one thousand nine hundred ninety-eight, shall be
433 retroactive, and shall be effective for tax years beginning
434 on or after the first day of January, one thousand nine
435 hundred ninety-five.

CHAPTER 299

(Com. Sub. for H. B. 4308—By Mr. Speaker, Mr. Kiss, and Delegates Beach,
Pettit, Michael, Mezzatesta, Warner and Amores)

[Passed March 14, 1998; in effect from passage. Approved by the Governor.]

AN ACT to amend chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article thirteen-n, relating to allowing a tax credit of two hundred fifty dollars per full-time hourly employee for eligible taxpayers engaged in new steel manufacturing operations; manufacturing, adding value to primary steel products; and beginning operations within this state after the first day of July, one thousand nine hundred ninety-eight, or for the addition of a new product or line of an existing value-added

steel products manufacturing facility after the first day of July, one thousand nine hundred ninety-eight; setting forth legislative purpose; specifying definitions; providing that the credit applies to wrought nickel-based products; setting eligibility for credit; creation of the credit; amount of credit allowed; expiration of the credit; annual credit allowance; proration of credit; annual computation; credit to successors; credit recapture; administrative rules; construction and effective date.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 13N. TAX CREDIT FOR NEW STEEL MANUFACTURING OPERATIONS AFTER JULY 1, 1998.

- §11-13N-1. Legislative purpose.
- §11-13N-2. Definitions.
- §11-13N-3. Eligibility for tax credits; creation of the credit.
- §11-13N-4. Amount of credit allowed; expiration of the credit.
- §11-13N-5. Application of annual credit allowance.
- §11-13N-6. Proration of credit among partners, members of limited liability companies, or shareholders in small business corporations.
- §11-13N-7. Annual computation of the number of new jobs held by full-time employees.
- §11-13N-8. Availability of credit to successors.
- §11-13N-9. Credit recapture; interest; penalties; additions to tax; statute of limitations.
- §11-13N-10. Administrative rules.
- §11-13N-11. Construction of article.
- §11-13N-12. Effective date.

§11-13N-1. Legislative purpose.

- 1 The Legislature finds that production of value-added
- 2 steel products is very important to the economy of this
- 3 state and that a sound economy is in the public interest
- 4 and promotes the general welfare of the people of this
- 5 state. In order to encourage capital investment in this

6 state, through the manufacture of value-added steel
7 products after the thirtieth day of June, one thousand nine
8 hundred ninety-eight, thereby increasing employment and
9 economic development, there is hereby provided to
10 eligible taxpayers a credit for each new job filled by a
11 full-time hourly employee who works in a new value-
12 added steel product manufacturing facility, or in a new
13 value-added steel product line of an existing
14 manufacturing facility, that begins operating in this state
15 after the thirtieth day of June, one thousand nine hundred
16 ninety-eight.

§11-13N-2. Definitions.

1 (a) *General.* — When used in this article, or in the
2 administration of this article, terms defined in subsection
3 (b) of this section have the meanings ascribed to them by
4 this section, unless a different meaning is clearly required
5 by the context in which the term is used.

6 (b) *Terms defined.* —

7 (1) "Affiliate" means and includes all persons, as
8 defined in this section, which are affiliates of each other
9 when either directly or indirectly:

10 (A) One person controls or has the power to control
11 the other; or

12 (B) A third party or third parties control or have the
13 power to control two persons, the two thus being affiliates.
14 In determining whether concerns are independently
15 owned and operated and whether or not an affiliation
16 exists, consideration shall be given to all appropriate
17 factors, including common ownership, common
18 management and contractual relationships.

19 (2) "Commissioner" or "tax commissioner" means the
20 tax commissioner of the state of West Virginia, or the tax
21 commissioner's designee.

22 (3) "Corporation" includes any corporation, a joint-
23 stock company and any association or other organization
24 which is classified as a corporation under federal income
25 tax law.

26 (4) "Designee," when used in reference to the tax
27 commissioner, means any officer or employee of the tax
28 division of the department of tax and revenue duly
29 authorized by the tax commissioner directly, or indirectly
30 by one or more redelegations of authority, to perform the
31 functions mentioned or described in this article.

32 (5) "Eligible taxpayer" means a person who after the
33 thirtieth day of June, one thousand nine hundred ninety-
34 eight, begins manufacturing a value-added steel product at
35 a new manufacturing facility located in this state, or begins
36 manufacturing a new value-added steel product line at an
37 existing manufacturing facility located in this state, which
38 results in the creation of new jobs filled by full-time
39 employees.

40 (6) "Employer" means the person for whom an
41 individual performs or performed any service, of whatever
42 nature, as the employee of such person, except that if the
43 person for whom the individual performs or performed
44 the service does not have control of the payment of wages
45 for such services, the term "employer" means the person
46 having control of the payment of such wages.

47 (7) "Existing manufacturing facility" means a building
48 which, at anytime during the twelve months preceding the
49 month in which manufacture of a value-added steel
50 product begins, was used by the taxpayer, or by a related
51 person, to manufacture tangible personal property.

52 (8) "Full-time employee" means a permanent hourly
53 employee of an eligible taxpayer, who is a West Virginia
54 domiciled resident, and works in a new value-added steel
55 product manufacturing facility in this state, or in a new
56 value-added steel product line of an existing
57 manufacturing facility in this state, more than eighteen
58 hundred hours during the entire twelve-month period
59 ending on the last day of the taxable year of the eligible
60 employer, whether these hours are hours worked at the
61 manufacturing facility, or include hours of employer paid
62 vacation leave or other employer paid leave. Full-time
63 employee does not include an employee who is a part-
64 time, seasonal or temporary employee.

65 (9) "Internal Revenue Code" means the Internal
66 Revenue Code of 1986, as amended, of the United States.

67 (10) "Manufacturing facility" means any facility which
68 is used in the manufacturing of tangible personal property
69 (including processing resulting in a change in the
70 condition of such property).

71 (11) "New value-added steel product line" means the
72 manufacture of a value-added steel product in an existing
73 manufacturing facility in this state that first begins
74 manufacturing the new value-added steel product line
75 after the thirtieth day of June, one thousand nine hundred
76 ninety-eight.

77 (12) "New value-added steel product manufacturing
78 facility" means a building that is primarily used by the
79 eligible taxpayer to manufacture a value-added steel
80 product that is first placed in service and used for that
81 purpose by the eligible taxpayer after the thirtieth day of
82 June, one thousand nine hundred ninety-eight. If the
83 facility was used by the taxpayer, or by a related person, to
84 manufacture tangible personal property at any time
85 during the twelve months preceding the month in which
86 the facility is first used by the taxpayer to manufacture a
87 value-added steel product, the building is not a new value-
88 added steel product manufacturing facility.

89 (13) "New job" means a job at a new value-added steel
90 product manufacturing facility located in this state, or at a
91 new value-added steel product line at an existing
92 manufacturing facility located in this state, which did not
93 exist in this state with any employer as of the first day of
94 the second calendar month preceding the calendar month
95 in which the new value-added steel product manufacturing
96 facility begins to manufacture value-added steel products,
97 or in which the new value-added steel product line begins
98 to manufacture value-added steel products in an existing
99 manufacturing facility located in this state, that is filled by
100 a full-time employee of the eligible taxpayer.

101 (14) "Partnership" means and includes a syndicate,
102 group, pool, joint venture or other unincorporated
103 organization through or by means of which any business,

104 financial operation or venture is carried on, which is
105 classified as a partnership for federal income tax purposes
106 for the taxable year.

107 (15) "Partner" includes a member in a syndicate,
108 group, pool, joint venture or organization classified as a
109 partnership for federal income tax purposes for the
110 taxable year.

111 (16) "Part-time employee" means any employee who
112 normally works twenty hours or less per week.

113 (17) "Seasonal employee" means an employee who
114 normally works on a full-time basis less than five months
115 in a year.

116 (18) "Temporary employee" means an employee
117 performing services under a contractual arrangement with
118 the employer of two years or less duration.

119 (19) "Person" means and includes an individual, a
120 trust, estate, partnership, association, company or
121 corporation.

122 (20) "Related entity," "related person," "entity related
123 to" or "person related to" means:

124 (A) An individual, corporation, partnership, affiliate,
125 association or trust or any combination or group thereof
126 controlled by the taxpayer;

127 (B) An individual, corporation, partnership, affiliate,
128 association or trust or any combination or group thereof
129 that is in control of the taxpayer;

130 (C) An individual, corporation, partnership, affiliate,
131 association or trust or any combination or group thereof
132 controlled by an individual, corporation, partnership,
133 affiliate, association or trust or any combination or group
134 thereof that is in control of the taxpayer; or

135 (D) A member of the same controlled group as the
136 taxpayer. For purposes of this subdivision (20), "control,"
137 with respect to a corporation, means ownership, directly or
138 indirectly, of stock possessing fifty percent or more of the
139 total combined voting power of all classes of the stock of

140 the corporation which entitles its owner to vote. "Control,"
141 with respect to a trust, means ownership, directly or
142 indirectly, of fifty percent or more of the beneficial
143 interest in the principal or income of the trust. The
144 ownership of stock in a corporation, of a capital or profits
145 interest in a partnership or association or of a beneficial
146 interest in a trust shall be determined in accordance with
147 the rules for constructive ownership of stock provided in
148 section 267(c) of the Internal Revenue Code: *Provided*,
149 That paragraph (3) of section 267(c) of the Internal
150 Revenue Code shall not apply.

151 (21) "Tax year" or "taxable year," means the tax year
152 of the taxpayer for federal income tax purposes.

153 (22) "Taxpayer" means any person subject to the tax
154 imposed by article twenty-one, twenty-three or twenty-
155 four of this chapter.

156 (23) "Value-added steel product" means any product
157 that adds to, increases or enhances the value of any raw,
158 base or unimproved steel or wrought nickel-based product
159 through processes including, but not limited to,
160 anodization, coating, fabrication, machining, molding,
161 melting, stamping and any other processing which adds
162 value.

§11-13N-3. Eligibility for tax credits; creation of the credit.

1 There shall be allowed to every eligible taxpayer a
2 credit against the taxes imposed in articles twenty-one,
3 twenty-three and twenty-four of this chapter. The amount
4 of this credit shall be determined and applied as provided
5 in this article.

§11-13N-4. Amount of credit allowed; expiration of the credit.

1 (a) *Credit allowable.* — The amount of annual credit
2 allowable under this article to an eligible taxpayer shall be
3 two hundred fifty dollars for each new job at a new value-
4 added steel product manufacturing facility located in this
5 state, or at a new value-added steel product line of an
6 existing manufacturing facility located in this state, that is
7 filled by a full-time employee of the eligible taxpayer
8 during the taxable year, subject to the following:

9 (1) When the new value-added steel product
10 manufacturing facility, or the new steel product line of
11 an existing value-added steel product manufacturing
12 facility, is in operation for less than twelve months of the
13 taxable year in which it is placed in service, the credit
14 allowed by subsection (a) of this section shall be prorated
15 by the ratio that the number of months in the taxpayer's
16 taxable year during which the new value-added steel
17 products facility, or the new products line of an existing
18 value-added steel product manufacturing facility, was in
19 service bears to twelve.

20 (2) When the eligible taxpayer stops manufacturing
21 value-added steel products at the new value-added steel
22 product manufacturing facility, or at the new steel product
23 line of an existing value-added steel product
24 manufacturing facility, during the taxable year, the credit
25 allowed by subsection (a) of this section shall be prorated
26 by the ratio that the number of months in the taxpayer's
27 taxable year during which the new value-added steel
28 products facility, or the new products line of an existing
29 value-added steel product manufacturing facility, was in
30 operation manufacturing value-added steel product bears
31 to twelve.

32 (3) When determining the number of full-time
33 employees who fill new jobs at the new value-added steel
34 product manufacturing facility located in this state, or who
35 fill new jobs at a new value-added steel product line of an
36 existing manufacturing facility located in this state, the
37 eligible taxpayer shall not include any position occupied
38 by any employee of the eligible taxpayer, or of a related
39 person, which existed in this state as of the first day of the
40 second calendar month preceding the calendar month in
41 which the new value-added steel product manufacturing
42 facility, or a new value-added steel product line at an
43 existing value-added steel products manufacturing facility
44 first becomes operational, whether such positions are filled
45 by permanent, seasonal, temporary or part-time
46 employees.

47 (4) The amount of credit allowable each taxable year
48 shall be calculated annually based upon the number of

49 new jobs filled by full-time employees during the taxable
50 year: *Provided*, That the credit provided for in this article
51 may only be taken one time for each new job created, and
52 once claimed in a tax year for a new job the credit may
53 not be claimed in a subsequent year for that position.

54 (b) *Expiration of credit.* — This credit shall expire on
55 the first day of July, two thousand five. When the first day
56 of July in the year two thousand five falls during the
57 taxable year of the eligible taxpayer, the amount of credit
58 allowable for that taxable year shall be limited to that
59 portion of the amount of credit that would have been
60 allowable had the credit not expired multiplied by the
61 ratio of the number of months during taxpayers taxable
62 year ending before the first day of July, two thousand five,
63 bears to twelve.

§11-13N-5. Application of annual credit allowance.

1 (a) *Application of credit against business franchise*
2 *tax.* — The amount of credit allowed under section four
3 of this article shall first be applied against the eligible
4 taxpayer's liability for the tax imposed by article twenty-
5 three of this chapter that is attributable to a new value-
6 added steel product manufacturing facility located in this
7 state and to a new value-added steel product production
8 line at an existing manufacturing facility located in this
9 state.

10 (b) *Application of remaining credit against income*
11 *tax.* — After application of the allowable credit against the
12 tax imposed by article twenty-three of this chapter, as
13 provided in subsection (a) of this section, any remaining
14 credit may be applied against the taxes imposed by article
15 twenty-one or twenty-four of this chapter to the extent
16 those taxes are attributable to a new value-added steel
17 product manufacturing facility located in this state and to
18 a new value-added steel product production line at an
19 existing manufacturing facility located in this state:
20 *Provided*, That no credit shall be allowed against employer
21 withholding taxes due under article twenty-one of this
22 chapter.

23 (c) *Excess credit carried over.* — If after application
24 of subsections (a) and (b) of this section, any credit
25 remains for the taxable year, the amount remaining may
26 be carried over and applied as a credit against the tax
27 liability of the taxpayer in accordance with this section to
28 each of the next five taxable years unless sooner used.
29 Unused credit may not be carried back to any prior
30 taxable year.

31 (d) *Application of this credit when other credits apply.*
32 — The credit allowed under this article shall be applied
33 after application of all other applicable tax credits allowed
34 for the taxable year against the taxes imposed by article
35 twenty-one, twenty-three or twenty-four of this chapter.

36 (e) *Completion of annual schedule to assert credit.* —
37 To assert this credit against tax, the eligible taxpayer shall
38 prepare and file with the annual tax return filed under
39 article twenty-one, twenty-three or twenty-four of this
40 chapter, an annual schedule showing the amount of tax
41 paid for the taxable year, and the amount of credit allowed
42 under this article. This annual schedule shall set forth the
43 information and be in the form prescribed by the tax
44 commissioner.

45 (f) *Payments of estimated tax.* — A taxpayer may
46 consider the amount of credit allowed under this article
47 when determining the taxpayer's liability under articles
48 twenty-one, twenty-three and twenty-four of this chapter
49 for periodic payments of estimated tax for the taxable
50 year, in accordance with the procedures and requirements
51 prescribed by the tax commissioner. The annual total tax
52 liability and total tax credit allowed under this article are
53 subject to adjustment and reconciliation pursuant to the
54 filing of the annual schedule required by subsection (e) of
55 this section.

§11-13N-6. Proration of credit among partners, members of limited liability companies, or shareholders in small business corporations.

1 The amount of credit allowed under this article for the
2 taxable year to a partnership or limited liability company
3 classified as a partnership for the taxable year, or to an

4 electing small business corporation, that remains after
5 application the credit against the tax imposed by article
6 twenty-three of this chapter as provided in subsection (a),
7 section five of this article shall be allocated to the
8 individual partners, members or shareholders, as the case
9 may be, in proportion to their ownership interest in the
10 partnership, limited liability company or electing small
11 business corporation. The amount of credit allocated to
12 the individual partners, members or shareholders, as the
13 case may be, may be applied against the taxes imposed by
14 articles twenty-one and twenty-four of this chapter in
15 accordance with the rule set forth in subsection (b), section
16 five of this article.

§11-13N-7. Annual computation of the number of new jobs held by full-time employees.

1 (a) The eligible taxpayer shall annually determine the
2 number of new jobs held by full-time permanent
3 employees of the eligible taxpayer in the taxable year by
4 calculating the average number of full-time employees
5 holding jobs for each month of the taxable year by
6 averaging the beginning and ending monthly
7 employment of full-time employees, then totaling the
8 monthly averages and dividing that total by twelve.

9 (b) The eligible taxpayer shall also annually determine
10 the number of new jobs filled during the taxable year by
11 full-time employees of the eligible taxpayer employed
12 at a new value-added product manufacturing facility, or
13 at a new value-added steel product line at an existing
14 manufacturing facility, located in this state that is owned
15 or operated by the eligible taxpayer, by calculating the
16 average number of new jobs held by full-time employees
17 for each month of the taxable year by averaging the
18 beginning and ending monthly employment of full-time
19 employees holding new jobs, then totaling the monthly
20 averages and dividing that total by twelve.

21 (c) Preexisting jobs carried over from a corporation or
22 other entity merged with the taxpayer, and not reflective
23 of a true increase in the number of new jobs in West
24 Virginia, or preexisting jobs formerly in place with a
25 contract service provider which are taken over or

26 supplanted by the internal operations of the taxpayer, or
27 any other increase in the count of jobs in place with a
28 taxpayer which is not reflective of new jobs, as defined in
29 section two of this article, shall not count as new jobs for
30 purposes of the credit allowed under this article.

31 (d) The tax commissioner may prescribe by rule
32 alternative methods for determining the number of jobs
33 held by full-time permanent employees in the taxable year
34 upon a finding by the tax commissioner that an alternative
35 method is appropriate for ascertaining an accurate and
36 realistic determination of new jobs held by full-time
37 employees in the taxable year. For purposes of
38 prescribing alternative methods, the tax commissioner may
39 require the deduction or inclusion of jobs in place with
40 contract service providers that provide or at any time
41 provided any service to any eligible taxpayer or to any
42 member of the affiliated group related to any eligible
43 taxpayer or to any one or more entities related to the
44 eligible taxpayer: *Provided*, That deduction, or inclusion
45 of those jobs shall only pertain to jobs held by employees
46 of the contract service provider that are attributable or that
47 were formerly attributable to the service provided by the
48 contract service provider to the taxpayer. The tax
49 commissioner may require any deconsolidation of any
50 filing entity, or may require an alternative method based
51 on separate accounting, unitary combination, combination
52 of the affiliated group or combination of the taxpayer and
53 one or more entities related to the taxpayer, or any other
54 method determined by the tax commissioner to be
55 appropriate for ascertaining an accurate and realistic
56 determination of new jobs held by full-time employees in
57 the taxable year.

§11-13N-8. Availability of credit to successors.

1 (a) *Transfer or sale.* — When there is a transfer or sale
2 of the business assets of an eligible taxpayer to a successor
3 taxpayer which continues to operate the new value-added
4 steel product manufacturing facility located in this state,
5 or the new value-added steel product line of an existing
6 manufacturing facility located in this state, the successor
7 taxpayer is entitled to the credit allowed under this article:

8 *Provided*, That the successor taxpayer otherwise remains
9 in compliance with the requirements of this article for
10 entitlement to the credit.

11 (b) *Allocation of credit between eligible taxpayer and*
12 *successor eligible taxpayer.* — For any taxable year
13 during which a transfer, or sale of the business assets of an
14 eligible taxpayer to a successor taxpayer under this section
15 occurs, or a merger allowed under this section occurs, the
16 credit allowed under this article shall be apportioned
17 between the predecessor eligible taxpayer and the
18 successor taxpayer based on the number of days during
19 the taxable year that each taxpayer acted as the legal
20 employer of individuals filling new jobs for which the
21 credit allowed under this article is based and the number
22 of days during the taxable year that each taxpayer owned
23 the new value-added steel product manufacturing facility
24 located in this state, or the new value-added steel product
25 line of an existing manufacturing facility located in this
26 state.

27 (c) *Stock purchases.* — When a corporation which is
28 an eligible taxpayer entitled to the credit allowed under
29 this article is purchased through a stock purchase by a new
30 owner, and the corporation remains a legal entity so as to
31 retain its corporate identity, the entitlement of that
32 corporation to the credit allowed under this article will not
33 be affected by the ownership change.

34 (d) *Mergers.* —

35 (1) When a corporation or other entity which is an
36 eligible taxpayer entitled to the credit allowed under this
37 article is merged with another corporation, or entity, the
38 surviving corporation, or entity, shall be entitled to the
39 credit to which the predecessor eligible taxpayer was
40 originally entitled only if the surviving corporation, or
41 entity, otherwise complies with the provisions of this
42 article.

43 (2) The amount of credit available in any taxable year
44 during which a merger occurs shall be apportioned
45 between the predecessor eligible taxpayer and the
46 successor eligible taxpayer based on the number of days
47 during the taxable year that each taxpayer acted as the

48 legal employer of employees holding the new jobs upon
49 which the credit allowed under this article is based and the
50 number of days during the taxable year that each owned
51 the transferred business assets: *Provided*, That when the
52 taxable year of the predecessor eligible taxpayer and the
53 taxable year of the successor eligible taxpayer are
54 different, the apportionment shall be made in accordance
55 with legislative rules prescribed by the tax commissioner.

56 (e) No provision of this section or of this article shall
57 be construed to allow sales or other transfers of the tax
58 credit allowed under this article. The credit allowed under
59 this article may be transferred only in circumstances where
60 there is a valid successorship as described under this
61 section.

§11-13N-9. Credit recapture; interest; penalties; additions to tax; statute of limitations.

1 (a) If it appears upon audit or otherwise that any
2 person has improperly claimed the credit allowed by this
3 article, the amount improperly claimed and which the
4 person was not entitled to take shall be recaptured.
5 Amended returns shall be filed for any taxable year for
6 which the credit was improperly taken. Any additional
7 taxes due under this chapter shall be remitted with the
8 amended return or returns filed with the tax commissioner,
9 along with interest, as provided in section seventeen, article
10 ten of this chapter, and a ten percent penalty plus such
11 other penalties and additions to tax as may be applicable
12 under the provisions of article ten of this chapter.

13 (b) *Recapture for jobs lost.* —

14 (1) In any tax year the number of individuals
15 employed in full-time positions by the eligible taxpayer
16 decreases by more than ten percent, credit recapture shall
17 apply, and the taxpayer shall return to the state an amount
18 of tax determined by multiplying five hundred dollars by
19 the number of full-time jobs lost which exceed ten
20 percent. An amended return shall be filed for the tax year
21 for which credit recapture is required. Any additional
22 taxes due under this chapter shall be remitted with the
23 amended return filed with the tax commissioner, along
24 with interest, as provided in section seventeen, article ten of
25 this chapter, and a ten percent penalty plus such other

26 penalties and additions to tax as may be applicable under
27 the provisions of article ten of this chapter.

28 (2) Notwithstanding the provisions of article ten of this
29 chapter, penalties and additions to tax imposed under
30 article ten of this chapter and the ten percent penalty
31 imposed under this section may be waived, in whole or in
32 part, at the discretion of the tax commissioner. However,
33 interest may not be waived.

34 (c) Notwithstanding the provisions of article ten of this
35 chapter, the time within which a notice of assessment may
36 be issued by the tax commissioner to recover recapture tax
37 shall be five years from the date of filing of any tax return
38 on which this credit was taken or five years from the date
39 of payment of any tax liability calculated pursuant to the
40 assertion of the credit allowed under this article, whichever
41 is later.

§11-13N-10. Administrative rules.

1 The tax commissioner may prescribe such rules as
2 may be necessary to carry out the purposes of this article,
3 including, but not limited to, rules relating to applicability
4 of credit, method of claiming of credit, credit recapture,
5 documentation necessary to claim credit and rules
6 preventing abuse of this article by related persons or by
7 change in the form of doing business. All rules
8 promulgated under this article shall be promulgated in
9 accordance with article three, chapter twenty-nine-a of
10 this code.

§11-13N-11. Construction of article.

1 The provisions of this article shall be reasonably
2 construed. The burden of proof is on the person claiming
3 the credit allowed by this article to establish by clear and
4 convincing evidence that the person is entitled to the
5 amount of credit asserted for the taxable year.

§11-13N-12. Effective date.

1 This article shall be effective for taxable years
2 beginning on or after the first day of July, one thousand
3 nine hundred ninety-eight.

CHAPTER 300

(Com. Sub. for H. B. 4326—By Mr. Speaker, Mr. Kiss, and Delegates
Beach, Kelley, Michael, Mezzatesta and Martin)

[Passed March 14, 1998; in effect from passage. Approved by the Governor.]

AN ACT to amend chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article thirteen-o, relating to allowing a tax credit of two hundred fifty dollars per full-time hourly employees for eligible taxpayers engaged in new aluminum or polymer manufacturing operations manufacturing value-added products and beginning operations within this state after the first day of July, one thousand nine hundred ninety-eight, or for the addition of a new product or line of an existing value-added aluminum or polymer product manufacturing facility after the first day of July, one thousand nine hundred ninety-eight; setting forth legislative purpose; specifying definitions; setting eligibility for credit; creation of the credit; amount of credit allowed; expiration of the credit; annual credit allowance; proration of credit; annual computation; credit to successors; credit recapture; administrative rules; construction and effective date.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 13O. TAX CREDIT FOR NEW ALUMINUM OR POLYMER MANUFACTURING OPERATIONS AFTER JULY 1, 1998.

- §11-13O-1. Legislative purpose.
- §11-13O-2. Definitions.
- §11-13O-3. Eligibility for tax credits; creation of the credit.
- §11-13O-4. Amount of credit allowed; expiration of the credit.
- §11-13O-5. Application of annual credit allowance.

- §11-130-6. Proration of credit among partners, members of limited liability companies, or shareholders in small business corporations.
- §11-130-7. Annual computation of the number of new jobs held by full-time employees.
- §11-130-8. Availability of credit to successors.
- §11-130-9. Credit recapture; interest; penalties; additions to tax; statute of limitations.
- §11-130-10. Administrative rules.
- §11-130-11. Construction of article.
- §11-130-12. Effective date.

§11-130-1. Legislative purpose.

1 The Legislature finds that production of value-added
2 products is very important to the economy of this state
3 and that a sound economy is in the public interest and
4 promotes the general welfare of the people of this state.
5 In order to encourage capital investment in this state,
6 through the manufacture of value-added aluminum and
7 polymer products after the thirtieth day of June, one
8 thousand nine hundred ninety-eight, thereby increasing
9 employment and economic development, there is hereby
10 provided to eligible taxpayers a credit for each new job
11 filled by a full-time hourly employee who works in a new
12 value-added aluminum or polymer product
13 manufacturing facility, or in a new value-added aluminum
14 or polymer product line of an existing manufacturing
15 facility, that begins operating in this state after the thirtieth
16 day of June, one thousand nine hundred ninety-eight.

§11-130-2. Definitions.

1 (a) *General.* — When used in this article, or in the
2 administration of this article, terms defined in subsection
3 (b) of this section have the meanings ascribed to them by
4 this section, unless a different meaning is clearly required
5 by the context in which the term is used.

6 (b) *Terms defined.* —

7 (1) “Affiliate” means and includes all persons, as
8 defined in this section, which are affiliates of each other
9 when either directly or indirectly:

10 (A) One person controls or has the power to control
11 the other; or

12 (B) A third party or third parties control or have the
13 power to control two persons, the two thus being affiliates.
14 In determining whether concerns are independently
15 owned and operated and whether or not an affiliation
16 exists, consideration shall be given to all appropriate
17 factors, including common ownership, common
18 management and contractual relationships.

19 (2) "Commissioner" or "tax commissioner" means
20 the tax commissioner of the state of West Virginia or the
21 tax commissioner's delegate.

22 (3) "Corporation" includes any corporation, a joint-
23 stock company and any association or other organization
24 which is classified as a corporation under federal income
25 tax law.

26 (4) "Delegate", when used in reference to the tax
27 commissioner, means any officer or employee of the tax
28 division of the department of tax and revenue duly
29 authorized by the tax commissioner directly, or indirectly
30 by one or more redelegations of authority, to perform the
31 functions mentioned or described in this article.

32 (5) "Eligible taxpayer" means a person who after the
33 thirtieth day of June, one thousand nine hundred ninety-
34 eight, begins manufacturing a value-added aluminum or
35 polymer product at a new manufacturing facility located
36 in this state, or begins manufacturing a new value-added
37 aluminum or polymer product line at an existing
38 manufacturing facility located in this state, which results in
39 the creation of new jobs filled by full-time employees.

40 (6) "Employer" means the person for whom an
41 individual performs or performed any service, of whatever
42 nature, as the employee of such person, except that if the
43 person for whom the individual performs or performed
44 the service does not have control of the payment of wages
45 for such services, the term "employer" means the person
46 having control of the payment of such wages.

47 (7) "Existing manufacturing facility" means a
48 building which at anytime during the twelve months
49 preceding the month in which manufacture of a value-
50 added aluminum or polymer product begins was used by
51 the taxpayer, or by a related person, to manufacture
52 tangible personal property.

53 (8) "Full-time employee" means a permanent hourly
54 employee of an eligible taxpayer, who is a West Virginia
55 domiciled resident, and works in a new value-added
56 aluminum or polymer product manufacturing facility in
57 this state, or in a new value-added aluminum or polymer
58 product line of an existing manufacturing facility in this
59 state, more than eighteen hundred hours during the entire
60 twelve-month period ending on the last day of the taxable
61 year of the eligible employer, whether these hours are
62 hours worked at the manufacturing facility, or include
63 hours of employer paid vacation leave or other employer
64 paid leave. Full-time employee does not include an
65 employee who is a part-time, seasonal or temporary
66 employee.

67 (9) "Internal Revenue Code" means the Internal
68 Revenue Code of 1986, as amended, of the United States.

69 (10) "Manufacturing facility" means any facility
70 which is used in the manufacturing of tangible personal
71 property (including processing resulting in a change in
72 the condition of such property).

73 (11) "New value-added aluminum or polymer
74 product line" means the manufacture of a value-added
75 aluminum or polymer product in an existing
76 manufacturing facility in this state that first begins
77 manufacturing the new value-added aluminum or polymer
78 product line after the thirtieth day of June, one thousand
79 nine hundred ninety-eight.

80 (12) "New value-added aluminum product
81 manufacturing facility" means a building that is primarily
82 used by the eligible taxpayer to manufacture a value-
83 added aluminum product that is first placed in service and
84 used for that purpose by the eligible taxpayer after the
85 thirtieth day of June, one thousand nine hundred ninety-

86 eight. If the facility was used by the taxpayer, or by a
87 related person, to manufacture tangible personal property
88 at any time during the twelve months preceding the month
89 in which the facility is first used by the taxpayer to
90 manufacture a value-added aluminum or polymer
91 product, the building is not a new value-added aluminum
92 or polymer product manufacturing facility.

93 (13) "New job" means a job at a new value-added
94 aluminum or polymer product manufacturing facility
95 located in this state, or at a new value-added aluminum or
96 polymer product line at an existing manufacturing facility
97 located in this state, which did not exist in this state with
98 any employer as of the first day of the second calendar
99 month preceding the calendar month in which the new
100 value-added aluminum or polymer product
101 manufacturing facility begins to manufacture value-added
102 aluminum or polymer products, or in which the new
103 value-added aluminum or polymer product line begins to
104 manufacture value-added aluminum or polymer products
105 in an existing manufacturing facility located in this state,
106 that is filled by a full-time employee of the eligible
107 taxpayer.

108 (14) "Partnership" means and includes a syndicate,
109 group, pool, joint venture or other unincorporated
110 organization through or by means of which any business,
111 financial operation, or venture is carried on, which is
112 classified as a partnership for federal income tax purposes
113 for the taxable year.

114 (15) "Partner" includes a member in a syndicate,
115 group, pool, joint venture or organization classified as a
116 partnership for federal income tax purposes for the
117 taxable year.

118 (16) "Part-time employee" means any employee who
119 normally works twenty hours or less per week.

120 (17) "Seasonal employee" means an employee who
121 normally works on a full-time basis less than five months
122 in a year.

123 (18) "Temporary employee" means an employee
124 performing services under a contractual arrangement with
125 the employer of two years or less duration.

126 (19) "Person" means and includes an individual, a
127 trust, estate, partnership, limited liability company,
128 association, company or corporation.

129 (20) "Related entity", "related person", "entity
130 related to" or "person related to" means:

131 (A) An individual, corporation, partnership, affiliate,
132 association or trust or any combination or group thereof
133 controlled by the taxpayer;

134 (B) An individual, corporation, partnership, affiliate,
135 association or trust or any combination or group thereof
136 that is in control of the taxpayer;

137 (C) An individual, corporation, partnership, affiliate,
138 association or trust or any combination or group thereof
139 controlled by an individual, corporation, partnership,
140 affiliate, association or trust or any combination or group
141 thereof that is in control of the taxpayer; or

142 (D) A member of the same controlled group as the
143 taxpayer. For purposes of subdivision (3) of this
144 subsection, "control," with respect to a corporation,
145 means ownership, directly or indirectly, of stock
146 possessing fifty percent or more of the total combined
147 voting power of all classes of the stock of the corporation
148 which entitles its owner to vote. "Control," with respect
149 to a trust, means ownership, directly or indirectly, of fifty
150 percent or more of the beneficial interest in the principal
151 or income of the trust. The ownership of stock in a
152 corporation, of a capital or profits interest in a partnership
153 or association or of a beneficial interest in a trust shall be
154 determined in accordance with the rules for constructive
155 ownership of stock provided in section 267(c) of the
156 Internal Revenue Code: *Provided*, That paragraph (3) of
157 section 267(c) of the Internal Revenue Code shall not
158 apply.

159 (21) "Tax year" or "taxable year," means the tax
160 year of the taxpayer for federal income tax purposes.

161 (22) "Taxpayer" means any person subject to the tax
162 imposed by articles twenty-one, twenty-three or twenty-
163 four of this chapter.

164 (23) "Value-added aluminum or polymer product"
165 means any product that adds to, increases or enhances the
166 value of any raw, base or unimproved aluminum or
167 polymer product through processes including, but not
168 limited to, anodization, coating, fabrication, machining,
169 molding, extraction, stamping and any other processing
170 which adds value.

§11-130-3. Eligibility for tax credits; creation of the credit.

1 There shall be allowed to every eligible taxpayer a
2 credit against the taxes imposed in articles twenty-one,
3 twenty-three and twenty-four of this chapter. The amount
4 of this credit shall be determined and applied as provided
5 in this article.

§11-130-4. Amount of credit allowed; expiration of the credit.

1 (a) *Credit allowable.* — The amount of annual credit
2 allowable under this article to an eligible taxpayer shall be
3 two hundred fifty dollars for each new job at a new value-
4 added aluminum or polymer product manufacturing
5 facility located in this state, or at a new value-added
6 aluminum or polymer product line of an existing
7 manufacturing facility located in this state, that is filled by
8 a full-time employee of the eligible taxpayer during the
9 taxable year, subject to the following:

10 (1) When the new value-added aluminum or polymer
11 product manufacturing facility, or the new aluminum or
12 polymer product line of an existing value-added
13 aluminum or polymer product manufacturing facility, is
14 in operation for less than twelve months of the taxable
15 year in which it is placed in service, the credit allowed by
16 subsection (a) of this section shall be prorated by the ratio
17 that the number of months in the taxpayer's taxable year
18 during which the new value-added aluminum or polymer
19 product facility, or the new products line of an existing

20 value-added aluminum or polymer product
21 manufacturing facility, was in service bears to twelve;

22 (2) When the eligible taxpayer stops manufacturing
23 value-added aluminum or polymer products at the new
24 value-added aluminum product manufacturing facility, or
25 at the new aluminum or polymer product line of an
26 existing value-added aluminum or polymer product
27 manufacturing facility, during the taxable year, the credit
28 allowed by subsection (a) of this section shall be prorated
29 by the ratio that the number of months in the taxpayer's
30 taxable year during which the new value-added aluminum
31 or polymer product facility, or the new products line of an
32 existing value-added aluminum or polymer product
33 manufacturing facility, was in operation manufacturing
34 value-added aluminum or polymer products bears to
35 twelve;

36 (3) When determining the number of full-time
37 employees who fill new jobs at the new value-added
38 aluminum or polymer product manufacturing facility
39 located in this state, or who fill new jobs at a new value-
40 added aluminum or polymer product line of an existing
41 manufacturing facility located in this state, the eligible
42 taxpayer shall not include any position occupied by any
43 employee of the eligible taxpayer, or of a related person,
44 which existed in this state as of the first day of the second
45 calendar month preceding the calendar month in which
46 the new value-added aluminum or polymer product
47 manufacturing facility, or a new value-added aluminum or
48 polymer product line at an existing value-added
49 aluminum or polymer products manufacturing facility
50 first becomes operational, whether such positions are filled
51 by permanent, seasonal, temporary or part-time
52 employees;

53 (4) The amount of credit allowable each taxable year
54 shall be calculated annually based upon the number of
55 new jobs filled by full-time employees during the taxable
56 year: *Provided*, That the credit provided for in this article
57 may only be taken one time for each new job created, and
58 once claimed in a tax year for a new job the credit may
59 not be claimed in a subsequent year for that position.

60 (b) *Expiration of credit.* — This credit shall expire on
61 the first day of July, two thousand two. When the first day
62 of July in the year two thousand two falls during the
63 taxable year of the eligible taxpayer, the amount of credit
64 allowable for that taxable year shall be limited to that
65 portion of the amount of credit that would have been
66 allowable had the credit not expired multiplied by the
67 ratio the number of months during taxpayers taxable year
68 ending before the first day of July, two thousand two,
69 bears to twelve.

§11-130-5. Application of annual credit allowance.

1 (a) *Application of credit against business franchise*
2 *tax.* — The amount of credit allowed under section four
3 of this article shall first be applied against the eligible
4 taxpayer's liability for the tax imposed by article twenty-
5 three of this chapter that is attributable to a new value-
6 added aluminum or polymer product manufacturing
7 facility located in this state and to a new value-added
8 aluminum or polymer product production line at an
9 existing manufacturing facility located in this state.

10 (b) *Application of remaining credit against income*
11 *tax.* — After application of the allowable credit against the
12 tax imposed by article twenty-three of this chapter, as
13 provided in subsection (a) of this section, any remaining
14 credit may be applied against the taxes imposed by article
15 twenty-one or twenty-four of this chapter to the extent
16 those taxes are attributable to a new value-added
17 aluminum or polymer product manufacturing facility
18 located in this state and to a new value-added aluminum or
19 polymer product production line at an existing
20 manufacturing facility located in this state: *Provided,* That
21 no credit shall be allowed against employer withholding
22 taxes due under article twenty-one of this chapter.

23 (c) *Excess credit forfeited.* — If after application of
24 subsections (a) and (b) of this section, any credit remains
25 for the taxable year, the amount remaining and not used is
26 forfeited. Unused credit may not be carried back to any
27 prior taxable year and shall not carry forward to any
28 subsequent taxable year.

29 (d) *Application of this credit when other credits apply.*
30 — The credit allowed under this article shall be applied
31 after application of all other applicable tax credits allowed
32 for the taxable year against the taxes imposed by article
33 twenty-one, twenty-three or twenty-four of this chapter.

34 (e) *Completion of annual schedule to assert credit.* —
35 To assert this credit against tax, the eligible taxpayer shall
36 prepare and file with the annual tax return filed under
37 article twenty-one, twenty-three or twenty-four of this
38 chapter, an annual schedule showing the amount of tax
39 paid for the taxable year, and the amount of credit allowed
40 under this article. This annual schedule shall set forth the
41 information and be in the form prescribed by the tax
42 commissioner.

43 (f) *Payments of estimated tax.* — A taxpayer may
44 consider the amount of credit allowed under this article
45 when determining the taxpayer's liability under articles
46 twenty-one, twenty-three and twenty-four of this chapter
47 for periodic payments of estimated tax for the taxable
48 year, in accordance with the procedures and requirements
49 prescribed by the tax commissioner. The annual total tax
50 liability and total tax credit allowed under this article are
51 subject to adjustment and reconciliation pursuant to the
52 filing of the annual schedule required by subsection (e) of
53 this section.

**§11-130-6. Proration of credit among partners, members of
limited liability companies, or shareholders in
small business corporations.**

1 The amount of credit allowed under this article for the
2 taxable year to a partnership or limited liability company
3 classified as a partnership for the taxable year, or to an
4 electing small business corporation, that remains after
5 application the credit against the tax imposed by article
6 twenty-three of this chapter as provided in subsection (a),
7 section five of this article shall be allocated to the
8 individual partners, members or shareholders, as the case
9 may be, in proportion to their ownership interest in the
10 partnership, limited liability company or electing small
11 business corporation. The amount of credit allocated to
12 the individual partners, members or shareholders, as the

13 case may be, may be applied against the taxes imposed by
14 articles twenty-one and twenty-four of this chapter in
15 accordance with the rule set forth in subsection (b), section
16 five of this article.

§11-13O-7. Annual computation of the number of new jobs held by full-time employees.

1 (a) The eligible taxpayer shall annually determine the
2 number of new jobs held by full-time permanent
3 employees of the eligible taxpayer in the taxable year by
4 calculating the average number of full-time employees
5 holding jobs for each month of the taxable year by
6 averaging the beginning and ending monthly
7 employment of full-time employees, then totaling the
8 monthly averages and dividing that total by twelve.

9 (b) The eligible taxpayer shall also annually determine
10 the number of new jobs filled during the taxable year by
11 full-time employees of the eligible taxpayer employed
12 at a new value-added aluminum or polymer product
13 manufacturing facility, or at a new value-added aluminum
14 or polymer product line at an existing manufacturing
15 facility, located in this state that is owned or operated by
16 the eligible taxpayer, by calculating the average number
17 of new jobs held by full-time employees for each month
18 of the taxable year by averaging the beginning and
19 ending monthly employment of full-time employees
20 holding new jobs, then totaling the monthly averages and
21 dividing that total by twelve.

22 (c) Preexisting jobs carried over from a corporation or
23 other entity merged with the taxpayer, and not reflective
24 of a true increase in the number of new jobs in West
25 Virginia, or preexisting jobs formerly in place with a
26 contract service provider which are taken over or
27 supplanted by the internal operations of the taxpayer, or
28 any other increase in the count of jobs in place with a
29 taxpayer which is not reflective of new jobs, as defined in
30 section two of this article, shall not count as new jobs for
31 purposes of the credit allowed under this article.

32 (d) The tax commissioner may prescribe by rule
33 alternative methods for determining the number of jobs

34 held by full-time permanent employees in the taxable year
35 upon a finding by the tax commissioner that an alternative
36 method is appropriate for ascertaining an accurate and
37 realistic determination of new jobs held by full-time
38 employees in the taxable year. For purposes of
39 prescribing alternative methods, the tax commissioner may
40 require the deduction or inclusion of jobs in place with
41 contract service providers that provide or at any time
42 provided any service to any eligible taxpayer or to any
43 member of the affiliated group related to any eligible
44 taxpayer or to any one or more entities related to the
45 eligible taxpayer: *Provided*, That deduction, or inclusion
46 of those jobs shall only pertain to jobs held by employees
47 of the contract service provider that are attributable or that
48 were formerly attributable to the service provided by the
49 contract service provider to the taxpayer. The tax
50 commissioner may require any deconsolidation of any
51 filing entity, or may require an alternative method based
52 on separate accounting, unitary combination, combination
53 of the affiliated group or combination of the taxpayer and
54 one or more entities related to the taxpayer, or any other
55 method determined by the tax commissioner to be
56 appropriate for ascertaining an accurate and realistic
57 determination of new jobs held by full-time employees in
58 the taxable year.

§11-130-8. Availability of credit to successors.

1 (a) *Transfer or sale.* — When there is a transfer or sale
2 of the business assets of an eligible taxpayer to a successor
3 taxpayer which continues to operate the new value-added
4 aluminum or polymer product manufacturing facility
5 located in this state, or the new value-added aluminum or
6 polymer product line of an existing manufacturing facility
7 located in this state, the successor taxpayer is entitled to
8 the credit allowed under this article: *Provided*, That the
9 successor taxpayer otherwise remains in compliance with
10 the requirements of this article for entitlement to the
11 credit.

12 (b) *Allocation of credit between eligible taxpayer and*
13 *successor eligible taxpayer.* — For any taxable year

14 during which a transfer, or sale of the business assets of an
15 eligible taxpayer to a successor taxpayer under this section
16 occurs, or a merger allowed under this section occurs, the
17 credit allowed under this article shall be apportioned
18 between the predecessor eligible taxpayer and the
19 successor taxpayer based on the number of days during
20 the taxable year that each taxpayer acted as the legal
21 employer of individuals filling new jobs for which the
22 credit allowed under this article is based and the number
23 of days during the taxable year that each taxpayer owned
24 the new value-added aluminum or polymer product
25 manufacturing facility located in this state, or the new
26 value-added aluminum or polymer product line of an
27 existing manufacturing facility located in this state.

28 (c) *Stock purchases.* — When a corporation which is
29 an eligible taxpayer entitled to the credit allowed under
30 this article is purchased through a stock purchase by a new
31 owner, and the corporation remains a legal entity so as to
32 retain its corporate identity, the entitlement of that
33 corporation to the credit allowed under this article will not
34 be affected by the ownership change.

35 (d) *Mergers.* —

36 (1) When a corporation or other entity which is an
37 eligible taxpayer entitled to the credit allowed under this
38 article is merged with another corporation or entity, the
39 surviving corporation or entity, shall be entitled to the
40 credit to which the predecessor eligible taxpayer was
41 originally entitled only if the surviving corporation or
42 entity, otherwise complies with the provisions of this
43 article.

44 (2) The amount of credit available in any taxable year
45 during which a merger occurs shall be apportioned
46 between the predecessor eligible taxpayer and the
47 successor eligible taxpayer based on the number of days
48 during the taxable year that each taxpayer acted as the
49 legal employer of employees holding the new jobs upon
50 which the credit allowed under this article is based and the
51 number of days during the taxable year that each owned
52 the transferred business assets: *Provided*, That when the
53 taxable year of the predecessor eligible taxpayer and the

54 taxable year of the successor eligible taxpayer are
55 different, the apportionment shall be made in accordance
56 with legislative rules prescribed by the tax commissioner.

57 (e) No provision of this section or of this article shall
58 be construed to allow sales or other transfers of the tax
59 credit allowed under this article. The credit allowed under
60 this article may be transferred only in circumstances where
61 there is a valid successorship as described under this
62 section.

**§11-130-9. Credit recapture; interest; penalties; additions to
tax; statute of limitations.**

1 (a) If it appears upon audit or otherwise that any
2 person has improperly claimed the credit allowed by this
3 article, the amount improperly claimed and which the
4 person was not entitled to take shall be recaptured.
5 Amended returns shall be filed for any taxable year for
6 which the credit was improperly taken. Any additional
7 taxes due under this chapter shall be remitted with the
8 amended return or returns filed with the tax commissioner,
9 along with interest, as provided in section seventeen, article
10 ten of this chapter, and a ten percent penalty plus such
11 other penalties and additions to tax as may be applicable
12 under the provisions of article ten of this chapter.

13 (b) *Recapture for jobs lost.* —

14 (1) In any tax year the number of individuals
15 employed in full-time positions by the eligible taxpayer
16 decreases by more than ten percent, credit recapture shall
17 apply, and the taxpayer shall return to the state an amount
18 of tax determined by multiplying five hundred dollars by
19 the number of full-time jobs lost which exceed ten
20 percent. An amended return shall be filed for the tax year
21 for which credit recapture is required. Any additional
22 taxes due under this chapter shall be remitted with the
23 amended return filed with the tax commissioner, along
24 with interest, as provided in section seventeen, article ten of
25 this chapter, and a ten percent penalty plus such other
26 penalties and additions to tax as may be applicable under
27 the provisions of article ten of this chapter.

28 (2) Notwithstanding the provisions of article ten of this
29 chapter, penalties and additions to tax imposed under
30 article ten of this chapter and the ten percent penalty
31 imposed under this section may be waived, in whole or in
32 part, at the discretion of the tax commissioner. However,
33 interest may not be waived.

34 (c) Notwithstanding the provisions of article ten of this
35 chapter, the time within which a notice of assessment may
36 be issued by the tax commissioner to recover recaptured
37 tax shall be five years from the date of filing of any tax
38 return on which this credit was taken or five years from
39 the date of payment of any tax liability calculated
40 pursuant to the assertion of the credit allowed under this
41 article, whichever is later.

§11-130-10. Administrative rules.

1 The tax commission may prescribe such rules as may
2 be necessary to carry out the purposes of this article,
3 including, but not limited to, rules relating to applicability
4 of credit, method of claiming credit, credit recapture,
5 documentation necessary to claim credit and rules
6 preventing abuse of this article by related persons or by
7 change in the form of doing business. All rules
8 promulgated under this article shall be promulgated in
9 accordance with article three, chapter twenty-nine-a of this
10 code.

§11-130-11. Construction of article.

1 The provisions of this article shall be reasonably
2 construed. The burden of proof is on the person claiming
3 the credit allowed by this article to establish by clear and
4 convincing evidence that the person is entitled to the
5 amount of credit asserted for the taxable year.

§11-130-12. Effective date.

1 This article shall be effective for taxable years
2 beginning on or after the first day of July, one thousand
3 nine hundred ninety-eight.

CHAPTER 301

(Com. Sub. for H. B. 2882—By Delegates Kelley, Clements, Walters, Jenkins,
Seacrist, Leach and Miller)

[Passed March 14, 1998; in effect July 1, 1998. Approved by the Governor.]

AN ACT to amend and reenact section four, article fourteen, chapter eleven 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 five-b, all relating generally to gasoline and special fuel taxes and exemptions from those taxes; permitting distributors and producers to sell untaxed gasoline and special fuel to certain entities and organizations for their exclusive use; requirements to obtain exemption; privilege to purchase untaxed gasoline and special fuel subject to suspension or revocation by tax commissioner; and penalties for noncompliance.

Be it enacted by the Legislature of West Virginia:

That section four, article fourteen, chapter eleven 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 five-b, all to read as follows:

ARTICLE 14. GASOLINE AND SPECIAL FUEL EXCISE TAX.

§11-14-4. Computation of tax.

§11-14-5b. Exemptions for sales made through special devices.

§11-14-4. Computation of tax.

1 (a) Measure of tax.

2 (1) A distributor or producer shall use as the measure
3 of tax all actual metered gallons of gasoline and all actual
4 metered gallons of special fuel withdrawn from storage
5 within this state for use, or for the sale for use, as fuel in an
6 internal combustion engine, or that is sold, transferred or
7 delivered to its company operated retail storage or any

8 other retail station or user wherein the storage is for use or
9 for the sale for use as fuel in an internal combustion
10 engine.

11 (2) A retail dealer, or importer, or user shall use as the
12 measure of tax all actual metered gallons of gasoline and
13 all actual metered gallons of special fuel, not previously
14 included in the measure of tax, received into such
15 person's storage within this state wherein the storage is for
16 use or for the sale for use as gasoline or special fuel in an
17 internal combustion engine, or is used by him as fuel in an
18 internal combustion engine.

19 (3) A person who is not a distributor or producer,
20 retail dealer, importer, or user shall use as the measure of
21 tax all actual metered gallons of gasoline or special fuel
22 subject to tax under this article and not previously
23 included in the measure of tax by him or any other
24 person.

25 (b) Exemptions. — There may be subtracted from the
26 measure of tax determined under subsection (a) of this
27 section, to the extent included in the measure:

28 (1) The actual metered gallons of gasoline and special
29 fuel that are exempt under section five of this article from
30 the tax imposed by this article; and

31 (2) The actual metered gallons of gasoline and special
32 fuel sold by a distributor or producer that are exempt
33 under sections five-a and five-b of this article from the tax
34 imposed by this article.

35 (c) This article shall not be construed to require the
36 inclusion in the measure of tax of any gasoline or special
37 fuel previously included in the measure of tax upon which
38 the tax has been previously paid.

39 (d) The tax imposed by this article shall be in addition
40 to all other taxes of whatever character imposed by any
41 other provisions of law.

§11-14-5b. Exemptions for sales made through special devices.

1 (a) Where the requirements of this section have been
2 met, gasoline or special fuel sold by a distributor or
3 producer to a customer described in subsection (b) of this

4 section through a special device described in subsection
5 (c) of this section is exempt from the taxes otherwise
6 imposed by this article and article fifteen of this chapter.

7 (b) For purposes of this section, "customer" means
8 any of the following entities that regularly purchase
9 gasoline or special fuel for nontaxable uses for its
10 exclusive use in vehicles it owns or leases:

11 (A) The United States government or any agency
12 thereof;

13 (B) A municipality in this state;

14 (C) A county commission in this state;

15 (D) A county board of education in this state; and

16 (E) An organization in a county in this state that is
17 certified annually by the county commission as a bona
18 fide:

19 (i) Volunteer fire department;

20 (ii) Nonprofit ambulance service; or

21 (iii) Nonprofit emergency rescue service.

22 (c) For purposes of this section, "special device"
23 means a device, such as a cardlock system, that accurately
24 accounts for sales of gasoline or special fuel for
25 nontaxable uses that is maintained by a distributor or
26 producer at an attended or unattended location in this
27 state.

28 (d)(1) To qualify for the exemption described in
29 subsection (a) of this section, the distributor or producers
30 must maintain accurate records that establish to the
31 satisfaction of the tax commissioner the right to the
32 exemption.

33 (2) The records must include purchase orders or
34 contracts for the sale or sales of the gasoline or special
35 fuel or, in the absence of such purchase orders or
36 contracts, a certificate, signed by an authorized officer of
37 the customer, that the gasoline or special fuel was
38 purchased for the exclusive use of an entity described in
39 subsection (b) of this section.

40 (3) The records must also include, for each nontaxable
41 sale:

42 (A) The names of the customer and the person to
43 whom the gasoline or special fuel was delivered;

44 (B) The date of delivery;

45 (C) The license number of the vehicle fueled;

46 (D) The type and quantity of gasoline or special fuel
47 delivered; and

48 (E) Such other information as the tax commissioner
49 may require.

50 (e)(1) A customer's privilege to purchase nontaxable
51 gasoline or special fuel through a special device is subject
52 to suspension or revocation by the tax commissioner.

53 (2) A customer is required to make and retain such
54 records of its purchases of gasoline and special fuel
55 through a special device as may be required by the tax
56 commissioner.

57 (f) When the tax commissioner determines, as the
58 result of an audit or investigation, that a customer
59 purchasing gasoline or special fuel that is exempt from tax
60 under subsection (a) of this section is reselling the
61 gasoline or special fuel, is using the gasoline or special
62 fuel for purposes other than the customer's exclusive use,
63 or is failing to make and retain sufficient and adequate
64 records showing the quantity of gasoline or special fuel
65 used or consumed for the customer's exclusive use, the
66 tax commissioner shall suspend the privilege of the
67 customer to purchase untaxed gasoline or special fuel
68 through any special device for such period as the tax
69 commissioner by written order specifies. The order shall
70 be served on the customer in the same manner as a notice
71 of assessment may be served under article ten of this
72 chapter. The customer may appeal the order in the same
73 manner and within the same period of time as a notice of
74 assessment may be appealed under article ten of this
75 chapter. A copy of the order and any subsequent change
76 or revision of the order shall also be served on any
77 distributor or producer that maintains a special device
78 through which the customer purchases untaxed gasoline
79 or special fuel.

80 (g) When the tax commissioner determines, as the
81 result of an audit or other investigation, that a customer
82 purchasing gasoline or special fuel that is exempt from tax
83 under subsection (a) of this section is knowingly and
84 intentionally failing to comply with any requirements of
85 this section, the tax commissioner shall by written order
86 revoke the customer's privilege to purchase untaxed
87 gasoline or special fuel through any special device. The
88 order of the tax commissioner shall be served on the
89 customer in the same manner as a notice of assessment is
90 served under article ten of this chapter. The customer
91 may appeal the order in the same manner and within the
92 same period of time as a notice of assessment may be
93 appealed under article ten of this chapter. A copy of the
94 order and any subsequent change or revision of that order
95 shall also be served on any distributor or producer that
96 maintains a special device through which the customer
97 purchases untaxed gasoline or special fuel.

98 (h) Notwithstanding the exemption provided under
99 subsection (a) of this section to the contrary, a customer is
100 liable for the taxes that would otherwise be imposed by
101 this article and article fifteen of this chapter on the
102 gasoline or special fuel delivered to the customer if the
103 customer sells or uses the gasoline or special fuel in a
104 manner or under circumstances that fails to meet the
105 requirements of this article for the exemption of the
106 gasoline or special fuel from taxation.

107 (i) A customer liable for the taxes described in
108 subsection (h) of this section shall, in addition to paying
109 the taxes described in subsection (h) of this section, pay a
110 money penalty equal to twenty-five percent of the taxes
111 plus interest calculated beginning with the day the
112 gasoline or special fuel was received by the customer until
113 the day the taxes, penalty and interest are paid to the tax
114 commissioner. For each subsequent sale or use, during a
115 fiscal year, of the gasoline or special fuel in a manner or
116 under circumstances that fails to meet the requirements of
117 this article for the exemption of the gasoline or special
118 fuel from taxation, the purchaser shall pay the taxes and a
119 money penalty equal to fifty percent of the tax plus
120 interest calculated in the same manner. For purposes of
121 this section, gasoline and special fuel is received by the
122 customer when it is put into the supply tank of a vehicle
123 owned or leased by the customer.

124 (j) A customer liable for the taxes described in
125 subsection (h) of this section is not entitled to a refund or
126 any credit for the taxes paid or required to be paid under
127 subsection (i) of this section.

128 (k) The exemptions created by this section apply to
129 gasoline or special fuel received by a customer through a
130 special device on or after the first day of July, one
131 thousand nine hundred ninety-eight.

CHAPTER 302

(H. B. 4253—By Delegates Seacrist, Manuel,
Hunt, Kelley and Azinger)

[Passed March 14, 1998; in effect July 1, 1998. Approved by the Governor.]

AN ACT to amend and reenact section five, article fourteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to exempting propane gas for off road use from the excise tax on gasoline or special fuel.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 14. GASOLINE AND SPECIAL FUEL EXCISE TAX.

§11-14-5. Exemptions from tax.

1 There shall be exempted from the excise tax on gaso-
2 line or special fuel imposed by this article the following:

3 (1) All gallons of gasoline or special fuel exported
4 from this state to any other state or nation;

5 (2) All gallons of gasoline or special fuel sold to and
6 purchased by the United States or any agency of the
7 United States when delivered in bulk quantities of five
8 hundred gallons or more;

9 (3) All gallons of gasoline or special fuel sold to and
10 purchased by a county board of education when delivered
11 in bulk quantities of five hundred gallons or more;

12 (4) All gallons of gasoline or special fuel sold
13 pursuant to a government contract, in bulk quantities of
14 five hundred gallons or more, for use in conjunction with
15 any municipal, county, state or federal civil defense or
16 emergency service program, or to any person on whom is
17 imposed a requirement to maintain an inventory of
18 gasoline or special fuel for the purpose of the program:
19 *Provided*, That fueling facilities used for these purposes
20 are not capable of fueling motor vehicles and the person
21 in charge of the program has in his or her possession a
22 letter of authority from the tax commissioner certifying
23 his or her right to the exemption;

24 (5) All gallons of gasoline or special fuel imported
25 into this state in the fuel supply tank or tanks of a motor
26 vehicle, other than in the fuel supply tank of a vehicle
27 being hauled. This exemption does not relieve a person
28 owning or operating as a motor carrier of any taxes
29 imposed by article fourteen-a of this chapter;

30 (6) All gallons of gasoline and special fuel used and
31 consumed in stationary off-highway turbine engines;

32 (7) All gallons of special fuel for heating any public
33 or private dwelling, building or other premises;

34 (8) All gallons of special fuel for boilers;

35 (9) All gallons of gasoline or special fuel used as a dry
36 cleaning solvent or commercial or industrial solvent;

37 (10) All gallons of gasoline or special fuel used as
38 lubricants, ingredients or components of any manu-
39 factured product or compound;

40 (11) All gallons of gasoline or special fuel sold to any
41 municipality or agency of a municipality for use in
42 vehicles or equipment owned and operated by the
43 municipality or agency of a municipality and when
44 purchased for delivery in bulk quantities of five hundred
45 gallons or more;

46 (12) All gallons of gasoline or special fuel sold to any
47 urban mass transportation authority, created pursuant to
48 the provisions of article twenty-seven, chapter eight of this
49 code, for use in an urban mass transportation system;

- 50 (13) All gallons of gasoline or special fuel sold for use
51 as aircraft fuel;
- 52 (14) All gallons of gasoline or special fuel sold for use
53 or used as a fuel for commercial watercraft;
- 54 (15) All gallons of special fuel sold for use or
55 consumed in railroad diesel locomotives;
- 56 (16) All gallons of gasoline or special fuel sold to and
57 purchased by a unit of county government when delivered
58 in bulk quantities of five hundred gallons or more;
- 59 (17) All gallons of special dyed diesel fuel; and
- 60 (18) All gallons of propane gas for off road use.

CHAPTER 303

(S. B. 225—By Senators Oliverio and Ross)

[Passed March 12, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to consumers sales tax; definitions; production of natural resources; and including construction of ventilation and dewatering structures within definition of production of natural resources.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 15. CONSUMERS SALES TAX.

§11-15-2. Definitions.

1 For the purpose of this article:

2 (a) "Business" includes all activities engaged in or
3 caused to be engaged in with the object of gain or
4 economic benefit, direct or indirect, and all activities of the
5 state and its political subdivisions which involve sales of
6 tangible personal property or the rendering of services
7 when those service activities compete with or may compete
8 with the activities of other persons.

9 (b) "Communication" means all telephone, radio, light,
10 light wave, radio telephone, telegraph and other
11 communication or means of communication, whether used
12 for voice communication, computer data transmission or
13 other encoded symbolic information transfers and shall
14 include commercial broadcast radio, commercial
15 broadcast television and cable television.

16 (c) "Contracting":

17 (1) *In general.* -- "Contracting" means and includes
18 the furnishing of work, or both materials and work, for
19 another (by a sole contractor, general contractor, prime
20 contractor or subcontractor) in fulfillment of a contract
21 for the construction, alteration, repair, decoration or
22 improvement of a new or existing building or structure, or
23 any part thereof, or for removal or demolition of a
24 building or structure, or any part thereof, or for the
25 alteration, improvement or development of real property.

26 (2) *Form of contract not controlling.* -- An activity
27 that falls within the scope of the definition of contracting
28 shall constitute contracting regardless of whether such
29 contract governing the activity is written or verbal and
30 regardless of whether it is in substance or form a lump
31 sum contract, a cost-plus contract, a time and materials
32 contract, whether or not open-ended, or any other kind of
33 construction contract.

34 (3) *Special rules.* -- For purposes of this definition:

35 (A) The term "structure" includes, but is not limited to,
36 everything built up or composed of parts joined together
37 in some definite manner and attached or affixed to real
38 property, or which adds utility to real property or any part
39 thereof, or which adds utility to a particular parcel of

40 property and is intended to remain there for an indefinite
41 period of time;

42 (B) The term "alteration" means, and is limited to,
43 alterations which are capital improvements to a building or
44 structure or to real property;

45 (C) The term "repair" means, and is limited to, repairs
46 which are capital improvements to a building or structure
47 or to real property;

48 (D) The term "decoration" means, and is limited to,
49 decorations which are capital improvements to a building
50 or structure or to real property;

51 (E) The term "improvement" means, and is limited to,
52 improvements which are capital improvements to a
53 building or structure or to real property;

54 (F) The term "capital improvement" means
55 improvements that are affixed to or attached to and
56 become a part of a building or structure or the real
57 property or which add utility to real property or any part
58 thereof and that last, or are intended to be relatively
59 permanent. As used herein, "relatively permanent" means
60 lasting at least a year or longer in duration without the
61 necessity for regularly scheduled recurring service to
62 maintain such capital improvement. "Regular recurring
63 service" means regularly scheduled service intervals of less
64 than one year;

65 (G) Contracting does not include the furnishing of
66 work, or both materials and work in the nature of hookup,
67 connection, installation or other services if such service is
68 incidental to the retail sale of tangible personal property
69 from the service provider's inventory: *Provided*, That
70 such hookup, connection or installation of the foregoing
71 is incidental to the sale of the same and performed by the
72 seller thereof or performed in accordance with
73 arrangements made by the seller thereof. Examples of
74 transactions that are excluded from the definition of
75 contracting pursuant hereto include, but are not limited to,
76 the sale of wall-to-wall carpeting and the installation of
77 wall-to-wall carpeting, the sale, hookup and connection of

78 mobile homes, window air conditioning units, dishwashers,
79 clothing washing machines or dryers, other household
80 appliances, drapery rods, window shades, venetian blinds,
81 canvas awnings, free standing industrial or commercial
82 equipment and other similar items of tangible personal
83 property. Repairs made to the foregoing are within the
84 definition of contracting if such repairs involve
85 permanently affixing to or improving real property or
86 something attached thereto which extends the life of the
87 real property or something affixed thereto or allows or is
88 intended to allow such real property or thing permanently
89 attached thereto to remain in service for a year or longer.

90 (d) (1) "Directly used or consumed" in the activities of
91 manufacturing, transportation, transmission,
92 communication or the production of natural resources
93 means used or consumed in those activities or operations
94 which constitute an integral and essential part of such
95 activities, as contrasted with and distinguished from those
96 activities or operations which are simply incidental,
97 convenient or remote to such activities.

98 (2) Uses of property or consumption of services which
99 constitute direct use or consumption in the activities of
100 manufacturing, transportation, transmission,
101 communication or the production of natural resources
102 includes only:

103 (A) In the case of tangible personal property, physical
104 incorporation of property into a finished product resulting
105 from manufacturing production or the production of
106 natural resources;

107 (B) Causing a direct physical, chemical or other
108 change upon property undergoing manufacturing
109 production or production of natural resources;

110 (C) Transporting or storing property undergoing
111 transportation, communication, transmission,
112 manufacturing production or production of natural
113 resources;

114 (D) Measuring or verifying a change in property
115 directly used in transportation, communication,

116 transmission, manufacturing production or production of
117 natural resources;

118 (E) Physically controlling or directing the physical
119 movement or operation of property directly used in
120 transportation, communication, transmission,
121 manufacturing production or production of natural
122 resources;

123 (F) Directly and physically recording the flow of
124 property undergoing transportation, communication,
125 transmission, manufacturing production or production of
126 natural resources;

127 (G) Producing energy for property directly used in
128 transportation, communication, transmission,
129 manufacturing production or production of natural
130 resources;

131 (H) Facilitating the transmission of gas, water, steam or
132 electricity from the point of their diversion to property
133 directly used in transportation, communication,
134 transmission, manufacturing production or production of
135 natural resources;

136 (I) Controlling or otherwise regulating atmospheric
137 conditions required for transportation, communication,
138 transmission, manufacturing production or production of
139 natural resources;

140 (J) Serving as an operating supply for property
141 undergoing transmission, manufacturing production or
142 production of natural resources, or for property directly
143 used in transportation, communication, transmission,
144 manufacturing production or production of natural
145 resources;

146 (K) Maintenance or repair of property, including
147 maintenance equipment, directly used in transportation,
148 communication, transmission, manufacturing production
149 or production of natural resources;

150 (L) Storage, removal or transportation of economic
151 waste resulting from the activities of manufacturing,

152 transportation, communication, transmission or the
153 production of natural resources;

154 (M) Pollution control or environmental quality or
155 protection activity directly relating to the activities of
156 manufacturing, transportation, communication,
157 transmission or the production of natural resources and
158 personnel, plant, product or community safety or security
159 activity directly relating to the activities of manufacturing,
160 transportation, communication, transmission or the
161 production of natural resources; or

162 (N) Otherwise be used as an integral and essential part
163 of transportation, communication, transmission,
164 manufacturing production or production of natural
165 resources.

166 (3) Uses of property or services which would not
167 constitute direct use or consumption in the activities of
168 manufacturing, transportation, transmission,
169 communication or the production of natural resources
170 include, but are not limited to:

171 (A) Heating and illumination of office buildings;

172 (B) Janitorial or general cleaning activities;

173 (C) Personal comfort of personnel;

174 (D) Production planning, scheduling of work or
175 inventory control;

176 (E) Marketing, general management, supervision,
177 finance, training, accounting and administration; or

178 (F) An activity or function incidental or convenient to
179 transportation, communication, transmission,
180 manufacturing production or production of natural
181 resources, rather than an integral and essential part of such
182 activities.

183 (e) (1) "Directly used or consumed" in the activities of
184 gas storage, the generation or production or sale of
185 electric power, the provision of a public utility service or
186 the operation of a utility business, means used or
187 consumed in those activities or operations which constitute

188 an integral and essential part of such activities or
189 operation, as contrasted with and distinguished from
190 activities or operations which are simply incidental,
191 convenient or remote to such activities.

192 (2) Uses of property or consumption of services which
193 constitute direct use or consumption in the activities of gas
194 storage, the generation or production or sale of electric
195 power, the provision of a public utility service, or the
196 operation of a utility business include only:

197 (A) Tangible personal property or services, including
198 equipment, machinery, apparatus, supplies, fuel and power
199 and appliances, which are used immediately in production
200 or generation activities and equipment, machinery,
201 supplies, tools and repair parts used to keep in operation
202 exempt production or generation devices. For purposes
203 of this subsection, production or generation activities shall
204 commence from the intake, receipt or storage of raw
205 materials at the production plant site;

206 (B) Tangible personal property or services, including
207 equipment, machinery, apparatus, supplies, fuel and power,
208 appliances, pipes, wires and mains which are used
209 immediately in the transmission or distribution of gas,
210 water and electricity to the public, and equipment,
211 machinery, tools, repair parts and supplies used to keep in
212 operation exempt transmission or distribution devices, and
213 such vehicles and their equipment as are specifically
214 designed and equipped for such purposes are exempt
215 from the tax when used to keep a transmission or
216 distribution system in operation or repair. For purposes
217 of this subsection, transmission or distribution activities
218 shall commence from the close of production at a
219 production plant or wellhead when a product is ready for
220 transmission or distribution to the public and shall
221 conclude at the point where the product is received by the
222 public;

223 (C) Tangible personal property or services, including
224 equipment, machinery, apparatus, supplies, fuel and power,
225 appliance, pipes, wires and mains, which are used
226 immediately in the storage of gas or water, and equipment,

227 machinery, tools, supplies and repair parts used to keep in
228 operation exempt storage devices;

229 (D) Tangible personal property or services used
230 immediately in the storage, removal or transportation of
231 economic waste resulting from the activities of gas storage,
232 the generation or production or sale of electric power, the
233 provision of a public utility service, or the operation of a
234 utility business;

235 (E) Tangible personal property or services used
236 immediately in pollution control or environmental quality
237 or protection activity or community safety or security
238 directly relating to the activities of gas storage, generation
239 or production or sale of electric power, the provision of a
240 public utility service or the operation of a utility business.

241 (3) Uses of property or services which would not
242 constitute direct use or consumption in the activities of gas
243 storage, generation or production or sale of electric power,
244 the provision of a public utility service or the operation of
245 a utility business include, but are not limited to:

246 (A) Heating and illumination of office buildings;

247 (B) Janitorial or general cleaning activities;

248 (C) Personal comfort of personnel;

249 (D) Production planning, scheduling of work or
250 inventory control;

251 (E) Marketing, general management, supervision,
252 finance, training, accounting and administration; or

253 (F) An activity or function incidental or convenient to
254 the activities of gas storage, generation or production or
255 sale of electric power, the provision of public utility
256 service or the operation of a utility business.

257 (f) "Drugs" includes all sales of drugs or appliances to
258 a purchaser, upon prescription of a physician or dentist
259 and any other professional person licensed to prescribe.

260 (g) "Gas storage" means the injection of gas into a
261 storage reservoir, or the storage of gas for any period of

262 time in a storage reservoir, or the withdrawal of gas from a
263 storage reservoir, engaged in by businesses subject to the
264 business and occupation tax imposed by sections two and
265 two-e, article thirteen of this chapter.

266 (h) "Generating or producing or selling of electric
267 power" means the generation, production or sale of
268 electric power engaged in by businesses subject to the
269 business and occupation tax imposed by section two,
270 two-d, two-m or two-n, article thirteen of this chapter.

271 (i) "Gross proceeds" means the amount received in
272 money, credits, property or other consideration from sales
273 and services within this state, without deduction on account
274 of the cost of property sold, amounts paid for interest or
275 discounts or other expenses whatsoever. Losses shall not
276 be deducted, but any credit or refund made for goods
277 returned may be deducted.

278 (j) "Management information services" means, and is
279 limited to, data processing, data storage, data recovery and
280 backup, programming recovery and backup, telecommunica-
281 tions, computation and computer processing, computer programming, electronic
282 information and data management activities, or any
283 combination of such activities, when such activity, or
284 activities, is not subject to regulation by the West Virginia
285 public service commission and such activity, or activities, is
286 for the purpose of managing, planning for, organizing or
287 operating, any industrial or commercial business, or any
288 enterprise, facility or facilities of an industrial or
289 commercial business, whether such industrial or
290 commercial business or enterprise, facility or facilities of
291 an industrial or commercial business is located within or
292 without this state and without regard to whether such
293 industrial or commercial business, or enterprise, facility or
294 facilities of an industrial or commercial business is owned
295 by the provider of the management information services
296 or by a "related person", as defined in Section 267(b) of
297 the Internal Revenue Code of 1986, as amended.
298

299 (k) "Management information services facility" means
300 a building, or any part thereof, or a complex of buildings,
301 or any part thereof, including the machinery and

302 equipment located therein, that is exclusively dedicated to
303 providing management information services to the owner
304 or operator thereof or to another person.

305 (l) "Manufacturing" means a systematic operation or
306 integrated series of systematic operations engaged in as a
307 business or segment of a business which transforms or
308 converts tangible personal property by physical, chemical
309 or other means into a different form, composition or
310 character from that in which it originally existed.

311 (m) "Personal service" includes those:

312 (1) Compensated by the payment of wages in the
313 ordinary course of employment; and

314 (2) Rendered to the person of an individual without, at
315 the same time, selling tangible personal property, such as
316 nursing, barbering, shoe shining, manicuring and similar
317 services.

318 (n) "Persons" means any individual, partnership,
319 association, corporation, state or its political subdivisions
320 or agency of either, guardian, trustee, committee, executor
321 or administrator.

322 (o) "Production of natural resources" means, except
323 for oil and gas, the performance, by either the owner of
324 the natural resources or another, of the act or process of
325 exploring, developing, severing, extracting, reducing to
326 possession and loading for shipment and shipment for
327 sale, profit or commercial use of any natural resource
328 products and any reclamation, waste disposal or
329 environmental activities associated therewith and the
330 construction, installation or fabrication of ventilation
331 structures, mine shafts, slopes, boreholes, dewatering
332 structures, including associated facilities and apparatus, by
333 the producer or others, including contractors and
334 subcontractors, at a coal mine or coal production facility.
335 For the natural resources oil and gas, "production of
336 natural resources" means the performance, by either the
337 owner of the natural resources, a contractor, or a
338 subcontractor, of the act or process of exploring,
339 developing, drilling, well stimulation activities such as
340 logging, perforating or fracturing, well completion
341 activities such as the installation of the casing, tubing and

342 other machinery and equipment, and any reclamation,
343 waste disposal or environmental activities associated
344 therewith, including the installation of the gathering
345 system or other pipeline to transport the oil and gas
346 produced or environmental activities associated therewith
347 and any service work performed on the well or well site
348 after production of the well has initially commenced. All
349 work performed to install or maintain facilities up to the
350 point of sale for severance tax purposes would be included
351 in the "production of natural resources" and subject to the
352 direct use concept. "Production of natural resources" does
353 not include the performance or furnishing of work, or
354 materials or work, in fulfillment of a contract for the
355 construction, alteration, repair, decoration or improvement
356 of a new or existing building or structure, or any part
357 thereof, or for the alteration, improvement or development
358 of real property, by persons other than those otherwise
359 directly engaged in the activities specifically set forth in
360 this subsection as "production of natural resources".

361 (p) "Providing a public service or the operating of a
362 utility business" means the providing of a public service or
363 the operating of a utility by businesses subject to the
364 business and occupation tax imposed by sections two and
365 two-d, article thirteen of this chapter.

366 (q) "Purchaser" means a person who purchases
367 tangible personal property or a service taxed by this
368 article.

369 (r) "Sale", "sales" or "selling" includes any transfer of
370 the possession or ownership of tangible personal property
371 for a consideration, including a lease or rental, when the
372 transfer or delivery is made in the ordinary course of the
373 transferor's business and is made to the transferee or his
374 agent for consumption or use or any other purpose.

375 (s) "Service" or "selected service" includes all
376 nonprofessional activities engaged in for other persons for
377 a consideration, which involve the rendering of a service as
378 distinguished from the sale of tangible personal property,
379 but shall not include contracting, personal services or the
380 services rendered by an employee to his employer or any
381 service rendered for resale.

382 (t) "Tax" includes all taxes, interest and penalties levied
383 hereunder.

384 (u) "Tax commissioner" means the state tax
385 commissioner.

386 (v) "Taxpayer" means any person liable for the tax
387 imposed by this article.

388 (w) "Transmission" means the act or process of
389 causing liquid, natural gas or electricity to pass or be
390 conveyed from one place or geographical location to
391 another place or geographical location through a pipeline
392 or other medium for commercial purposes.

393 (x) "Transportation" means the act or process of
394 conveying, as a commercial enterprise, passengers or
395 goods from one place or geographical location to another
396 place or geographical location.

397 (y) "Ultimate consumer" or "consumer" means a
398 person who uses or consumes services or personal
399 property.

400 (z) "Vendor" means any person engaged in this state
401 in furnishing services taxed by this article or making sales
402 of tangible personal property.

CHAPTER 304

(H. B. 4686—By Delegates Michael, Kelley, Warner,
Pettit, Doyle, Miller and Facemyer)

[Passed March 14, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section seven-a; and to amend article fifteen-a of said chapter by adding thereto a new section, designated section two-b, all relating to consumers sales and service and use tax on sales and installation of modular dwellings.

Be it enacted by the Legislature of West Virginia:

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

Article

15. Consumers Sales Tax.

15A. Use Tax

ARTICLE 15. CONSUMERS SALES TAX.

§11-15-7a. Tax on the manufacture, sale and installation of modular dwellings.

1 (a) Notwithstanding the provisions of section seven of
2 this article, persons engaged in the manufacture and sale
3 or the manufacture, sale and installation of a modular
4 dwelling shall pay the tax imposed by this article only on
5 the value of the building supplies and materials used in the
6 manufacture and installation of the modular dwelling and
7 the preparation of the site for permanent installation, and
8 not on the labor involved in such activities. For purposes
9 of this section, the value of the building supplies and
10 materials shall be the actual cost of the building supplies
11 and materials. If the manufacturer asserts an exemption at
12 the time of purchase of the building supplies and
13 materials, the manufacturer shall remit the tax due on the
14 value of the building supplies and materials used in the
15 manufacture of the modular dwelling at the time of sale of
16 the modular dwelling. If the manufacturer pays the tax at
17 the time of purchase of the building supplies and
18 materials, the manufacturer is responsible for maintaining
19 records evidencing payment of the tax. Failure to
20 maintain such records will result in the tax being assessed
21 to the manufacturer.

22 (b) Persons engaged in the sale and installation of a
23 modular dwelling shall pay the tax imposed by this article
24 on only the value of the materials used in the manufacture
25 and installation of the modular dwelling and the
26 preparation of the site for permanent installation, and not
27 on the labor involved in such activities. For purposes of
28 this section, the value of the materials used in the
29 manufacture of the modular dwelling shall be the actual
30 cost of the materials and building supplies to the
31 manufacturer as delineated on the invoice to the

32 purchaser. If the actual cost of the materials is not
33 available, then the cost of the materials used in the
34 manufacture of the modular dwelling shall be sixty
35 percent of the total cost of the modular dwelling. A credit
36 will be given to the purchaser for any sales or use tax that
37 has been lawfully imposed by another state and paid by
38 the manufacturer on the purchase of building supplies and
39 materials used in the manufacture of the modular
40 dwelling. If the manufacturer pays the tax at the time of
41 purchase of the building supplies and materials, the
42 manufacturer is responsible for maintaining records
43 evidencing payment of the tax and delineating this
44 amount on the invoice. Failure to maintain such records
45 will result in the credit being denied.

46 (c) *Definition of modular dwelling.* — For purposes of
47 this article, a modular dwelling shall include, but not be
48 limited to, single and multi-family houses, apartment units
49 and commercial dwellings comprised of two or more
50 sections without a permanent chassis, built to a state or
51 model code other than the National Manufactured
52 Housing Construction and Safety Standards Act of 1974,
53 which are primarily constructed at a location other than
54 the permanent site at which they are to be finally
55 assembled and which are shipped to the site with most
56 permanent components in place.

ARTICLE 15A. USE TAX.

§11-15A-2b. Tax on the manufacture, sale and installation of modular dwellings.

1 (a) Notwithstanding the provisions of section two-a of
2 this article, persons engaged in the manufacture and sale
3 or the manufacture, sale and installation of a modular
4 dwelling shall pay the tax imposed by this article only on
5 the value of the building supplies and materials used in the
6 manufacture and installation of the modular dwelling and
7 the preparation of the site for permanent installation, and
8 not on the labor involved in such activities. For purposes
9 of this section, the value of the building supplies and
10 materials shall be the actual cost of the building supplies
11 and materials. If the manufacturer asserts an exemption at
12 the time of purchase of the building supplies and
13 materials, the manufacturer shall remit the tax due on the
14 value of the building supplies and materials used in the
15 manufacture of the modular dwelling at the time of sale of

16 the modular dwelling. If the manufacturer pays the tax at
17 the time of purchase of the building supplies and
18 materials, the manufacturer is responsible for maintaining
19 records evidencing payment of the tax. Failure to
20 maintain such records will result in the tax being assessed
21 to the manufacturer.

22 (b) Persons engaged in the sale and installation of a
23 modular dwelling shall pay the tax imposed by this article
24 on only the value of the materials used in the manufacture
25 and installation of the modular dwelling and the
26 preparation of the site for permanent installation and not
27 on the labor involved in such activities. For purposes of
28 this section, the value of the materials used in the
29 manufacture of the modular dwelling shall be the actual
30 cost of the materials and building supplies to the
31 manufacturer as delineated on the invoice to the
32 purchaser. If the actual cost of the materials is not
33 available, then the cost of the materials used in the
34 manufacture of the modular dwelling shall be sixty
35 percent of the total cost of the modular dwelling. A credit
36 will be given to the purchaser for any sales or use tax that
37 has been lawfully imposed by another state and paid by
38 the manufacturer on the purchase of building supplies
39 and materials used in the manufacture of the modular
40 dwelling. If the manufacturer pays the tax at the time of
41 purchase of the building supplies and materials, the
42 manufacturer is responsible for maintaining records
43 evidencing payment of the tax and delineating the amount
44 on the invoice. Failure to maintain such records will result
45 in the credit being denied.

46 (c) *Definition of modular dwelling.* — For purposes of
47 this article, a modular dwelling shall include, but not be
48 limited to, single and multi-family houses, apartment units
49 and commercial dwellings comprised of two or more
50 sections without a permanent chassis, built to a state or
51 model code other than the National Manufactured
52 Housing Construction and Safety Standards Act of 1974,
53 which are primarily constructed at a location other than
54 the permanent site at which they are to be finally
55 assembled and which are shipped to the site with most
56 permanent components in place.

CHAPTER 305

(S. B. 207—By Senators Tomblin, Mr. President, and Buckalew)
[By Request of the Executive]

[Passed February 13, 1998; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine, article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to updating the meaning of certain terms used in the West Virginia personal income tax act by bringing them into conformity with their meanings for federal income tax purposes; and specifying effective dates.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-9. Meaning of terms.

1 (a) Any term used in this article shall have the same
2 meaning as when used in a comparable context in the laws
3 of the United States relating to income taxes, unless a
4 different meaning is clearly required. Any reference in
5 this article to the laws of the United States shall mean the
6 provisions of the Internal Revenue Code of 1986, as
7 amended, and any other provisions of the laws of the
8 United States as relate to the determination of income for
9 federal income tax purposes. All amendments made to
10 the laws of the United States after the thirty-first day of
11 December, one thousand nine hundred ninety-six, but
12 prior to the first day of January, one thousand nine
13 hundred ninety-eight, shall be given effect in determining
14 the taxes imposed by this article to the same extent those
15 changes are allowed for federal income tax purposes,
16 whether such changes are retroactive or prospective, but
17 no amendment to the laws of the United States made on or
18 after the first day of January, one thousand nine hundred
19 ninety-eight, shall be given any effect.

20 (b) *Medical savings accounts.* — The term "taxable
21 trust" does not include a medical savings account
22 established pursuant to section twenty, article fifteen,
23 chapter thirty-three of this code or section fifteen, article
24 sixteen of said chapter. Employer contributions to a
25 medical savings account established pursuant to said
26 sections, are not "wages" for purposes of withholding
27 under section seventy-one of this article.

28 (c) *Surtax.* — The term "surtax" means the twenty
29 percent additional tax imposed on taxable withdrawals
30 from a medical savings account under section twenty,
31 article fifteen, chapter thirty-three of this code, and the
32 twenty percent additional tax imposed on taxable
33 withdrawals from a medical savings account under section
34 fifteen, article sixteen of said chapter, which are collected
35 by the tax commissioner as tax collected under this article.

36 (d) *Effective date.* — The amendments to this section
37 enacted in the year one thousand nine hundred ninety-
38 eight shall be retroactive to the extent allowable under
39 federal income tax law. With respect to taxable years that
40 begin prior to the first day of January, one thousand nine
41 hundred ninety-seven, the law in effect for each of those
42 years shall be fully preserved as to such year, except as
43 provided in this section.

CHAPTER 306

(Com. Sub. for H. B. 2079—By Delegates Manuel, Michael, Mezzatesta,
Collins and Martin)

[Passed March 14, 1998; in effect July 1, 1998. Approved by the Governor.]

AN ACT to amend and reenact section seven, article twenty-three, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to exempting hunting clubs from paying a franchise tax if there is no income and no dividends paid.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 23. BUSINESS FRANCHISE TAX.

§11-23-7. Persons and organizations exempt from tax.

1 The following organizations and persons shall be
2 exempt from the tax imposed by this article to the extent
3 provided in this section:

4 (a) Natural persons doing business in this state that are
5 not doing business in the form of a partnership (as
6 defined in section three of this article) or in the form of a
7 corporation (as defined in section three of this article).
8 Such persons include persons doing business as sole
9 proprietors, sole practitioners and other self-employed
10 persons.

11 (b) Corporations and organizations which by reason
12 of their purposes or activities are exempt from federal
13 income tax: *Provided*, That this exemption does not apply
14 to that portion of their capital (as defined in section three
15 of this article) which is used, directly or indirectly, in the
16 generation of unrelated business income (as defined in the
17 Internal Revenue Code) of any such corporation or
18 organization if the unrelated business income is subject to
19 federal income tax.

20 (c) Insurance companies which pay this state a tax
21 upon premiums.

22 (d) Production credit associations organized under the
23 provisions of the federal "Farm Credit Act of 1933":
24 *Provided*, That this exemption does not apply to
25 corporations or associations organized under the
26 provisions of article four, chapter nineteen of this code.

27 (e) Any trust established pursuant to section one
28 hundred eighty-six, chapter seven, title twenty-nine of the
29 code of the laws of the United States (enacted as section
30 three hundred two (c) of the labor management relations
31 act, one thousand nine hundred forty-seven), as amended

32 prior to the first day of January, one thousand nine
33 hundred eighty-five.

34 (f) Any credit union organized under the provisions
35 of chapter thirty-one, or any other chapter of this code:
36 *Provided*, That this exemption does not apply to
37 corporations or cooperative associations organized under
38 the provisions of article four, chapter nineteen of this
39 code.

40 (g) Any corporation organized under this code which
41 is a political subdivision of the state of West Virginia, or is
42 an instrumentality of a political subdivision of this state,
43 and was created pursuant to this code.

44 (h) Any corporation or partnership engaged in the
45 activity of agriculture and farming, as defined in
46 paragraph (8), subsection (b), section three of this article:
47 *Provided*, That if a corporation or partnership is not
48 exclusively engaged in such activity, its tax base under this
49 article shall be apportioned, in accordance with regulations
50 promulgated by the tax commissioner, among its several
51 activities and only that portion attributable to the activity
52 of agriculture and farming shall be exempt from tax
53 under this article.

54 (i) Any corporation or partnership licensed under
55 article twenty-three, chapter nineteen of this code, to
56 conduct horse or dog racing meetings or a pari-mutuel
57 system of wagering: *Provided*, That if the corporation or
58 partnership is not exclusively engaged in this activity, its
59 tax base under this article shall be apportioned, in
60 accordance with regulations promulgated by the tax
61 commissioner, among its several activities and only that
62 portion attributable to the activity of conducting a horse
63 or dog racing meeting or a pari-mutuel system of
64 wagering shall be exempt from tax under this article.

65 (j) For those tax years beginning after the thirtieth day
66 of June, one thousand nine hundred ninety-eight, any
67 corporation or partnership operating as a hunting club:
68 *Provided*, That the corporation or partnership distributes
69 no income or dividends to its owners or stockholders. For
70 the purposes of this subsection, a hunting club is a group

71 of persons owning land which is used principally for
72 hunting purposes by the members of the club and guests,
73 and where any charges made for hunting are principally
74 for the purpose of defraying the costs of operating and
75 maintaining the club and club properties or establishing a
76 reasonable reserve to meet the operating and maintenance
77 costs of the club. The tax commissioner shall by
78 legislative rule promulgated in accordance with article
79 three of chapter twenty-nine of this code further prescribe
80 the definition of a hunting club and the manner and
81 method in which this credit may be claimed.

CHAPTER 307

(S. B. 208—By Senators Tomblin, Mr. President, and Buckalew)

[By Request of the Executive]

[Passed February 13, 1998; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article twenty-four, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to updating the meaning of certain terms used in the West Virginia corporation net income tax act by bringing them into conformity with their meanings for federal income tax purposes; and specifying effective dates.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-3. Meaning of terms; general rule.

1 (a) Any term used in this article shall have the same
2 meaning as when used in a comparable context in the laws
3 of the United States relating to federal income taxes,
4 unless a different meaning is clearly required by the

5 context or by definition in this article. Any reference in
6 this article to the laws of the United States shall mean the
7 provisions of the Internal Revenue Code of 1986, as
8 amended, and such other provisions of the laws of the
9 United States as relate to the determination of income for
10 federal income tax purposes. All amendments made to
11 the laws of the United States after the thirty-first day of
12 December, one thousand nine hundred ninety-six, but
13 prior to the first day of January, one thousand nine
14 hundred ninety-eight, shall be given effect in determining
15 the taxes imposed by this article to the same extent those
16 changes are allowed for federal income tax purposes,
17 whether such changes are retroactive or prospective, but
18 no amendment to the laws of the United States made on or
19 after the first day of January, one thousand nine hundred
20 ninety-eight, shall be given any effect.

21 (b) The term "Internal Revenue Code of 1986" means
22 the Internal Revenue Code of the United States enacted by
23 the "Federal Tax Reform Act of 1986" and includes the
24 provisions of law formerly known as the Internal Revenue
25 Code of 1954, as amended, and in effect when the
26 "Federal Tax Reform Act of 1986" was enacted, that were
27 not amended or repealed by the "Federal Tax Reform Act
28 of 1986". Except when inappropriate, any references in
29 any law, executive order or other document:

30 (1) To the Internal Revenue Code of 1954 shall
31 include reference to the Internal Revenue Code of 1986;
32 and

33 (2) To the Internal Revenue Code of 1986 shall
34 include a reference to the provisions of law formerly
35 known as the Internal Revenue Code of 1954.

36 (c) *Effective date.* — The amendments to this section
37 enacted in the year one thousand nine hundred ninety-
38 eight shall be retroactive to the extent allowable under
39 federal income tax law. With respect to taxable years that
40 begin prior to the first day of January, one thousand nine
41 hundred ninety-seven, the law in effect for each of those
42 years shall be fully preserved as to such year, except as
43 provided in this section.

CHAPTER 308

(H. B. 4687—By Delegates Facemyer, Michael, Kelley, Warner, Pettit,
Seacrist and Walters)

[Passed March 14, 1998; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections six and seven, article twenty-four, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to corporation net income tax; allocation and apportionment of net income of corporate partner's distributive share; providing that the allocation and apportionment shall be made using the partnership's property, payroll and sales factors; corporation net income tax adjustments in determining West Virginia taxable income, beginning in taxable year one thousand nine hundred ninety-eight; adding increasing adjustments for foreign taxes and for net operating losses from sources outside of the United States; amending the decreasing adjustment for foreign source income; eliminating the obsolete reference to the net operating loss deduction from the allowance for certain governmental obligations and obligations secured by residential property; and specifying effective date.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-6. Adjustments in determining West Virginia taxable income.

§11-24-7. Allocation and apportionment.

§11-24-6. Adjustments in determining West Virginia taxable income.

- 1 (a) *General.* — In determining West Virginia taxable
- 2 income of a corporation, its taxable income as defined for
- 3 federal income tax purposes shall be adjusted and

4 determined before the apportionment provided by section
5 seven of this article, by the items specified in this section.

6 (b) *Adjustments increasing federal taxable income.* —
7 There shall be added to federal taxable income, unless
8 already included in the computation of federal taxable
9 income, the following items:

10 (1) Interest or dividends on obligations or securities of
11 any state or of a political subdivision or authority of the
12 state;

13 (2) Interest or dividends, less related expenses to the
14 extent not deducted in determining federal taxable
15 income, on obligations or securities of any authority,
16 commission or instrumentality of the United States which
17 the laws of the United States exempt from federal income
18 tax but not from state income taxes;

19 (3) Income taxes and other taxes, including franchise
20 and excise taxes, which are based on, measured by, or
21 computed with reference to net income, imposed by this
22 state or any other taxing jurisdiction, to the extent
23 deducted in determining federal taxable income;

24 (4) The amount of unrelated business taxable income
25 as defined by Section 512 of the Internal Revenue Code
26 of 1986, as amended, of a corporation which by reason of
27 its purposes is generally exempt from federal income
28 taxes;

29 (5) The amount of any net operating loss deduction
30 taken for federal income tax purposes under Section 172
31 of the Internal Revenue Code of 1986, as amended;

32 (6) Any amount included in federal taxable income
33 which is a net operating loss from sources without the
34 United States after making the decreasing adjustments
35 provided in subdivisions (5) and (7), subsection (c) of this
36 section for Section 951 income and Section 78 income.
37 Federal taxable income from sources without the United
38 States shall be determined in accordance with the
39 provisions of Sections 861, 862, and 863 of the Internal
40 Revenue Code of 1986, as amended; and

41 (7) The amount of foreign taxes deducted in
42 determining federal taxable income.

43 (c) *Adjustments decreasing federal taxable income.* —
44 There shall be subtracted from federal taxable income to
45 the extent included therein:

46 (1) Any gain from the sale or other disposition of
47 property having a higher fair market value on the first day
48 of July, one thousand nine hundred sixty-seven, than the
49 adjusted basis at said date for federal income tax purposes:
50 *Provided*, That the amount of this adjustment is limited to
51 that portion of any gain which does not exceed the
52 difference between the fair market value and the adjusted
53 basis;

54 (2) The amount of any refund or credit for
55 overpayment of income taxes and other taxes, including
56 franchise and excise taxes, which are based on, measured
57 by, or computed with reference to net income, imposed by
58 this state or any other taxing jurisdiction, to the extent
59 properly included in gross income for federal income tax
60 purposes;

61 (3) The amount added to federal taxable income due
62 to the elimination of the reserve method for computation
63 of the bad debt deduction;

64 (4) The full amount of interest expense actually
65 disallowed in determining federal taxable income which
66 was incurred or continued to purchase or carry obligations
67 or securities of any state or of any political subdivision of
68 the state;

69 (5) The amount required to be added to federal
70 taxable income as a dividend received from a foreign
71 (non-United States) corporation under Section 78 of the
72 Internal Revenue Code of 1986, as amended, by a
73 corporation electing to take the foreign tax credit for
74 federal income tax purposes;

75 (6) The amount of salary expenses disallowed as a
76 deduction for federal income tax purposes due to
77 claiming the federal jobs credit under Section 51 of the
78 Internal Revenue Code of 1986, as amended;

79 (7) The amount included in federal adjusted gross
80 income by the operation of Section 951 of the Internal
81 Revenue Code of 1986, as amended;

82 (8) Employer contributions to medical savings
83 accounts established pursuant to section fifteen, article
84 sixteen, chapter thirty-three of this code to the extent
85 included in federal adjusted gross income for federal
86 income tax purposes less any portion of employer
87 contributions withdrawn for purposes other than payment
88 of medical expenses: *Provided*, That the amount
89 subtracted pursuant to this subsection for any one taxable
90 year may not exceed the maximum amount that would
91 have been deductible from the corporation's federal
92 adjusted gross income for federal income tax purposes if
93 the aggregate amount of the corporation's contributions to
94 individual medical savings accounts established under
95 section fifteen, article sixteen, chapter thirty-three of this
96 code had been contributed to a qualified plan as defined
97 under the Employee Retirement Income Security Act of
98 1974, as amended; and

99 (9) Any amount included in federal taxable income
100 which is foreign source income. Foreign source income is
101 any amount included in federal taxable income which is
102 taxable income from sources without the United States,
103 less the adjustments provided in subdivisions (5) and (7)
104 of this subsection.

105 In determining "foreign source income", the
106 provisions of Sections 861, 862 and 863 of the Internal
107 Revenue Code of 1986, as amended, shall be applied.

108 (d) *Net operating loss deduction.* — Except as
109 otherwise provided in this subsection, there is allowed as a
110 deduction for the taxable year an amount equal to the
111 aggregate of: (1) The West Virginia net operating loss
112 carryovers to that year; plus (2) the net operating loss
113 carrybacks to that year: *Provided*, That no more than
114 three hundred thousand dollars of net operating loss from
115 any taxable year beginning after the thirty-first day of
116 December, one thousand nine hundred ninety-two, may be
117 carried back to any previous taxable year. For purposes
118 of this subsection, the term "West Virginia net operating

119 loss deduction" means the deduction allowed by this
120 subsection, determined in accordance with Section 172 of
121 the Internal Revenue Code of 1986, as amended.

122 (1) *Special rules.* —

123 (A) When the corporation further adjusts its adjusted
124 federal taxable income under section seven of this article,
125 the West Virginia net operating loss deduction allowed by
126 this subsection shall be deducted after the section seven
127 adjustments are made;

128 (B) The tax commissioner shall prescribe the transition
129 regulations as he deems necessary for fair and equitable
130 administration of this subsection as amended by this act.

131 (2) *Effective date.* — The provisions of this subsection,
132 as amended by chapter one hundred nineteen, acts of the
133 Legislature, one thousand nine hundred eighty-eight,
134 apply to all taxable years ending after the thirtieth day of
135 June, one thousand nine hundred eighty-eight; and to all
136 loss carryovers from taxable years ending on or before
137 said thirtieth day of June.

138 (e) *Special adjustments for expenditures for water and*
139 *air pollution control facilities.* —

140 (1) If the taxpayer so elects under subdivision (2) of
141 this subsection, there shall be:

142 (A) Subtracted from federal taxable income the total
143 of the amounts paid or incurred during the taxable year
144 for the acquisition, construction or development within
145 this state of water pollution control facilities or air
146 pollution control facilities as defined in Section 169 of the
147 Internal Revenue Code; and

148 (B) Added to federal taxable income the total of the
149 amounts of any allowances for depreciation and
150 amortization of the water pollution control facilities or air
151 pollution control facilities, as so defined, to the extent
152 deductible in determining federal taxable income.

153 (2) The election referred to in subdivision (1) of this
154 subsection shall be made in the return filed within the time
155 prescribed by law, including extensions of the time, for the

156 taxable year in which the amounts were paid or incurred.
157 The election shall be made in that manner, and the scope
158 of application of that election shall be defined, as the tax
159 commissioner may by rule prescribe, and shall be
160 irrevocable when made as to all amounts paid or incurred
161 for any particular water pollution control facility or air
162 pollution control facility.

163 (3) Notwithstanding any other provisions of this
164 subsection or of section seven to the contrary, if the
165 taxpayer's federal taxable income is subject to allocation
166 and apportionment under section seven, the adjustments
167 prescribed in paragraphs (A) and (B), subdivision (1) of
168 this subsection shall, instead of being made to the
169 taxpayer's federal taxable income before allocation and
170 apportionment thereof as provided in section seven, be
171 made to the portion of the taxpayer's net income,
172 computed without regard to the adjustments, allocated and
173 apportioned to this state in accordance with section seven.

174 (f) *Allowance for certain government obligations and*
175 *obligations secured by residential property.* — The West
176 Virginia taxable income of a taxpayer subject to this
177 article as adjusted in accordance with subsections (b), (c)
178 and (e) of this section shall be further adjusted by
179 multiplying the taxable income after the adjustment by
180 said subsections by a fraction equal to one minus a
181 fraction:

182 (1) The numerator of which is the sum of the average
183 of the monthly beginning and ending account balances
184 during the taxable year (account balances to be
185 determined at cost in the same manner that obligations,
186 investments and loans are reported on Schedule L of the
187 Federal Form 1120) of the following:

188 (A) Obligations or securities of the United States, or of
189 any agency, authority, commission or instrumentality of
190 the United States and any other corporation or entity
191 created under the authority of the United States Congress
192 for the purpose of implementing or furthering an
193 objective of national policy;

194 (B) Obligations or securities of this state and any
195 political subdivision or authority of the state;

196 (C) Investments or loans primarily secured by
197 mortgages, or deeds of trust, on residential property
198 located in this state and occupied by nontransients; and

199 (D) Loans primarily secured by a lien or security
200 agreement on residential property in the form of a mobile
201 home, modular home or double-wide, located in this state
202 and occupied by nontransients.

203 (2) The denominator of which is the average of the
204 monthly beginning and ending account balances of the
205 total assets of the taxpayer which are shown on Schedule L
206 of Federal Form 1120, which are filed by the taxpayer
207 with the Internal Revenue Service.

208 (g) The amendments to the provisions of this section
209 made during the regular session of the Legislature in the
210 year one thousand nine hundred ninety-eight, apply to all
211 taxable years beginning on or after the thirty-first day of
212 December, one thousand nine hundred ninety-seven.

§11-24-7. Allocation and apportionment.

1 (a) *General.* — Any taxpayer having income from
2 business activity which is taxable both in this state and in
3 another state shall allocate and apportion its net income as
4 provided in this section. For purposes of this section, the
5 term "net income" means the taxpayer's federal taxable
6 income adjusted as provided in section six.

7 (b) *"Taxable in another state" defined.* — For
8 purposes of allocation and apportionment of net income
9 under this section, a taxpayer is taxable in another state if:

10 (1) In that state the taxpayer is subject to a net income
11 tax, a franchise tax measured by net income, a franchise
12 tax for the privilege of doing business, or a corporation
13 stock tax; or

14 (2) That state has jurisdiction to subject the taxpayer
15 to a net income tax, regardless of whether, in fact, that state
16 does or does not subject the taxpayer to the tax.

17 (c) *Business activities entirely within West Virginia.* —
18 If the business activities of a taxpayer take place entirely
19 within this state, the entire net income of the taxpayer is
20 subject to the tax imposed by this article. The business
21 activities of a taxpayer are considered to have taken place
22 in their entirety within this state if the taxpayer is not
23 "taxable in another state": *Provided*, That the business
24 activities of a financial organization having its commercial
25 domicile in this state are considered to take place entirely
26 in this state, notwithstanding that the organization may be
27 "taxable in another state": *Provided, however*, That the
28 income from the business activities of a financial
29 organization not having its commercial domicile in this
30 state shall be apportioned according to the applicable
31 provisions of this article.

32 (d) *Business activities partially within and partially*
33 *without West Virginia; allocation of nonbusiness income.*
34 — If the business activities of a taxpayer take place
35 partially within and partially without this state and the
36 taxpayer is also taxable in another state, rents and royalties
37 from real or tangible personal property, capital gains,
38 interest, dividends or patent or copyright royalties, to the
39 extent that they constitute nonbusiness income of the
40 taxpayer, shall be allocated as provided in subdivisions (1)
41 through (4): *Provided*, That to the extent the items
42 constitute business income of the taxpayer, they may not
43 be so allocated but they shall be apportioned to this state
44 according to the provisions of subsection (e) of this
45 section and to the applicable provisions of section seven-b
46 of this article.

47 (1) *Net rents and royalties.* —

48 (A) Net rents and royalties from real property located
49 in this state are allocable to this state.

50 (B) Net rents and royalties from tangible personal
51 property are allocable to this state:

52 (i) If and to the extent that the property is utilized in
53 this state; or

54 (ii) In their entirety if the taxpayer's commercial
55 domicile is in this state and the taxpayer is not organized
56 under the laws of or taxable in the state in which the
57 property is utilized.

58 (C) The extent of utilization of tangible personal
59 property in a state is determined by multiplying the rents
60 and royalties by a fraction, the numerator of which is the
61 number of days of physical location of the property in the
62 state during the rental or royalty period in the taxable year
63 and the denominator of which is the number of days of
64 physical location of the property everywhere during all
65 rental or royalty periods in the taxable year. If the
66 physical location of the property during the rental or
67 royalty period is unknown or unascertainable by the
68 taxpayer, tangible personal property is utilized in the state
69 in which the property was located at the time the rental or
70 royalty payer obtained possession.

71 (2) *Capital gains.* —

72 (A) Capital gains and losses from sales of real
73 property located in this state are allocable to this state.

74 (B) Capital gains and losses from sales of tangible
75 personal property are allocable to this state if:

76 (i) The property had a situs in this state at the time of
77 the sale; or

78 (ii) The taxpayer's commercial domicile is in this state
79 and the taxpayer is not taxable in the state in which the
80 property had a situs.

81 (C) Capital gains and losses from sales of intangible
82 personal property are allocable to this state if the
83 taxpayer's commercial domicile is in this state.

84 (D) Gains pursuant to Section 631 (a) and (b) of the
85 Internal Revenue Code of 1986, as amended, from sales of
86 natural resources severed in this state shall be allocated to
87 this state if they are nonbusiness income.

88 (3) Interest and dividends are allocable to this state if
89 the taxpayer's commercial domicile is in this state.

90 (4) *Patent and copyright royalties.* —

91 (A) Patent and copyright royalties are allocable to this
92 state:

93 (i) If and to the extent that the patent or copyright is
94 utilized by the payer in this state; or

95 (ii) If and to the extent that the patent or copyright is
96 utilized by the payer in a state in which the taxpayer is not
97 taxable and the taxpayer's commercial domicile is in this
98 state.

99 (B) A patent is utilized in a state to the extent that it is
100 employed in production, fabrication, manufacturing or
101 other processing in the state or to the extent that a
102 patented product is produced in the state. If the basis of
103 receipts from patent royalties does not permit allocation to
104 states or if the accounting procedures do not reflect states
105 of utilization, the patent is utilized in the state in which the
106 taxpayer's commercial domicile is located.

107 (C) A copyright is utilized in a state to the extent that
108 printing or other publication originates in the state. If the
109 basis of receipts from copyright royalties does not permit
110 allocation to states or if the accounting procedures do not
111 reflect states of utilization, the copyright is utilized in the
112 state in which the taxpayer's commercial domicile is
113 located.

114 (5) *Corporate partner's distributive share.* —

115 (A) Persons carrying on business as partners in a
116 partnership, as defined in Section 761 of the Internal
117 Revenue Code of 1986, as amended, are liable for income
118 tax only in their separate or individual capacities.

119 (B) A corporate partner's distributive share of income,
120 gain, loss, deduction or credit of a partnership shall be
121 modified as provided in section six of this article for each
122 partnership. For taxable years beginning on or after the
123 thirty-first day of December, one thousand nine hundred
124 ninety-eight, the distributive share shall then be allocated
125 and apportioned as provided in this section, using the
126 partnership's property, payroll and sales factors. The sum

127 of that portion of the distributive share allocated and
128 apportioned to this state shall then be treated as
129 distributive share allocated to this state; and that portion of
130 distributive share allocated or apportioned outside this
131 state shall be treated as distributive share allocated outside
132 this state, unless the taxpayer requests or the tax
133 commissioner, under subsection (h) of this section
134 requires that the distributive share be treated differently.

135 (e) *Business activities partially within and partially*
136 *without this state; apportionment of business income.* —
137 All net income, after deducting those items specifically
138 allocated under subsection (d), shall be apportioned to this
139 state by multiplying the net income by a fraction, the
140 numerator of which is the property factor plus the payroll
141 factor plus two times the sales factor, and the denominator
142 of which is four, reduced by the number of factors, if any,
143 having no denominator.

144 (1) *Property factor.* — The property factor is a
145 fraction, the numerator of which is the average value of
146 the taxpayer's real and tangible personal property owned
147 or rented and used by it in this state during the taxable
148 year and the denominator of which is the average value of
149 all the taxpayer's real and tangible personal property
150 owned or rented and used by the taxpayer during the
151 taxable year, which is reported on Schedule L Federal
152 Form 1120, plus the average value of all real and tangible
153 personal property leased and used by the taxpayer during
154 the taxable year.

155 (2) *Value of property.* — Property owned by the
156 taxpayer shall be valued at its original cost, adjusted by
157 subsequent capital additions or improvements thereto and
158 partial disposition thereof, by reason of sale, exchange,
159 abandonment, etc.: *Provided*, That where records of
160 original cost are unavailable or cannot be obtained without
161 unreasonable expense, property shall be valued at original
162 cost as determined under rules of the tax commissioner.
163 Property rented by the taxpayer from others shall be
164 valued at eight times the annual rental rate. The term "net
165 annual rental rate" is the annual rental paid, directly or

166 indirectly, by the taxpayer, or for its benefit, in money or
167 other consideration for the use of property and includes:

168 (A) Any amount payable for the use of real or
169 tangible personal property, or any part of the property,
170 whether designated as a fixed sum of money or as a
171 percentage of sales, profits or otherwise.

172 (B) Any amount payable as additional rent or in lieu
173 of rents, such as interest, taxes, insurance, repairs or any
174 other items which are required to be paid by the terms of
175 the lease or other arrangement, not including amounts
176 paid as service charges, such as utilities, janitor services,
177 etc. If a payment includes rent and other charges
178 unsegregated, the amount of rent shall be determined by
179 consideration of the relative values of the rent and the
180 other items.

181 (3) *Movable property.* — The value of movable
182 tangible personal property used both within and without
183 this state shall be included in the numerator to the extent
184 of its utilization in this state. The extent of the utilization
185 shall be determined by multiplying the original cost of the
186 property by a fraction, the numerator of which is the
187 number of days of physical location of the property in
188 this state during the taxable period, and the denominator
189 of which is the number of days of physical location of the
190 property everywhere during the taxable year. The
191 number of days of physical location of the property may
192 be determined on a statistical basis or by other reasonable
193 method acceptable to the tax commissioner.

194 (4) *Leasehold improvements.* — Leasehold
195 improvements shall, for purposes of the property factor,
196 be treated as property owned by the taxpayer regardless of
197 whether the taxpayer is entitled to remove the
198 improvements or the improvements revert to the lessor
199 upon expiration of the lease. Leasehold improvements
200 shall be included in the property factor at their original
201 cost.

202 (5) *Average value of property.* — The average value
203 of property shall be determined by averaging the values at
204 the beginning and ending of the taxable year: *Provided,*

205 That the tax commissioner may require the averaging of
206 monthly values during the taxable year if substantial
207 fluctuations in the values of the property exist during the
208 taxable year, or where property is acquired after the
209 beginning of the taxable year, or is disposed of, or whose
210 rental contract ceases, before the end of the taxable year.

211 (6) *Payroll factor.* — The payroll factor is a fraction,
212 the numerator of which is the total compensation paid in
213 this state during the taxable year by the taxpayer for
214 compensation, and the denominator of which is the total
215 compensation paid by the taxpayer during the taxable
216 year, as shown on the taxpayer's federal income tax return
217 as filed with the Internal Revenue Service, as reflected in
218 the schedule of wages and salaries and that portion of cost
219 of goods sold which reflects compensation, or as shown on
220 a pro forma return.

221 (7) *Compensation.* — The term "compensation" means
222 wages, salaries, commissions and any other form of
223 remuneration paid to employees for personal services.
224 Payments made to an independent contractor or to any
225 other person not properly classifiable as an employee shall
226 be excluded. Only amounts paid directly to employees
227 are included in the payroll factor. Amounts considered as
228 paid directly to employees include the value of board,
229 rent, housing, lodging and other benefits or services
230 furnished to employees by the taxpayer in return for
231 personal services, provided the amounts constitute income
232 to the recipient for federal income tax purposes.

233 (8) *Employee.* — The term "employee" means:

234 (A) Any officer of a corporation; or

235 (B) Any individual who, under the usual common-law
236 rule applicable in determining the employer-employee
237 relationship, has the status of an employee.

238 (9) *Compensation.* — Compensation is paid or
239 accrued in this state if:

240 (A) The employee's service is performed entirely
241 within this state; or

242 (B) The employee's service is performed both within
243 and without this state, but the service performed without
244 the state is incidental to the individual's service within this
245 state. The word "incidental" means any service which is
246 temporary or transitory in nature, or which is rendered in
247 connection with an isolated transaction; or

248 (C) Some of the service is performed in this state and:

249 (i) The employee's base of operations or, if there is no
250 base of operations, the place from which the service is
251 directed or controlled is in the state; or

252 (ii) The base of operations or the place from which the
253 service is directed or controlled is not in any state in which
254 some part of the service is performed, but the employee's
255 residence is in this state.

256 The term "base of operations" is the place of more or
257 less permanent nature from which the employee starts his
258 or her work and to which he or she customarily returns in
259 order to receive instructions from the taxpayer or
260 communications from his or her customers or other
261 persons or to replenish stock or other materials, repair
262 equipment, or perform any other functions necessary to
263 the exercise of his or her trade or profession at some other
264 point or points. The term "place from which the service is
265 directed or controlled" refers to the place from which the
266 power to direct or control is exercised by the taxpayer.

267 (10) *Sales factor.* — The sales factor is a fraction, the
268 numerator of which is the gross receipts of the taxpayer
269 derived from transactions and activity in the regular
270 course of its trade or business in this state during the
271 taxable year (business income), less returns and
272 allowances. The denominator of the fraction is the total
273 gross receipts derived by the taxpayer from transactions
274 and activity in the regular course of its trade or business
275 during the taxable year (business income), and reflected in
276 its gross income reported and as appearing on the
277 taxpayer's Federal Form 1120, and consisting of those
278 certain pertinent portions of the (gross income) elements
279 set forth: *Provided*, That if either the numerator or the
280 denominator includes interest or dividends from
281 obligations of the United States government which are
282 exempt from taxation by this state, the amount of such

283 interest and dividends, if any, shall be subtracted from the
284 numerator or denominator in which it is included.

285 (11) *Allocation of sales of tangible personal pro-*
286 *perty.* —

287 (A) Sales of tangible personal property are in this state
288 if:

289 (i) The property is received in this state by the
290 purchaser, other than the United States government,
291 regardless of the f.o.b. point or other conditions of the
292 sale. In the case of delivery by common carrier or other
293 means of transportation, the place at which the property is
294 ultimately received after all transportation has been
295 completed is the place at which the property is received by
296 the purchaser. Direct delivery in this state, other than for
297 purposes of transportation, to a person or firm designated
298 by the purchaser, is delivery to the purchaser in this state,
299 and direct delivery outside this state to a person or firm
300 designated by the purchaser is not delivery to the
301 purchaser in this state, regardless of where title passes or
302 other conditions of sale; or

303 (ii) The property is shipped from an office, store,
304 warehouse, factory or other place of storage in this state
305 and the purchaser is the United States government.

306 (B) All other sales of tangible personal property
307 delivered or shipped to a purchaser within a state in which
308 the taxpayer is not taxed, as defined in subsection (b) of
309 this section, shall be excluded from the denominator of
310 the sales factor.

311 (12) *Allocation of other sales.* — Sales, other than
312 sales of tangible personal property are in this state if:

313 (A) The income-producing activity is performed in
314 this state; or

315 (B) The income-producing activity is performed both
316 in and outside this state and a greater proportion of
317 the income-producing activity is performed in this state
318 than in any other state, based on costs of performance; or

319 (C) The sale constitutes business income to the
320 taxpayer, or the taxpayer is a financial organization not

321 having its commercial domicile in this state, and in either
322 case the sale is a receipt described as attributable to this
323 state in subsection (b), section seven-b of this article.

324 (13) *Financial organizations and other taxpayers with*
325 *business activities partially within and partially without*
326 *this state.* — Notwithstanding anything contained in this
327 section to the contrary, in the case of financial
328 organizations and other taxpayers, not having their
329 commercial domicile in this state, the rules of this
330 subsection apply to the apportionment of income from
331 their business activities except as expressly otherwise
332 provided in subsection (b), section seven-b of this article.

333 (f) *Income-producing activity.* — The term
334 "income-producing activity" applies to each separate item
335 of income and means the transactions and activity directly
336 engaged in by the taxpayer in the regular course of its
337 trade or business for the ultimate purpose of obtaining
338 gain or profit. The activity does not include transactions
339 and activities performed on behalf of the taxpayer, such as
340 those conducted on its behalf by an independent
341 contractor. "Income-producing activity" includes, but is
342 not limited to, the following:

343 (1) The rendering of personal services by employees
344 with utilization of tangible and intangible property by the
345 taxpayer in performing a service;

346 (2) The sale, rental, leasing, licensing or other use of
347 real property;

348 (3) The sale, rental, leasing, licensing or other use of
349 tangible personal property; or

350 (4) The sale, licensing or other use of intangible
351 personal property.

352 The mere holding of intangible personal property is
353 not, in itself, an income-producing activity: *Provided,*
354 That the conduct of the business of a financial
355 organization is an income-producing activity.

356 (g) *Cost of performance.* — The term "cost of
357 performance" means direct costs determined in a manner
358 consistent with generally accepted accounting principles
359 and in accordance with accepted conditions or practices in
360 the trade or business of the taxpayer.

361 (h) *Other methods of allocation and apportion-*
362 *ment.* —

363 (1) *General.* — If the allocation and apportionment
364 provisions of subsections (d) and (e) of this section do not
365 fairly represent the extent of the taxpayer's business
366 activities in this state, the taxpayer may petition for or the
367 tax commissioner may require, in respect to all or any part
368 of the taxpayer's business activities, if reasonable:

369 (A) Separate accounting;

370 (B) The exclusion of one or more of the factors;

371 (C) The inclusion of one or more additional factors
372 which will fairly represent the taxpayer's business activity
373 in this state; or

374 (D) The employment of any other method to
375 effectuate an equitable allocation or apportionment of the
376 taxpayer's income. The petition shall be filed no later
377 than the due date of the annual return for the taxable year
378 for which the alternative method is requested, determined
379 without regard to any extension of time for filing the
380 return, and the petition shall include a statement of the
381 petitioner's objections and of the alternative method of
382 allocation or apportionment as it believes to be proper
383 under the circumstances with such detail and proof as the
384 tax commissioner may require.

385 (2) *Alternative method for public utilities.* — If the
386 taxpayer is a public utility and if the allocation and
387 apportionment provisions of subsections (d) and (e) do
388 not fairly represent the taxpayer's business activities in this
389 state, the taxpayer may petition for, or the tax
390 commissioner may require, as an alternative to the other
391 methods provided for in paragraph (1) of this subsection,
392 the allocation and apportionment of the taxpayer's net
393 income in accordance with any system of accounts
394 prescribed by the public service commission of this state
395 pursuant to the provisions of section eight, article two,
396 chapter twenty-four of this code: *Provided*, That the
397 allocation and apportionment provisions of the system of
398 accounts fairly represent the extent of the taxpayer's
399 business activities in this state for the purposes of the tax
400 imposed by this article.

401 (3) *Burden of proof.* — In any proceeding before the
402 tax commissioner or in any court in which employment of
403 one of the methods of allocation or apportionment
404 provided for in paragraph (1) or (2) of this subsection is
405 sought, on the ground that the allocation and
406 apportionment provisions of subsections (d) and (e) do
407 not fairly represent the extent of the taxpayer's business
408 activities in this state, the burden of proof is:

409 (A) If the tax commissioner seeks employment of one
410 of the methods, on the tax commissioner; or

411 (B) If the taxpayer seeks employment of one of the
412 other methods, on the taxpayer.

CHAPTER 309

(Com. Sub. for S. B. 403—By Senator Craigo)

[Passed March 13, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections fourteen, sixteen, nineteen, twenty-one, twenty-three, twenty-four and twenty-five, article three, chapter eleven-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to sheriff's tax lien sales; requiring the sheriff to collect subsequent taxes due from the purchaser of a tax lien before a certificate of sale is issued; establishing a time limit before charges attach for expenses incurred for preparation of notices to redeem; requiring the purchaser of a tax lien to furnish the person redeeming the property with a certification of title examination; providing that purchasers may only be reimbursed for title examinations performed by certain persons; modifying form of notice to redeem; and making certain technical revisions.

Be it enacted by the Legislature of West Virginia:

That sections fourteen, sixteen, nineteen, twenty-one, twenty-three, twenty-four and twenty-five, article three, chapter eleven-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 3. SALE OF TAX LIENS AND NONENTERED, ESCHEATED AND WASTE AND UNAPPROPRIATED LANDS.

- §11A-3-14. Purchase by individual at tax sale; certificate of sale.
- §11A-3-16. Subsequent tax payments by purchaser.
- §11A-3-19. What purchaser must do before he can secure deed.
- §11A-3-21. Notice to redeem.
- §11A-3-23. Redemption from purchase; receipt; list of redemptions; lien; lien of person redeeming interest of another; record.
- §11A-3-24. Notice of redemption to purchaser; moneys received by sheriff.
- §11A-3-25. Distribution of surplus to purchaser.

§11A-3-14. Purchase by individual at tax sale; certificate of sale.

1 (a) If the highest bidder present at the sale provided
2 for in section five of this article, bids and pays at least the
3 amount of taxes, interest and charges for which the tax
4 lien on any real estate is offered for sale, the sheriff shall
5 issue to him or her a certificate of sale for the purchase
6 money, except the sheriff shall require payment of any
7 subsequent taxes due at the time of the sale before a
8 certificate of sale is issued. The heading of the certificate
9 shall be:

10 Memorandum of tax lien on real estate sold in the
11 county of _____ on this ____ day of _____, 19 __,
12 for the nonpayment of taxes charged thereon for the year
13 (or years) 19__.

14 Except for the heading, the tax commissioner shall
15 prescribe the form of the receipt.

16 (b) The certificate of sale shall describe the real estate
17 subject to the tax lien that was sold, the total amount of all
18 taxes, interest, penalties and costs paid for each lot or tract,
19 and the rate of interest to which the purchaser is entitled
20 upon redemption. The certificate shall also set forth
21 columns for the entry of subsequent years taxes paid and
22 costs required by the sheriff to be paid on the date of the
23 sale, and for the entry of subsequent taxes and costs paid.

24 For each certificate delivered, the purchaser shall pay a fee
25 of ten dollars, and that amount shall be included in the
26 costs described in the certificate.

§11A-3-16. Subsequent tax payments by purchaser.

1 Any person who has paid any subsequent taxes, other
2 than the subsequent taxes paid on the date of the sale as
3 provided for in section fourteen of this article, on lands
4 for which he or she holds the certificate of sale described
5 in section fourteen or fifteen of this article shall produce
6 the certificate and copies of paid tax receipts to the clerk
7 of the county commission, who shall endorse the amount
8 of the subsequent taxes and the date of payment of the
9 taxes in his or her records upon the payment to the clerk
10 of a fee for the endorsement in the amount of two dollars.

§11A-3-19. What purchaser must do before he can secure deed.

1 (a) At any time after the thirty-first day of October of
2 the year following the sheriff's sale, and on or before the
3 thirty-first day of December of the same year, the
4 purchaser, his or her heirs or assigns, in order to secure a
5 deed for the real estate subject to the tax lien or liens
6 purchased, shall: (1) Prepare a list of those to be served
7 with notice to redeem and request the clerk to prepare and
8 serve the notice as provided in sections twenty-one and
9 twenty-two of this article; (2) provide the clerk with a list
10 of any additional expenses incurred after the first day of
11 January of the year following the sheriff's sale for the
12 preparation of the list of those to be served with notice to
13 redeem including proof of the additional expenses in the
14 form of receipts or other evidence of reasonable legal
15 expenses incurred for the services of any attorney who has
16 performed an examination of the title to the real estate and
17 rendered a written opinion and certification thereon; (3)
18 deposit, or offer to deposit, with the clerk a sum sufficient
19 to cover the costs of preparing and serving the notice; and
20 (4) present the purchaser's certificate of sale, or order of
21 the county commission where the certificate has been lost
22 or wrongfully withheld from the owner, to the clerk of the
23 county commission. For failure to meet these

24 requirements, the purchaser shall lose all the benefits of
25 his or her purchase.

26 (b) If the person requesting preparation and service of
27 the notice is an assignee of the purchaser, he or she shall,
28 at the time of the request, file with the clerk a written
29 assignment to him or her of the purchaser's rights,
30 executed, acknowledged and certified in the manner
31 required to make a valid deed.

32 (c) Whenever any certificate given by the sheriff for a
33 tax lien on any land, or interest in the land sold for
34 delinquent taxes, or any assignment of the lien is lost or
35 wrongfully withheld from the rightful owner of the land
36 and the land or interest has not been redeemed, the county
37 commission may receive evidence of the loss or wrongful
38 detention and, upon satisfactory proof of that fact, may
39 cause a certificate of the proof and finding, properly
40 attested by the county clerk under the seal of the county,
41 to be delivered to the rightful claimant, and a record of the
42 certificate shall be duly made by the county clerk in the
43 recorded proceedings of the commission.

§11A-3-21. Notice to redeem.

1 Whenever the provisions of section nineteen of this
2 article have been complied with, the clerk of the county
3 commission shall prepare a notice in form or effect as
4 follows:

5 To _____.

6 You will take notice that _____, the purchaser
7 (or _____, the assignee, heir or devisee of
8 _____, the purchaser) of the tax lien(s) on the
9 following real estate, _____, (here describe
10 the real estate for which the tax lien(s) thereon were sold)
11 located in _____, (here name the city, town or
12 village in which the real estate is situated or, if not within a
13 city, town or village, give the district and a general
14 description) which was returned delinquent in the name of
15 _____, and for which the tax lien(s) thereon
16 was sold by the sheriff of _____ County at
17 the sale for delinquent taxes made on the

18 _____ day of _____, 19____,
 19 has requested that you be notified that a deed for such real
 20 estate will be made to him on or after the first day of
 21 April, 19____, as provided by law, unless before that day
 22 you redeem such real estate. The amount you will have to
 23 pay to redeem on the last day, March thirty-first, will be as
 24 follows:

25 Amount equal to the taxes, interest, and charges due
 26 on the date of sale, with interest to March 31, 19__
 27\$_____

28 Amount of subsequent years taxes paid on the
 29 property, since the sale, with interest to March 31, 19__
 30 \$_____

31 Amount paid for title examination and preparation of
 32 list of those to be served, and for preparation and service
 33 of the notice with interest from January 1, 19 (insert year)
 34 following the sheriff's sale to March 31, 19__
 35 \$_____

36 Amount paid for other statutory costs
 37 (describe)_____

38 _____
 39\$_____

40 Total \$_____

41 You may redeem at any time before March thirty-first,
 42 nineteen hundred _____, by paying the
 43 above total less any unearned interest.

44 Given under my hand this _____ day of
 45 _____, 19____.

46 _____

47 Clerk of the County Commission
 48 of _____ County,
 49 State of West Virginia

50 The clerk for his or her service in preparing the notice
 51 shall receive a fee of five dollars for the original and one

52 dollar for each copy required. Any additional costs which
53 must be expended for publication, or service of the notice
54 in the manner provided for serving process commencing a
55 civil action, or for service of process by certified mail,
56 shall be charged by the clerk. All costs provided by this
57 section shall be included as redemption costs and included
58 in the notice described in this section.

**§11A-3-23. Redemption from purchase; receipt; list of
redemptions; lien; lien of person redeeming
interest of another; record.**

1 (a) After the sale of any tax lien on any real estate
2 pursuant to section five of this article, the owner of, or any
3 other person who was entitled to pay the taxes on, any real
4 estate for which a tax lien thereon was purchased by an
5 individual may redeem at any time before a tax deed is
6 issued for the real estate. In order to redeem, he or she
7 shall pay to the clerk of the county commission the
8 following amounts: (1) An amount equal to the taxes,
9 interest and charges due on the date of the sale, with
10 interest at the rate of one percent per month from the date
11 of sale; (2) all other taxes which have since been paid by
12 the purchaser, his or her heirs or assigns, with interest at
13 the rate of one percent per month from the date of
14 payment; (3) any additional expenses incurred from the
15 first day of January of the year following the sheriff's sale
16 to the date of redemption for the preparation of the list of
17 those to be served with notice to redeem and any title
18 examination incident thereto, with interest at the rate of
19 one percent per month from the date of payment for
20 reasonable legal expenses incurred for the services of an
21 attorney who has performed an examination of the title to
22 the real estate and rendered a written opinion and
23 certification thereon: *Provided*, That the amount he or
24 she shall be required to pay, excluding the interest, for the
25 expenses incurred for the preparation of the list of those
26 to be served with notice to redeem required by section
27 nineteen of this article and any title examination
28 performed, shall not exceed two hundred dollars; and (4)
29 all additional statutory costs paid by the purchaser. Where
30 the clerk has not received from the purchaser satisfactory
31 proof of the expenses incurred in preparing the notice to

32 redeem, and any examination of title incident thereto, in
33 the form of receipts or other evidence of legal expenses
34 incurred as provided in section nineteen of this article, the
35 person redeeming shall pay the clerk the sum of two
36 hundred dollars plus interest at the rate of one percent per
37 month from the first day of January of the year following
38 the sheriff's sale for disposition by the sheriff pursuant to
39 the provisions of sections ten, twenty-four, twenty-five and
40 thirty-two of this article.

41 The person redeeming shall be given a receipt for the
42 payment.

43 (b) Any person who, by reason of the fact that no
44 provision is made for partial redemption of the tax lien on
45 real estate purchased by an individual, is compelled in
46 order to protect himself or herself to redeem the tax lien
47 on all of the real estate when it belongs, in whole or in
48 part, to some other person, shall have a lien on the interest
49 of that other person for the amount paid to redeem the
50 interest. He or she shall lose his or her right to the lien,
51 however, unless within thirty days after payment he or she
52 files with the clerk of the county commission his or her
53 claim in writing against the owner of the interest, together
54 with the receipt provided for in this section. The clerk
55 shall docket the claim on the judgment lien docket in his
56 or her office and properly index the claim. The lien may
57 be enforced as other judgment liens are enforced.

§11A-3-24. Notice of redemption to purchaser; moneys received by sheriff.

1 (a) Upon payment of the sum necessary to redeem, the
2 clerk shall deliver to the sheriff the redemption money
3 paid and the name and address of the purchaser, his or her
4 heirs and assigns. The clerk shall also note the fact of
5 redemption on his or her record of delinquent lands.

6 (b) Of the redemption money received by the sheriff
7 pursuant to this section, the sheriff shall deposit into the
8 sale of tax lien surplus fund provided by section ten of
9 this article an amount equal to the amount of taxes,
10 interest and charges due on the date of the sale, plus the
11 interest at the rate of one percent per month from the date

12 of sale to the date of redemption, the amount of the
13 subsequent years taxes paid the day of or after the
14 sheriff's sale, plus interest at the rate of one percent per
15 month thereon from the date of payment to the date of
16 redemption, the amount of any additional expenses
17 incurred after the first day of January of the year
18 following the sheriff's sale for the preparation of the list
19 of those to be served with notice to redeem and any
20 examination of title performed and certified pursuant to
21 the provisions of section nineteen of this article, plus
22 interest at a rate of one percent per month from the date
23 of payment to the date of redemption. In cases where the
24 clerk has not received from the purchaser satisfactory
25 proof of additional expenses incurred after the first day of
26 January of the year following the sheriff's sale as
27 provided in section twenty-three of this article, the sheriff
28 shall deposit the money received in the sale of tax lien
29 surplus fund provided by section ten of this article.

§11A-3-25. Distribution of surplus to purchaser.

1 (a) Where the land has been redeemed in the manner
2 set forth in section twenty-three of this article, and the
3 clerk has delivered the redemption money to the sheriff
4 pursuant to section twenty-four of this article, the sheriff
5 shall, upon delivery of the sum necessary to redeem,
6 promptly notify the purchaser, his or her heirs or assigns,
7 by mail, of the fact of the redemption and pay to the
8 purchaser, his or her heirs or assigns the following
9 amounts: (1) From the sale of tax lien surplus fund
10 provided by section ten of this article: (A) The surplus of
11 money paid in excess of the amount of the taxes, interest
12 and charges due and paid to the sheriff at the sale; and (B)
13 the amount of taxes, interest and charges due on the date
14 of the sale, plus the interest at the rate of one percent per
15 month from the date of sale to the date of redemption; (2)
16 all other taxes on the land which have since been paid by
17 the purchaser, his or her heirs or assigns, with interest at
18 the rate of one percent per month from the date of
19 payment to the date of redemption; (3) any additional
20 expenses that may have been incurred from the first day
21 of January of the year following the sheriff's sale to the
22 date of redemption in preparing the list of those to be

23 served with notice to redeem and any title examination
24 performed in accordance with section nineteen of this
25 article with interest at the rate of one percent per month
26 from the date of payment, but the amount which shall be
27 paid, excluding the interest, for the expenses incurred for
28 the preparation of the list of those to be served with notice
29 to redeem required by section nineteen of this article, and
30 any title examination shall not exceed two hundred
31 dollars; and (4) all additional statutory costs paid by the
32 purchaser.

33 (b) (1) The notice shall include:

34 (A) A copy of the redemption certificate issued by the
35 county clerk;

36 (B) An itemized statement of the redemption money
37 to which the purchaser is entitled pursuant to the
38 provisions of this section; and

39 (C) Where, at the time of the redemption, the clerk has
40 not received from the purchaser satisfactory proof of the
41 expenses incurred in preparing the list of those to be
42 served with notice to redeem and any title examination
43 performed in accordance with section nineteen of this
44 article, the clerk shall also include instructions to the
45 purchaser as to how these expenses may be claimed.

46 (2) Subject to the limitations of this section, the
47 purchaser is entitled to recover any expenses incurred in
48 preparing the list of those to be served with notice to
49 redeem and any title examination incident thereto from
50 the first day of January of the year following the sheriff's
51 sale to the date of the sale to the date of the redemption.

52 (c) Where, pursuant to section twenty-three of this
53 article, the clerk has not received from the purchaser
54 satisfactory proof of the expenses incurred in preparing
55 the list of those to be served with notice to redeem, and
56 any title examination incident thereto, in the form of
57 receipts or other evidence and therefore received from the
58 purchaser as required by that section and delivered to the
59 sheriff the sum of two hundred dollars plus interest at the
60 rate of one percent per month from the first day of

61 January of the year following the sheriff's sale to the date
62 of the sale to the date of redemption, and the sheriff has
63 not received from the purchaser satisfactory proof of the
64 expenses within thirty days from the date of notification,
65 the sheriff shall refund the amount to the person
66 redeeming and the purchaser is barred from any claim.
67 Where, pursuant to that section, the clerk has received
68 from the purchaser and therefore delivered to the sheriff
69 the sum of two hundred dollars plus interest at the rate of
70 one percent per month from the first day of January of
71 the year following the sheriff's sale to the date of the sale
72 to the date of redemption, and the purchaser provides the
73 sheriff within thirty days from the date of notification
74 satisfactory proof of the expenses, and the amount of the
75 expenses is less than the amount paid by the person
76 redeeming, the sheriff shall refund the difference to the
77 person redeeming.

CHAPTER 310

(Com. Sub. for H. B. 4110—By Mr. Speaker, Mr. Kiss, and Delegates Yeager,
Mezzatesta, Jenkins, Hubbard, Smith and Hall)

[Passed March 13, 1998; in effect July 1, 1998. Approved by the Governor.]

AN ACT to amend and reenact section seventeen, article seven-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing the service credit within the teachers retirement system for teachers who serve as an officer with a statewide professional association and providing that members elected to public office be credited for time served in discharging legislative duties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

§18-7A-17. Statement and computation of teachers' service.

1 (a) Under rules adopted by the retirement board, each
2 teacher shall file a detailed statement of his or her length
3 of service as a teacher for which he or she claims credit.
4 The retirement board shall determine what part of a year is
5 the equivalent of a year of service. In computing the
6 service, however, it shall credit no period of more than a
7 month's duration during which a member was absent
8 without pay, nor shall it credit for more than one year of
9 service performed in any calendar year.

10 (b) For the purpose of this article, the retirement board
11 shall grant prior service credit to new entrants and other
12 members of the retirement system for service in any of the
13 armed forces of the United States in any period of
14 national emergency within which a federal Selective
15 Service Act was in effect. For purposes of this section,
16 "armed forces" includes women's army corps, women's
17 appointed volunteers for emergency service, army nurse
18 corps, spars, women's reserve and other similar units
19 officially parts of the military service of the United States.
20 The military service is considered equivalent to public
21 school teaching, and the salary equivalent for each year of
22 that service is the actual salary of the member as a teacher
23 for his or her first year of teaching after discharge from
24 military service. Prior service credit for military service
25 shall not exceed ten years for any one member, nor shall it
26 exceed twenty-five percent of total service at the time of
27 retirement.

28 (c) For service as a teacher in the employment of the
29 federal government, or a state or territory of the United
30 States, or a governmental subdivision of that state or
31 territory, the retirement board shall grant credit to the
32 member: *Provided*, That the member shall pay to the
33 system double the amount he or she contributed during
34 the first full year of current employment, times the
35 number of years for which credit is granted, plus interest
36 at a rate to be determined by the retirement board. The
37 interest shall be deposited in the reserve fund and service
38 credit granted at the time of retirement shall not exceed
39 the lesser of ten years or fifty percent of the member's
40 total service as a teacher in West Virginia. Any transfer
41 of out-of-state service, as provided in this article, shall not

42 be used to establish eligibility for a retirement allowance
43 and the retirement board shall grant credit for the
44 transferred service as additional service only: *Provided,*
45 *however,* That a transfer of out-of-state service is
46 prohibited if the service is used to obtain a retirement
47 benefit from another retirement system: *Provided further,*
48 That salaries paid to members for service prior to entrance
49 into the retirement system shall not be used to compute
50 the average final salary of the member under the
51 retirement system.

52 (d) Service credit for members or retired members
53 shall not be denied on the basis of minimum income rules
54 promulgated by the teachers retirement board: *Provided.*
55 That the member or retired member shall pay to the
56 system the amount he or she would have contributed
57 during the year or years of public school service for which
58 credit was denied as a result of the minimum income rules
59 of the teachers retirement board.

60 (e) No members shall be considered absent from
61 service while serving as a member or employee of the
62 Legislature of the state of West Virginia during any duly
63 constituted session of that body or while serving as an
64 elected member of a county commission during any duly
65 constituted session of that body.

66 (f) No member shall be considered absent from
67 service as a teacher while serving as an officer with a
68 statewide professional teaching association, or who has
69 served in that capacity, and no retired teacher, who served
70 in that capacity while a member, shall be considered to
71 have been absent from service as a teacher by reason of
72 that service: *Provided,* That the period of service credit
73 granted for that service shall not exceed ten years:
74 *Provided, however,* That a member or retired teacher who
75 is serving or has served as an officer of a statewide
76 professional teaching association shall make deposits to
77 the teachers retirement board, for the time of any absence,
78 in an amount double the amount which he or she would
79 have contributed in his or her regular assignment for a
80 like period of time.

81 The teachers retirement board shall grant service credit
82 to any former or present member of the West Virginia
83 public employees retirement system who has been a

84 contributing member for more than three years, for
85 service previously credited by the public employees
86 retirement system and: (1) Shall require the transfer of the
87 member's contributions to the teachers retirement system;
88 or (2) shall require a repayment of the amount withdrawn
89 any time prior to the member's retirement: *Provided,*
90 That there shall be added by the member to the amounts
91 transferred or repaid under this subsection an amount
92 which shall be sufficient to equal the contributions he or
93 she would have made had the member been under the
94 teachers retirement system during the period of his or her
95 membership in the public employees retirement system
96 plus interest at a rate of six percent compounded annually
97 from the date of withdrawal to the date of payment. The
98 interest paid shall be deposited in the reserve fund.

99 (g) For service as a teacher in an elementary or
100 secondary parochial school, located within this state and
101 fully accredited by the West Virginia department of
102 education, the retirement board shall grant credit to the
103 member: *Provided,* That the member shall pay to the
104 system double the amount contributed during the first full
105 year of current employment, times the number of years
106 for which credit is granted, plus interest at a rate to be
107 determined by the retirement board. The interest shall be
108 deposited in the reserve fund and service granted at the
109 time of retirement shall not exceed the lesser of ten years
110 or fifty percent of the member's total service as a teacher
111 in the West Virginia public school system. Any transfer of
112 parochial school service, as provided in this section, may
113 not be used to establish eligibility for a retirement
114 allowance and the board shall grant credit for the transfer
115 as additional service only: *Provided, however,* That a
116 transfer of parochial school service is prohibited if the
117 service is used to obtain a retirement benefit from another
118 retirement system.

119 (h) If a member is not eligible for prior service credit
120 or pension as provided in this article, then his or her prior
121 service shall not be considered a part of his or her total
122 service.

123 (i) A member who withdrew from membership may
124 regain his or her former membership rights as specified in
125 section thirteen of this article only in case he or she has
126 served two years since his or her last withdrawal.

127 (j) Subject to the provisions of subsection (a) through
128 (i) of this section, the board shall verify as soon as
129 practicable the statements of service submitted. The
130 retirement board shall issue prior service certificates to all
131 persons eligible for the certificates under the provisions of
132 this article. The certificates shall state the length of the
133 prior service credit, but in no case shall the prior service
134 credit exceed forty years.

135 Notwithstanding any provision of this article to the
136 contrary, when a member is or has been elected to serve as
137 a member of the Legislature, and the proper discharge of
138 his or her duties of public office require that member to
139 be absent from his or her teaching or administrative duties,
140 the time served in discharge of his or her duties of the
141 legislative office are credited as time served for purposes
142 of computing service credit: *Provided*, That the board may
143 not require any additional contributions from that
144 member in order for the board to credit him or her with
145 the contributing service credit earned while discharging
146 official legislative duties.

CHAPTER 311

(Com. Sub. for H. B. 2430—By Mr. Speaker, Mr. Klus)

[Passed March 14, 1998; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-five, article seven-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the state teachers retirement system; and retirement plan selection by teachers retired due to disability.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.**§18-7A-25. Eligibility for retirement allowance.**

1 Any member who has attained the age of sixty years
2 or who has had thirty-five years of total service as a
3 teacher in West Virginia, regardless of age, shall be eligible
4 for an annuity. No new entrant nor present member shall
5 be eligible for an annuity, however, if either has less than
6 five years of service to his or her credit.

7 Any member who has attained the age of fifty-five
8 years and who has served thirty years as a teacher in West
9 Virginia shall be eligible for an annuity.

10 Any member who has served at least thirty but less
11 than thirty-five years as a teacher in West Virginia and is
12 less than fifty-five years of age shall be eligible for an
13 annuity, but the same shall be the reduced actuarial
14 equivalent of the annuity the member would have received
15 if such member were age fifty-five at the time such
16 annuity was applied for.

17 The request for any annuity shall be made by the
18 member in writing to the retirement board, but in case of
19 retirement for disability, the written request may be made
20 by either the member or the employer.

21 A member shall be eligible for annuity for disability if
22 he or she satisfies the conditions in either subdivision (a)
23 or subdivision (b) and meets the conditions of subdivision
24 (c) as follows:

25 (a) His or her service as a teacher in West Virginia
26 must total at least ten years, and service as a teacher must
27 have been terminated because of disability, which
28 disability must have caused absence from service for at
29 least six months before his or her application for disability
30 annuity is approved.

31 (b) His or her service as a teacher in West Virginia
32 must total at least five years, and service as a teacher must
33 have been terminated because of disability, which
34 disability must have caused absence from service for at

35 least six months before his or her application for disability
36 annuity is approved and said disability is a direct and total
37 result of an act of student violence directed toward the
38 member.

39 (c) An examination by a physician or physicians
40 selected by the retirement board must show that the
41 member is at the time mentally or physically incapacitated
42 for service as a teacher, that for such service the disability
43 is total and likely to be permanent, and that he or she
44 should be retired in consequence thereof.

45 Continuance of the disability of the retired teacher
46 shall be established by medical examination, as prescribed
47 in the preceding paragraph, annually for five years after
48 retirement, and thereafter at such times as the retirement
49 board may require. Effective the first day of July, one
50 thousand nine hundred ninety-eight, a member who has
51 retired because of a disability may select an option of
52 payment under the provisions of section twenty-eight of
53 this article: *Provided*, That any option selected under the
54 provisions of section twenty-eight of this article shall be in
55 all respects the actuarial equivalent of the straight life
56 annuity benefit the disability retiree receives or would
57 receive if the options under section twenty-eight of this
58 article were not available and that no beneficiary or
59 beneficiaries of the disability annuitant may receive a
60 greater benefit, nor receive any benefit for a greater length
61 of time, than such beneficiary or beneficiaries would have
62 received had the disability retiree not made any election of
63 the options available under said section twenty-eight. In
64 determining the actuarial equivalence, the board shall take
65 into account the life expectancies of the member and the
66 beneficiary: *Provided, however*, That the life expectancies
67 may at the discretion of the board be established by an
68 underwriting medical director of a competent insurance
69 company offering annuities. Payment of the disability
70 annuity provided in this article shall cease immediately if
71 the retirement board finds that the disability of the retired
72 teacher no longer exists, or if the retired teacher refuses to
73 submit to medical examination as required by this section.

CHAPTER 312

(Com. Sub. for H. B. 4538—By Mr. Speaker, Mr. Kiss, and Delegates Martin, Michael, Varner, Mezzatesta, Jenkins and Hubbard)

[Passed March 14, 1998; in effect July 1, 1998. Approved by the Governor.]

AN ACT to amend article seven-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto two new sections, designated sections twenty-six-p and twenty-six-q, all relating to providing supplemental benefits to certain retired teachers.

Be it enacted by the Legislature of West Virginia:

That article seven-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto two new sections, designated sections twenty-six-p and twenty-six-q, all to read as follows:

§18-7A-26p. Supplemental benefits for certain teachers who retired on or after July 1, 1986, but prior to April 1, 1988.

§18-7A-26q. Supplemental benefits for certain teachers who retired prior to April 1, 1988.

§18-7A-26p. Supplemental benefits for certain teachers who retired on or after July 1, 1986, but prior to April 1, 1988.

1 As an additional supplement to other retirement
2 allowances provided, each annuitant who retired on or
3 after the first day of July, one thousand nine hundred
4 eighty-six, and before the first day of April, one thousand
5 nine hundred eighty-eight, shall receive a monthly amount
6 equal to two dollars multiplied by his or her total service
7 credit.

§18-7A-26q. Supplemental benefits for certain teachers who retired prior to April 1, 1988.

1 As an additional supplement to other retirement
2 allowances provided, each annuitant who retired before the
3 first day of April, one thousand nine hundred eighty-
4 eight, and who is receiving a monthly pension of three
5 hundred dollars or less, shall receive a monthly total
6 amount equal to one dollar multiplied by his or her total
7 service credit.

CHAPTER 313

(Com. Sub. for S. B. 94—By Senators Bowman and Snyder)

[Passed March 14, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirty-five-b, article seven-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to raising the earnings cap from two thousand five hundred dollars to seven thousand five hundred dollars per year for appointed or elected officials receiving incentive retirement benefits; and removing obsolete provisions.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

§18-7A-35b. Temporary early retirement incentives program; legislative declarations and findings; termination date.

1 Under the prior enactment of this section, the
2 Legislature found and declared that a compelling state
3 interest existed in providing a temporary, early retirement
4 incentives program for encouraging the early, voluntary
5 retirement of those public employees who were current,
6 active, contributing members of this retirement system on

7 the first day of April, one thousand nine hundred
8 eighty-eight, in the reduction of the number of the
9 employees and in reduction of governmental costs for the
10 employees. The Legislature further found that
11 maintaining an actuarially sound retirement fund is essential
12 and that the reemployment in any manner, including
13 reemployment on a contract basis, by the state of any
14 person who retired under this section is contrary to the
15 intent of the early retirement program and severely
16 threatens the fiscal integrity of the retirement fund. The
17 early retirement program under the prior enactment of
18 this section, offered employees three retirement incentive
19 options. Any person who retired under the provisions of
20 the prior enactment of this section are subject to the
21 restrictions contained in this section.

22 (a) For the purposes of this section: (1) "Contract"
23 means any personal service agreement, not involving the
24 sale of commodities, that cannot be performed within sixty
25 days or for which the total compensation exceeds seven
26 thousand five hundred dollars in any twelve-month
27 period. The term "contract" does not include any
28 agreement obtained by a retirant through a bidding
29 process and which is for the furnishing of any commodity
30 to a government agency; (2) "governmental entity" means
31 the state of West Virginia; a constitutional branch or office
32 of the state government, or any subdivision of state
33 government; a county, city or town in the state; a county
34 board of education; a separate corporation or
35 instrumentality established pursuant to a state statute; any
36 other entity currently permitted to participate in any state
37 public retirement system or the public employees
38 insurance agency; or any officer or official of any entity
39 listed in this subsection who is acting in his or her official
40 capacity; (3) "substitute teacher" means a teacher, public
41 school librarian, registered professional nurse employed
42 by the county board of education or any other person
43 employed for counselling or instructional purposes in a
44 public school in this state who is temporarily fulfilling the
45 duties of an existing person employed in a specific
46 position who is temporarily absent from that specific

47 position; and (4) "part-time elected or appointed office"
48 means any elected or appointed office that compensates its
49 members in an amount less than two thousand five
50 hundred dollars or requires less than sixty days of service
51 in any twelve-month period.

52 (b) Any member who participated in the retirement
53 incentive program under the prior enactment of this
54 section is not eligible to accept further employment or
55 accept, directly or indirectly, work on a contract basis
56 from a governmental entity: *Provided*, That the executive
57 director may approve, upon written request for good cause
58 shown, an exception allowing a retiree to perform work
59 on a contract basis: *Provided, however*, That a person
60 may retire under this section and thereafter serve in an
61 elective office: *Provided further*, That he or she shall not
62 receive the incentive option he or she elected under the
63 prior enactment of this section during the term of service
64 in that office for which the total compensation exceeds
65 seven thousand five hundred dollars, but shall receive his
66 or her annuity calculated on regular basis, as if originally
67 taken not under the prior enactment of this section but on
68 a regular basis. At the end of the term and cessation of
69 service in the office, the incentive option resumes. In
70 respect of an appointive office, as distinguished from an
71 elective office, any person retiring under this section and
72 thereafter serving in the appointive office for which the
73 total compensation exceeds seven thousand five hundred
74 dollars shall not receive the incentive option he or she
75 elected under the prior enactment of this section during
76 the term of service in that office, but the incentive option
77 resumes during that period: *And provided further*, That at
78 the end of the term and cessation of service in the
79 appointive office the incentive option provided for under
80 the prior enactment of this section resumes: *And provided*
81 *further*, That any person elected or appointed to office by
82 the state or any of its political subdivisions who waives
83 whatever salary, wage or per diem compensation he or she
84 may be entitled to by virtue of service in that office and
85 who does not receive any income from service in that
86 office except the reimbursement of out-of-pocket costs

87 and expenses that are permitted by the statutes governing
88 the office shall continue to receive the incentive option he
89 or she elected under this section. The service may not be
90 counted as contributed or credited service for purposes of
91 computing retirement benefits.

92 (c) If the elected or appointed office is a part-time
93 elected or appointed office, a person electing retirement
94 under this section may serve in the elective or appointive
95 office with no loss of the benefits provided under the prior
96 enactment of this section.

97 (d) Prior to the initiation or renewal of any contract
98 for which the total compensation exceeds seven thousand
99 five hundred dollars and entered into pursuant to this
100 section or the acceptance of any elective or appointive
101 office for which the total compensation exceeds seven
102 thousand five hundred dollars, a person who has elected to
103 retire under the early retirement provisions of the prior
104 enactment of this section shall complete a disclosure and
105 waiver statement executed under oath and acknowledged
106 by a notary public. The board shall propose rules for
107 promulgation, pursuant to article three, chapter
108 twenty-nine-a of this code, regarding the form and
109 contents of the waiver and disclosure statement. The
110 disclosure and waiver statement shall be forwarded to the
111 appropriate state public retirement system administrator
112 who shall take action to ensure that the early retirement
113 incentive option benefit is reduced in accordance with the
114 provisions of this section. The administrator shall then
115 certify that action in writing to the appropriate
116 governmental entity.

117 (e) In any event, an eligible member who retired under
118 the prior enactment of this section may continue to receive
119 his or her incentive annuity and be employed as a
120 substitute teacher, as adjunct faculty, as a school service
121 personnel substitute, or as a part-time member of the
122 faculty of southern West Virginia community college or
123 West Virginia northern community college: *Provided,*
124 That the board of directors determines that the part-time

125 employment is in accordance with policies to be adopted
126 by the board regarding adjunct faculty. For purposes of
127 this section, a "part-time member of the faculty" means an
128 individual employed solely to provide instruction for not
129 more than twelve college credits per semester.

130 (f) Any incentive retirants, under the prior enactment
131 of this section, may not receive an annuity and enter or
132 reenter any governmental retirement system established or
133 authorized to be established by the state, notwithstanding
134 any provision of the code to the contrary, unless required
135 by constitutional provision.

136 (g) The additional annuity allowed for temporary
137 early retirement is intended to be paid from the retirement
138 incentive account created as a special account in the state
139 treasury and from the funds in the special account
140 established with moneys required to be applied or
141 transferred by heads of spending units from the unused
142 portion of salary and fringe benefits in their budgets
143 accruing in respect to the positions vacated and
144 subsequently canceled under this temporary early
145 retirement program. Salary and fringe benefit moneys
146 actually saved in a particular fiscal year constitute the fund
147 source. No additional annuity shall be disallowed even
148 though initial receipts may not be sufficient, with funds of
149 the system to be applied for the purpose, as for the base
150 annuity.

151 (h) The executive secretary of the retirement system
152 shall file a quarterly report to the Legislature detailing the
153 number of retirees who have elected to accept early
154 retirement incentive options, the dollar cost to date by
155 option selected, and the projected annual cost through the
156 year two thousand.

157 (i) *Termination of temporary retirement incentives*
158 *program.* — The right to retire under this section
159 terminated on the thirtieth day of June, one thousand nine
160 hundred eighty-nine.

CHAPTER 314

(Com. Sub. for H. B. 4267—By Delegates Amores, Coleman, Pino, Kominar, Staton, Smirl and L. White)

[Passed March 14, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one hundred four, four hundred sixteen and four hundred seventeen, article three, chapter forty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections two hundred seven and two hundred eight, article four of said chapter; to amend chapter forty-six-a of said code by adding thereto a new article, designated article six-f; and to amend and reenact section five, article four, chapter sixty-one of said code, all relating to the regulation of telemarketing activities generally; defining the term "demand draft"; making transfer warranties applicable to demand drafts transferred by a person for consideration; making presentment warranties applicable to demand drafts; making transfer warranties applicable to demand drafts transferred by a customer or collecting bank; making presentment warranties applicable to demand drafts presented to the drawee for payment; defining certain terms related to the regulation of telemarketing; exempting certain persons and entities from telemarketing registration; requiring the registration of telemarketers; requiring surety bond upon application for registration; levying of civil administrative penalty for failing to register or meet security requirement; requiring a telemarketer to keep records related to telemarketing activities; mandating disclosures which a telemarketer must make when communicating with a consumer; requiring a minimum policy on accepting returns or canceling services; describing unfair or deceptive acts or practices; establishing causes of action for unfair or deceptive acts or practices; creating the felony offense of operating a criminal recovery service and establishing the penalty therefor; describing abusive acts or practices; providing for civil remedies; providing that remedies are not exclusive; providing for service of process on certain

nonresidents; and making the creation of a fraudulent demand draft a felony forgery offense subject to criminal penalties.

Be it enacted by the Legislature of West Virginia:

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

Chapter

46. Uniform Commercial Code.

46A. West Virginia Consumer Credit and Protection Act.

61. Crimes and Their Punishment.

CHAPTER 46. UNIFORM COMMERCIAL CODE.

Article

3. Negotiable Instruments.

4. Bank Deposits and Collections.

ARTICLE 3. NEGOTIABLE INSTRUMENTS.

§46-3-104. Negotiable instrument.

§46-3-416. Transfer warranties.

§46-3-417. Presentment warranties.

§46-3-104. Negotiable instrument.

1 (a) Except as provided in subsections (c) and (d),
2 "negotiable instrument" means an unconditional promise
3 or order to pay a fixed amount of money, with or without
4 interest or other charges described in the promise or order,
5 if it:

6 (1) Is payable to bearer or to order at the time it is
7 issued or first comes into possession of a holder;

8 (2) Is payable on demand or at a definite time; and

9 (3) Does not state any other undertaking or instruction
10 by the person promising or ordering payment to do any
11 act in addition to the payment of money, but the promise
12 or order may contain (i) an undertaking or power to give,
13 maintain or protect collateral to secure payment, (ii) an
14 authorization or power to the holder to confess judgment
15 or realize on or dispose of collateral or (iii) a waiver of the
16 benefit of any law intended for the advantage or
17 protection of an obligor.

18 (b) "Instrument" means a negotiable instrument.

19 (c) An order that meets all of the requirements of
20 subsection (a), except paragraph (1), and otherwise falls
21 within the definition of "check" in subsection (f) is a
22 negotiable instrument and a check.

23 (d) A promise or order other than a check is not an
24 instrument if, at the time it is issued or first comes into
25 possession of a holder, it contains a conspicuous statement,
26 however expressed, to the effect that the promise or order
27 is not negotiable or is not an instrument governed by this
28 article.

29 (e) An instrument is a "note" if it is a promise and is
30 a "draft" if it is an order. If an instrument falls within the
31 definition of both "note" and "draft", a person entitled
32 to enforce the instrument may treat it as either.

33 (f) "Check" means (i) a draft, other than a
34 documentary draft, payable on demand and drawn on a
35 bank or (ii) a cashier's check or teller's check. An
36 instrument may be a check even though it is described on
37 its face by another term, such as "money order".

38 (g) "Cashier's check" means a draft with respect to
39 which the drawer and drawee are the same bank or
40 branches of the same bank.

41 (h) "Teller's check" means a draft drawn by a bank
42 (i) on another bank or (ii) payable at or through a bank.

43 (i) "Traveler's check" means an instrument that (i) is
44 payable on demand, (ii) is drawn on or payable at or
45 through a bank, (iii) is designated by the term "traveler's

46 check” or by a substantially similar term and (iv) requires,
47 as a condition to payment, a countersignature by a person
48 whose specimen signature appears on the instrument.

49 (j) “Certificate of deposit” means an instrument
50 containing an acknowledgment by a bank that a sum of
51 money has been received by the bank and a promise by
52 the bank to repay the sum of money. A certificate of
53 deposit is a note of the bank.

54 (k) “Demand draft” means a writing that is not
55 signed by a customer, as defined in subdivision (5),
56 subsection (a), section one hundred four, article four of
57 this chapter, and that is created by a third party under the
58 purported authority of the customer for the purpose of
59 charging the customer's account with a bank. A demand
60 draft does not include a check drawn by a fiduciary, as
61 defined in section three hundred seven of this article. A
62 demand draft may contain any or all of the following:

63 (1) The customer's printed or typewritten name or
64 account number;

65 (2) A notation that the customer authorized the draft;
66 and

67 (3) The statement “No signature required”,
68 “Authorization on file”, “Signature on file”, or words to
69 that effect.

§46-3-416. Transfer warranties.

1 (a) A person who transfers an instrument for
2 consideration warrants to the transferee and, if the transfer
3 is by indorsement, to any subsequent transferee that:

4 (1) The warrantor is a person entitled to enforce the
5 instrument;

6 (2) All signatures on the instrument are authentic and
7 authorized;

8 (3) The instrument has not been altered;

9 (4) The instrument is not subject to a defense or claim
10 in recoupment of any party which can be asserted against
11 the warrantor;

12 (5) The warrantor has no knowledge of any
13 insolvency proceeding commenced with respect to the
14 maker or acceptor or, in the case of an unaccepted draft,
15 the drawer; and

16 (6) If the instrument is a demand draft, the creation of
17 the instrument according to the terms on its face was
18 authorized by the person identified as drawer.

19 (b) A person to whom the warranties under subsection
20 (a) are made and who took the instrument in good faith
21 may recover from the warrantor as damages for breach of
22 warranty an amount equal to the loss suffered as a result
23 of the breach, but not more than the amount of the
24 instrument plus expenses and loss of interest incurred as a
25 result of the breach.

26 (c) The warranties stated in subsection (a) cannot be
27 disclaimed with respect to checks. Unless notice of a
28 claim for breach of warranty is given to the warrantor
29 within thirty days after the claimant has reason to know of
30 the breach and the identity of the warrantor, the liability of
31 the warrantor under subsection (b) is discharged to the
32 extent of any loss caused by the delay in giving notice of
33 the claim.

34 (d) A cause of action for breach of warranty under
35 this section accrues when the claimant has reason to know
36 of the breach.

37 (e) If the warranty under subdivision (6), subsection
38 (a) is not given by a transferor under applicable conflict
39 of law rules, the warranty is not given to that transferor
40 when that transferor is a transferee.

§46-3-417. Presentment warranties.

1 (a) If an unaccepted draft is presented to the drawee
2 for payment of acceptance and the drawee pays or accepts
3 the draft, (i) the person obtaining payment or acceptance,
4 at the time of presentment and (ii) a previous transferor of

5 the draft, at the time of transfer, warrant to the drawee
6 making payment or accepting the draft in good faith that:

7 (1) The warrantor is, or was, at the time the warrantor
8 transferred the draft, a person entitled to enforce the draft
9 or authorized to obtain payment or acceptance of the draft
10 on behalf of a person entitled to enforce the draft;

11 (2) The draft has not been altered;

12 (3) The warrantor has no knowledge that the signature
13 of the drawer of the draft is unauthorized; and

14 (4) If the instrument is a demand draft, the creation of
15 the draft according to the terms on its face was authorized
16 by the person identified as drawer.

17 (b) A drawee making payment may recover from any
18 warrantor damages for breach of warranty equal to the
19 amount paid by the drawee less the amount the drawee
20 received or is entitled to receive from the drawer because
21 of the payment. In addition, the drawee is entitled to
22 compensation for expenses and loss of interest resulting
23 from the breach. The right of the drawee to recover
24 damages under this subsection is not affected by any
25 failure of the drawee to exercise ordinary care in making
26 payment. If the drawee accepts the draft, breach of
27 warranty is a defense to the obligation of the acceptor. If
28 the acceptor makes payment with respect to the draft, the
29 acceptor is entitled to recover from any warrantor for
30 breach of warranty the amounts stated in this subsection.

31 (c) If a drawee asserts a claim for breach of warranty
32 under subsection (a) based on an unauthorized
33 indorsement of the draft or an alteration of the draft, the
34 warrantor may defend by proving that the indorsement is
35 effective under section 3-404 or 3-405 or the drawer is
36 precluded under section 3-406 or 4-406 from asserting
37 against the drawee the unauthorized indorsement or
38 alteration.

39 (d) If (i) a dishonored draft is presented for payment
40 to the drawer or an indorser or (ii) any other instrument is
41 presented for payment to a party obliged to pay the

42 instrument and (iii) payment is received, the following
43 rules apply:

44 (1) The person obtaining payment and prior
45 transferor of the instrument warrant to the person making
46 payment in good faith that the warrantor is, or was, at the
47 time the warrantor transferred the instrument, a person
48 entitled to enforce the instrument or authorized to obtain
49 payment on behalf of a person entitled to enforce the
50 instrument.

51 (2) The person making payment may recover from
52 any warrantor for breach of warranty an amount equal to
53 the amount paid plus expenses and loss of interest
54 resulting from the breach.

55 (3) The warranties stated in subsections (a) and (d)
56 cannot be disclaimed with respect to checks. Unless notice
57 of a claim for breach of warranty is given to the warrantor
58 within thirty days after the claimant has reason to know of
59 the breach and the identity of the warrantor, the liability of
60 the warrantor under subsection (b) or (d) is discharged to
61 the extent of any loss caused by the delay in giving notice
62 of the claim.

63 (e) A cause of action for breach of warranty under this
64 section accrues when the claimant has reason to know of
65 the breach.

66 (f) If the warranty under subdivision (4), subsection
67 (a) is not given by a transferor under applicable conflict
68 of law rules, the warranty is not given to that transferor
69 when that transferor is a transferee.

ARTICLE 4. BANK DEPOSITS AND COLLECTIONS.

§46-4-207. Transfer warranties.

§46-4-208. Presentment warranties.

§46-4-207. Transfer warranties.

1 (a) A customer or collecting bank that transfers an
2 item and receives a settlement or other consideration
3 warrants to the transferee and to any subsequent collecting
4 bank that:

5 (1) The warrantor is a person entitled to enforce the
6 item;

7 (2) All signatures on the item are authentic and
8 authorized;

9 (3) The item has not been altered;

10 (4) The item is not subject to a defense or claim in
11 recoupment (section 3-305(a)) of any party that can be
12 asserted against the warrantor;

13 (5) The warrantor has no knowledge of any
14 insolvency proceeding commenced with respect to the
15 maker or acceptor or, in the case of an unaccepted draft,
16 the drawer; and

17 (6) If the item is a demand draft, the creation of the
18 item according to the terms on its face was authorized by
19 the person identified as drawer.

20 (b) If an item is dishonored, a customer or collecting
21 bank transferring the item and receiving settlement or
22 other consideration is obliged to pay the amount due on
23 the item (i) according to the terms of the item at the time it
24 was transferred or (ii) if the transfer was of an incomplete
25 item, according to its terms when completed as stated in
26 sections 3-115 and 3-407. The obligation of a transferor
27 is owed to the transferee and to any subsequent collecting
28 bank that takes the item in good faith. A transferor cannot
29 disclaim its obligation under this subsection by an
30 indorsement stating that it is made "without recourse" or
31 otherwise disclaiming liability.

32 (c) A person to whom the warranties under subsection
33 (a) are made and who took the item in good faith may
34 recover from the warrantor as damages for breach of
35 warranty an amount equal to the loss suffered as a result
36 of the breach, but not more than the amount of the item
37 plus expenses and loss of interest incurred as a result of
38 the breach.

39 (d) The warranties stated in subsection (a) cannot be
40 disclaimed with respect to checks. Unless notice of a claim
41 for breach of warranty is given to the warrantor within

42 thirty days after the claimant has reason to know of the
43 breach and the identity of the warrantor, the warrantor is
44 discharged to the extent of any loss caused by the delay in
45 giving notice of the claim.

46 (e) A cause of action for breach of warranty under
47 this section accrues when the claimant has reason to know
48 of the breach.

49 (f) If the warranty under subdivision (6), subsection
50 (a) is not given by a transferor or collecting bank under
51 applicable conflict of law rules, the warranty is not given
52 to that transferor when that transferor is a transferee or to
53 any prior collecting bank of that transferee.

§46-4-208. Presentment warranties.

1 (a) If an unaccepted draft is presented to the drawee
2 for payment or acceptance and the drawee pays or accepts
3 the draft, (i) the person obtaining payment or acceptance,
4 at the time of presentment and (ii) a previous transferor of
5 the draft, at the time of transfer, warrant to the drawee that
6 pays or accepts the draft in good faith that:

7 (1) The warrantor is, or was, at the time the warrantor
8 transferred the draft, a person entitled to enforce the draft
9 or authorized to obtain payment or acceptance of the draft
10 on behalf of a person entitled to endorse the draft;

11 (2) The draft has not been altered;

12 (3) The warrantor has no knowledge that the signature
13 of the purported drawer of the draft is unauthorized; and

14 (4) If the instrument is a demand draft, the creation of
15 the draft according to the terms on its face was authorized
16 by the person identified as drawer.

17 (b) A drawee making payment may recover from a
18 warrantor damages for breach of warranty equal to the
19 amount paid by the drawee less the amount the drawee
20 received or is entitled to receive from the drawer because
21 of the payment. In addition, the drawee is entitled to
22 compensation for expenses and loss of interest resulting
23 from the breach. The right of the drawee to recover
24 damages under this subsection is not affected by any

25 failure of the drawee to exercise ordinary care in making
26 payment. If the drawee accepts the draft, (i) breach of
27 warranty is a defense to the obligation of the acceptor and
28 (ii) if the acceptor makes payment with respect to the
29 draft, the acceptor is entitled to recover from a warrantor
30 for breach of warranty the amounts stated in this
31 subsection.

32 (c) If a drawee asserts a claim for breach of warranty
33 under subsection (a) based on an unauthorized
34 indorsement of the draft or an alteration of the draft, the
35 warrantor may defend by proving that the indorsement is
36 effective under section 3-404 or 3-405 or the drawer is
37 precluded under section 3-406 or 4-406 from asserting
38 against the drawee the unauthorized indorsement or
39 alteration.

40 (d) If (i) a dishonored draft is presented for payment
41 to the drawer or an indorser or (ii) any other item is
42 presented for payment to a party obliged to pay the item,
43 and the item is paid, the person obtaining payment and a
44 prior transferor of the item warrant to the person making
45 payment in good faith that the warrantor is, or was, at the
46 time the warrantor transferred the item, a person entitled to
47 enforce the item or authorized to obtain payment on
48 behalf of a person entitled to enforce the item. The
49 person making payment may recover from any warrantor
50 for breach of warranty an amount equal to the amount
51 paid plus expenses and loss of interest resulting from the
52 breach.

53 (e) The warranties stated in subsections (a) and (d)
54 cannot be disclaimed with respect to checks. Unless notice
55 of a claim for breach of warranty is given to the warrantor
56 within thirty days after the claimant has reason to know of
57 the breach and the identity of the warrantor, the warrantor
58 is discharged to the extent of any loss caused by the delay
59 in giving notice of the claim.

60 (f) A cause of action for breach of warranty under this
61 section accrues when the claimant has reason to know of
62 the breach.

63 (g) If the warranty under subdivision (4), subsection
64 (a) is not given by a transferor under applicable conflict
65 of law rules, the warranty is not given to that transferor
66 when that transferor is a transferee.

CHAPTER 46A. WEST VIRGINIA CONSUMER CREDIT AND PROTECTION ACT.

ARTICLE 6F. TELEMARKETING.

PART I. DEFINITIONS.

- §46A-6F-101. Applicability of definitions.
- §46A-6F-102. Chance promotion.
- §46A-6F-103. Consumer; purchaser.
- §46A-6F-104. Consumer goods or services.
- §46A-6F-105. Division.
- §46A-6F-106. Individual.
- §46A-6F-107. Investment opportunity.
- §46A-6F-108. Material aspect or element.
- §46A-6F-109. Person.
- §46A-6F-110. Prize, gift or award.
- §46A-6F-111. Prize promotion.
- §46A-6F-112. Telemarketing solicitation.
- §46A-6F-113. Telemarketer.
- §46A-6F-114. Telemarketer in good standing.
- §46A-6F-201. Inapplicability of registration and bonding provisions of this article to charitable organizations.
- §46A-6F-202. Inapplicability of article to licensed securities, commodities, or investment broker, dealer, or investment adviser.
- §46A-6F-203. Inapplicability of article to licensed associated person of a securities, commodities, or investment broker, dealer, or investment adviser.
- §46A-6F-204. Inapplicability of article to person who does not make the major sales presentation.
- §46A-6F-205. Inapplicability of article to person who solicits sales by catalog.
- §46A-6F-206. Inapplicability of article to business-to-business sale.
- §46A-6F-207. Inapplicability of article to person who solicits contracts for the maintenance or repair of goods.
- §46A-6F-208. Inapplicability of article to person soliciting a transaction regulated by the commodity futures trading commission.
- §46A-6F-209. Inapplicability of article to supervised financial organization.

- §46A-6F-210. Inapplicability of article to licensed insurance broker, agent, customer representative, or solicitor.
- §46A-6F-211. Inapplicability of article to person soliciting the sale of services provided by a cable television system.
- §46A-6F-212. Inapplicability of article to certain telephone and communications companies.
- §46A-6F-213. Inapplicability of article to persons maintaining continuing business locations for sales of consumer goods or services.
- §46A-6F-214. Inapplicability of article to issuer of certain securities.
- §46A-6F-215. Inapplicability of article to book, video, record, or multimedia club.
- §46A-6F-216. Inapplicability of article to registered developer or a real estate salesperson or broker.
- §46A-6F-217. Inapplicability of article to person soliciting the sale of electric or natural gas energy or related goods or services.
- §46A-6F-218. Inapplicability of article to person soliciting the sale of a magazine or newspaper.
- §46A-6F-219. Inapplicability of article to certain telemarketers based on continuous sales and gross sales for exempt persons.
- §46A-6F-220. Inapplicability of article to the annual sale of less than one hundred dollars for food stuffs and edibles.
- §46A-6F-301. Registration of telemarketers.
- §46A-6F-302. Security requirement.
- §46A-6F-303. Failure to register or meet security requirement; remedies.
- §46A-6F-304. Record keeping requirements.
- §46A-6F-401. Mandatory disclosures.
- §46A-6F-402. Accepting returns or canceling services.
- §46A-6F-501. Unfair or deceptive acts or practices.
- §46A-6F-502. Causes of action arising out of unfair or deceptive acts or practices; limitation of actions.
- §46A-6F-503. Operating a criminal recovery service; penalties.
- §46A-6F-601. Abusive acts or practices.
- §46A-6F-701. Civil remedies.
- §46A-6F-702. Remedies not exclusive.
- §46A-6F-703. Service of process on certain nonresidents.

§46A-6F-101. Applicability of definitions.

- 1 For the purposes of this article, the words or terms
- 2 defined in this part have the meanings ascribed to them.
- 3 These definitions are applicable unless a different
- 4 meaning clearly appears from the context.

§46A-6F-102. Chance promotion.

1 “Chance promotion” means any plan in which
2 premiums are distributed by random or chance selection.

§46A-6F-103. Consumer; purchaser.

1 “Consumer” or “purchaser” means a person who is
2 solicited to become or does become obligated to pay for
3 consumer goods or services offered by a telemarketer
4 through telemarketing.

§46A-6F-104. Consumer goods or services.

1 “Consumer goods or services” means:

2 (1) Any property or services offered or sold to a
3 natural person primarily for personal, family, household
4 or agricultural purposes;

5 (2) Any property or service offered or sold for the
6 purpose of providing a profit or investment opportunity;
7 or

8 (3) Any property intended to be attached to or
9 installed in any real property, without regard to whether it
10 is so attached or installed, as well as timeshare estates and
11 licenses, resort and campground memberships, and any
12 services related to such property.

§46A-6F-105. Division.

1 “Division” means the consumer protection division
2 of the office of the attorney general.

§46A-6F-106. Individual.

1 “Individual” means a single human being and does
2 not mean a firm, association of individuals, corporation,
3 partnership, joint venture, sole proprietorship, or any other
4 entity.

§46A-6F-107. Investment opportunity.

1 “Investment opportunity” means anything tangible
2 or intangible, that is offered for sale, sold or traded based,
3 wholly or in part, on representations, either express or

- 4 implied, about past, present or future income, profit or
- 5 appreciation.

§46A-6F-108. Material aspect or element.

- 1 “Material aspect or element” means any factor likely
- 2 to affect a person's choice of, or conduct regarding, goods
- 3 or services and includes currency values and comparative
- 4 expressions of value including, but not limited to,
- 5 percentages or multiples.

§46A-6F-109. Person.

- 1 “Person” includes any individual, group of
- 2 individuals, firm, association, corporation, partnership,
- 3 joint venture, sole proprietorship, or any other business
- 4 entity.

§46A-6F-110. Prize, gift or award.

- 1 “Prize, gift or award” means anything offered or
- 2 given, or purportedly offered or given, to a consumer as
- 3 part of a prize promotion.

§46A-6F-111. Prize promotion.

- 1 “Prize promotion” means:
- 2 (1) A sweepstakes or other game of chance; or
- 3 (2) An oral or written express or implied
- 4 representation that a person has won, has been selected to
- 5 receive, or may be eligible to receive a prize, gift or award.

§46A-6F-112. Telemarketing solicitation.

- 1 (a) “Telemarketing solicitation” means and includes
- 2 any communication between a telemarketer and a
- 3 prospective purchaser for the purpose of selling or
- 4 attempting to sell the purchaser any consumer goods or
- 5 services, if it is intended by the telemarketer that an
- 6 agreement to purchase the consumer goods or services will
- 7 be made after any of the following events occur:
- 8 (1) The telemarketer makes an unsolicited telephone
- 9 call to a consumer, attempting to sell consumer goods or
- 10 services to the consumer, when the consumer has not

11 previously expressed an interest to the telemarketer in
12 purchasing, investing in, or obtaining information
13 regarding, the consumer goods or services offered by the
14 telemarketer; or

15 (2) The telemarketer communicates with a consumer
16 by any means and invites or directs the consumer to
17 respond by any means to the telemarketer's
18 communications, and the telemarketer intends to enter into
19 an agreement with the consumer for the purchase of
20 consumer goods or services at some time during the
21 course of one or more subsequent telephone
22 communications with the consumer.

23 (b) For purposes of this article, "communication"
24 means a written or oral notification or advertisement
25 transmitted from a telemarketer to a consumer by any
26 means.

§46A-6F-113. Telemarketer.

1 (a) "Telemarketer" means any person who initiates or
2 receives telephone calls to or from a consumer in this state
3 for the purpose of making a telemarketing solicitation as
4 defined in section one hundred thirteen of this article.

5 (b) A telemarketer may initiate or receive a
6 communication that constitutes a telemarketing solicitation
7 on his own behalf, through a salesperson, or through an
8 automated dialing machine.

9 (c) A telemarketer does not include any of the persons
10 or entities exempted pursuant to Part II of this article.

11 (d) A telemarketer does not include a salesperson as
12 defined in section one hundred fourteen of this article.

13 (e) A telemarketer includes, but is not limited to,
14 owners, operators, officers, directors, partners, or other
15 individuals engaged in the management activities of a
16 business entity that is subject to licensing and registration
17 pursuant to this article.

§46A-6F-114. Telemarketer in good standing.

1 "Telemarketer in good standing" means a
2 telemarketer who, during the previous two years has
3 continually been engaged in the business of telemarketing
4 and who has not been convicted, or pled guilty or nolo
5 contendere to racketeering, embezzlement, fraudulent
6 conversion, misappropriation of property or any violations
7 of state or federal securities laws, a theft offense, or any
8 consumer protection law or telemarketing law.

PART II. EXEMPT PERSONS OR ENTITIES.

§46A-6F-201. Inapplicability of registration and bonding provisions of this article to charitable organizations.

1 A charitable organization that is exempt from filing an
2 annual registration statement with the secretary of state
3 under the provisions of section six, article nineteen,
4 chapter twenty-nine of this code is exempt from the
5 registration and bonding provisions of this article when
6 making a telemarketing solicitation.

§46A-6F-202. Inapplicability of article to licensed securities, commodities, or investment broker, dealer, or investment adviser.

1 The provisions of this article do not apply to any
2 licensed securities, commodities, or investment broker,
3 dealer, or investment adviser, when soliciting within the
4 scope of his license. As used in this section, "licensed
5 securities, commodities, or investment broker, dealer, or
6 investment adviser" means a person who is licensed or
7 registered as such by the securities and exchange
8 commission, by the national association of securities
9 dealers or some other self-regulatory organization as
10 defined by the Securities Exchange Act of 1934 (15
11 U.S.C. §781), or by an official or agency of this state or
12 of any state of the United States.

§46A-6F-203. Inapplicability of article to licensed associated person of a securities, commodities, or investment broker, dealer, or investment adviser.

1 The provisions of this article do not apply to any
2 licensed associated person of a securities, commodities, or
3 investment broker, dealer, or investment adviser, when
4 soliciting within the scope of his license. As used in this
5 section, "licensed associated person of a securities,
6 commodities, or investment broker, dealer, or investment
7 adviser" means any associated person registered or
8 licensed by the national association of securities dealers or
9 other self-regulatory organization as defined by the
10 Securities Exchange Act of 1934 (15 U.S.C. §781) or by
11 an official or agency of this state or of any state of the
12 United States.

**§46A-6F-204. Inapplicability of article to person who does not
make the major sales presentation.**

1 The provisions of this article do not apply to a person
2 who does not make the major sales presentation during the
3 telephone solicitation and who does not intend to, and
4 does not actually, complete or obtain provisional
5 acceptance of a sale during the telephone solicitation, but
6 who makes the major sales presentation and completes the
7 sale at a later face-to-face meeting between the seller and
8 the prospective consumer in accordance with the home
9 solicitation provisions in this chapter and as a home
10 solicitation sale as defined by section one hundred two,
11 article one of this chapter. However, if a seller, in violation
12 of subdivision (4), subsection (a), section five hundred one
13 of this article, causes an individual to go to the prospective
14 consumer for the primary purpose of collecting payment
15 or delivering any item purchased, this exemption does not
16 apply.

**§46A-6F-205. Inapplicability of article to person who solicits
sales by catalog.**

1 The provisions of this article do not apply to a person
2 who solicits sales by periodically publishing and
3 delivering a catalog of a seller's merchandise to
4 prospective purchasers, if the catalog:

5 (1) Contains a written description or illustration of
6 each item offered for sale;

7 (2) Includes the business address or home address of
8 the seller;

9 (3) Includes at least twenty pages of written material
10 and illustrations and is distributed in more than one state;
11 and

12 (4) Has an annual circulation, by mailing, of not less
13 than one hundred fifty thousand catalogs.

§46A-6F-206. Inapplicability of article to business-to-business sale.

1 The provisions of this article do not apply to a
2 business-to-business sale.

§46A-6F-207. Inapplicability of article to person who solicits contracts for the maintenance or repair of goods.

1 The provisions of this article do not apply to a person
2 who solicits contracts for the maintenance or repair of
3 goods previously purchased from the person making the
4 solicitation or on whose behalf the solicitation is made.

§46A-6F-208. Inapplicability of article to person soliciting a transaction regulated by the commodity futures trading commission.

1 The provisions of this article do not apply to a person
2 soliciting a transaction regulated by the federal
3 commodity futures trading commission if the person is
4 registered or temporarily licensed for this activity with the
5 commodity futures trading commission under the
6 Commodity Exchange Act (7 U.S.C. §1 et seq.) and the
7 registration or license has not expired or been suspended
8 or revoked.

§46A-6F-209. Inapplicability of article to supervised financial organization.

1 The provisions of this article do not apply to any
2 supervised financial organization or an affiliate or
3 subsidiary thereof or regulated consumer lender subject to
4 regulation by the commissioner of banking or a federal
5 agency charged with regulating such supervised financial

6 organizations or regulated consumer lenders when acting
7 within the scope of the supervised or regulated activity.
8 As used in this section, the terms “supervised financial
9 organization” and “regulated consumer lender” shall
10 have the same meanings as ascribed to them in section one
11 hundred two, article one of this chapter.

§46A-6F-210. Inapplicability of article to licensed insurance broker, agent, customer representative, or solicitor.

1 The provisions of this article do not apply to any
2 licensed insurance broker, agent, customer representative,
3 or solicitor when soliciting within the scope of his or her
4 license. As used in this section, “licensed insurance
5 broker, agent, customer representative, or solicitor” means
6 any insurance broker, agent, customer representative, or
7 solicitor licensed by an official or agency of this state
8 pursuant to subsection (a), section one, article twelve,
9 chapter thirty-three of this code, or of any state of the
10 United States.

§46A-6F-211. Inapplicability of article to person soliciting the sale of services provided by a cable television system.

1 The provisions of this article do not apply to a person
2 soliciting the sale of services provided by a cable television
3 system operating under authority of a franchise or permit,
4 or to a person soliciting the sale of subscriber television
5 services or advertising.

§46A-6F-212. Inapplicability of article to certain telephone and communications companies.

1 The provisions of this article do not apply to any of
2 the following entities to the extent that its acts or practices
3 are subject to the jurisdiction or regulation of the West
4 Virginia public service commission or the federal
5 communications commission:

6 (1) A telephone company, or any affiliate or agent of
7 a telephone company; or

8 (2) Any provider of commercial mobile service, as
9 defined by the Communications Act of 1934, as amended
10 by the Telecommunications Act of 1966 (47 U.S.C. §151,
11 et seq.).

§46A-6F-213. Inapplicability of article to persons maintaining continuing business locations for sales of consumer goods or services.

1 The provisions of this article do not apply to a person
2 who offers to sell consumer goods or services through
3 telemarketing activities if the person maintains a
4 permanent business location under the same exact name as
5 that used in connection with the telemarketing sales, and
6 both of the following activities occur on a continuing
7 basis:

8 (1) The identical consumer goods or services offered
9 for sale by the person through telemarketing activities are
10 offered for sale at the person's business location; and

11 (2) More than fifty percent of all of the consumer
12 goods or services offered for sale by the person are
13 provided to consumers at the person's business location
14 rather than through telemarketing sales.

§46A-6F-214. Inapplicability of article to issuer of certain securities.

1 The provisions of this article do not apply to an issuer
2 or a subsidiary of an issuer that has a class of securities
3 which is subject to §12 of the Securities Exchange Act of
4 1934 (15 U.S.C. §781) and which is either registered or
5 exempt from registration under paragraphs (A), (B), (C),
6 (E), (F), (G), or (H) of subsection (g)(2) of that section.

§46A-6F-215. Inapplicability of article to book, video, record, or multimedia club.

1 The provisions of this article do not apply to a book,
2 video, record, or multimedia club or contractual plan or
3 arrangement:

4 (1) Under which the seller provides the consumer with
5 a form which the consumer may use to instruct the seller
6 not to ship the offered merchandise;

7 (2) That is regulated by the federal trade commission
8 trade regulation concerning use of negative option plans
9 by sellers in commerce; or

10 (3) That provides for the sale of books, records,
11 videos, multimedia products or other goods that are not
12 covered under subdivisions (1) or (2) of this section,
13 including continuity plans, subscription arrangements,
14 standing order arrangements, single sales of items offered
15 for sale one time, supplements, and series arrangements
16 under which the seller periodically ships merchandise to a
17 consumer who has consented in advance to receive such
18 merchandise on a periodic basis.

**§46A-6F-216. Inapplicability of article to registered developer
or a real estate salesperson or broker.**

1 The provisions of this article do not apply to a person
2 who is licensed as a real estate broker, associate broker, or
3 real estate salesperson, in accordance with the provisions
4 of article twelve, chapter forty-seven of this code, when
5 such person is acting within the scope of their license.

**§46A-6F-217. Inapplicability of article to person soliciting the
sale of electric or natural gas energy or
related goods or services.**

1 The provisions of this article do not apply to a person
2 soliciting on behalf of an entity that sells electric or
3 natural gas energy, or an affiliate of such an entity, if the
4 solicitation is for the sale of electric or natural gas energy
5 or related goods and services, and the transaction is
6 governed and regulated by the public service commission
7 or the federal energy regulatory commission.

**§46A-6F-218. Inapplicability of article to person soliciting the
sale of a magazine or newspaper.**

1 The provisions of this article do not apply to a person
2 primarily soliciting the sale of a single magazine
3 subscription or subscription to a newspaper of general
4 circulation or the sale of advertisements therein.

§46A-6F-219. Inapplicability of article to certain telemarketers based on continuous sales and gross sales for exempt persons.

1 The provisions of this article do not apply to any
2 telemarketer, in good standing, who has been providing
3 telemarketing sales services continuously for at least two
4 years under the same name and ownership and which
5 derives fifty percent of its gross telemarketing sales
6 revenues from contracts with persons exempted from this
7 part: *Provided*, That telemarketers under this exemption
8 must register, without bond, with the secretary of tax and
9 revenue to establish eligibility for this exemption.

§46A-6F-220. Inapplicability of article to the annual sale of less than one hundred dollars for food stuffs and edibles.

1 The provisions of this article do not apply to a person
2 soliciting the sale of food stuffs and edibles, except
3 vitamins, if the solicitations neither intends to result in, or
4 actually results in a sale or sales which costs the consumer
5 in excess of one hundred dollars annually to a single
6 address: *Provided*, That such sales are not solicited by
7 professional telemarketers.

PART III. REGISTRATION, SECURITY AND RECORD KEEPING.

§46A-6F-301. Registration of telemarketers.

1 (a) No person shall act as a telemarketer without first
2 having registered with the secretary of the department of
3 tax and revenue.

4 (b) The initial application for registration shall be
5 made at least sixty days prior to offering consumer goods
6 or services, or offering for sale consumer goods or
7 services through any medium, and an application for
8 renewal shall be made on an annual basis thereafter. The
9 department of tax and revenue shall charge reasonable
10 application and renewal fees for administration of the
11 registration requirements pursuant to this article. The
12 application and renewal fees shall be established through
13 the promulgation of a legislative rule pursuant to chapter
14 twenty-nine-a of this code. The fees so collected shall be

15 deposited into the state treasury to the credit of the special
16 revenue fund known as the "telemarketer registration
17 fund" pursuant to section three hundred four of this
18 article.

19 (c) The application for a certificate of registration or
20 renewal shall include, but not be limited to, the following
21 information:

22 (1) The true name, mailing address, telephone number
23 and physical address of the telemarketer, including each
24 name under which the telemarketer intends to engage in
25 telemarketing;

26 (2) Each occupation or business that the
27 telemarketer's principal owner has engaged in for two
28 years immediately preceding the date of the application;

29 (3) Whether any principal or manager has been
30 convicted, or pled guilty to, or is being prosecuted by
31 indictment for, racketeering, any violations of state or
32 federal securities laws, a theft offense, or any consumer
33 protection law or telemarketing law;

34 (4) Whether there has been entered against any
35 principal or manager an injunction, temporary restraining
36 order or a final judgment in any civil or administrative
37 action, involving fraud, theft, racketeering, embezzlement,
38 fraudulent conversion, misappropriation of property, or
39 any consumer protection law or telemarketing law,
40 including any pending litigation against the applicant;

41 (5) Whether the telemarketer, at any time during the
42 previous seven years, has filed for bankruptcy, been
43 adjudged bankrupt or been reorganized because of
44 insolvency;

45 (6) The true name, current home address, date of birth,
46 social security number and all other names of the
47 following:

48 (A) Each person participating in or responsible for the
49 management of the seller's business;

50 (B) Each person, office manager, or supervisor
51 principally responsible for the management of the seller's
52 business.

53 (7) The name, address and account number of every
54 institution where banking or any other monetary
55 transactions are done by the seller.

§46A-6F-302. Security requirement.

1 (a) An application for registration or renewal shall be
2 accompanied by a continuing surety bond executed by a
3 corporation that is licensed to transact the business of
4 fidelity and surety insurance in the state of West Virginia.
5 The bond must be approved by the department of tax and
6 revenue before a certificate of registration is issued in
7 accordance with the provisions of section three hundred
8 one of this article. A separate bond in the amount of one
9 hundred thousand dollars may be filed for each
10 telemarketing location, including each principal office and
11 each branch office thereof, or a single bond in the amount
12 of five hundred thousand dollars may be filed for all
13 locations of the telemarketer.

14 (b) The bond shall provide that the telemarketer will
15 pay all damages to the state or a private person resulting
16 from any unlawful act or action by the telemarketer or its
17 agent in connection with the conduct of telemarketing
18 activities.

19 (c) The registration of any telemarketer shall be void
20 upon termination of the bond of the surety company, or
21 loss of the bond, unless, prior to such termination, a new
22 bond has been filed with the department of tax and
23 revenue. The surety, for any cause, may cancel the bond
24 upon giving a sixty-day written notice by certified mail to
25 the telemarketer and to the department of tax and revenue.
26 Unless the bond is replaced by that of another surety
27 before the expiration of the sixty-day notice of
28 cancellation, the registration of the telemarketer shall be
29 treated as lapsed.

30 (d) The surety bond shall remain in effect for three
31 years from the period the telemarketing business ceases to
32 operate in this state.

33 (e) Any business required under this article to file a
34 bond with a registration application, may file, in lieu
35 thereof, an irrevocable letter of credit, with annual
36 renewals, a certificate of deposit, cash or government bond
37 in the same amount as would be required for the bond.
38 The department of tax and revenue shall deposit any such
39 funds in an interest bearing account. The department of
40 tax and revenue shall hold such letter of credit, cash,
41 certificate of deposit or government bond for three years
42 from the period the telemarketing business ceases to
43 operate or registration lapses, in order to pay claims made
44 against the telemarketing business during its period of
45 operation. At the end of the three-year term all interest
46 accrued, not required for payment of claims, shall be
47 remitted to the telemarketer.

48 (f) The registration of the telemarketing business will
49 be treated as lapsed if at any time, the amount of the letter
50 of credit, bond, cash, certificate of deposit or government
51 bond falls below the amount required by this section.

52 (g) Should the license of any surety company to
53 transact business in this state be terminated, all bonds
54 given pursuant to this article upon which such company is
55 surety shall thereupon be suspended, and the department
56 of tax and revenue shall immediately notify each affected
57 licensee of such suspension and require that a new bond
58 be filed. This notice shall be sent by registered or
59 certified mail, return receipt requested, and shall be
60 addressed to the telemarketer at his or its principal place
61 of business as shown by the department of tax and
62 revenue records. The failure of any telemarketer to file a
63 bond with new or additional surety within thirty days after
64 being advised in writing by the department of tax and
65 revenue of the necessity to do so shall be cause for the
66 department of tax and revenue to revoke the
67 telemarketer's registration.

68 (h) An action may be brought in any court of
69 competent jurisdiction upon the bond by any person to

70 whom the licensee fails to account and pay as set forth in
71 such bond. The aggregate liability of the surety company
72 to all persons injured by a telemarketer's violations may
73 not exceed the amount of the bond.

§46A-6F-303. Failure to register or meet security requirement; remedies.

1 (a) Any person is subject to a civil administrative
2 penalty, to be levied by the department of tax and revenue,
3 of not more than five thousand dollars if the person:

4 (1) Acts as a telemarketer without first registering
5 pursuant to section three hundred one of this article;

6 (2) Acts as a telemarketer without first meeting the
7 security requirements set forth in section three hundred
8 two of this article;

9 (3) Acts as a telemarketer after failing to maintain a
10 certificate of registration accompanied by a surety bond as
11 required by sections three hundred one and three hundred
12 two of this article;

13 (4) Includes any material information on a registration
14 application that is false or misleading; or

15 (5) Misrepresents that a telemarketer is registered.

16 In assessing a civil administrative penalty, department
17 of tax and revenue shall take into account the seriousness
18 of the violation, any good faith efforts to comply with
19 applicable requirements, any benefit obtained by the act
20 or omission, and any other appropriate factors as the
21 department of tax and revenue may establish by rules
22 proposed for promulgation by the Legislature in
23 accordance with the provisions of article three, chapter
24 twenty-nine-a of this code.

25 (b) No assessment shall be levied pursuant to
26 subsection (a) of this section until after the alleged violator
27 has been notified by certified mail or personal service.
28 The notice shall include:

29 (1) A reference to this section, sections three hundred
30 one and three hundred two of this article, and any
31 legislative rule that was allegedly violated;

32 (2) A concise statement of the facts alleged to
33 constitute the violation;

34 (3) A statement of the amount of the administrative
35 penalty to be imposed; and

36 (4) A statement of the alleged violator's right to an
37 informal hearing.

38 (c) The alleged violator has twenty calendar days from
39 receipt of the notice within which to deliver to the
40 department of tax and revenue a written request for a
41 hearing. If no hearing is requested, the notice becomes a
42 final order after the expiration of the twenty-day period.
43 If a hearing is requested, the department of tax and
44 revenue shall inform the alleged violator of the time and
45 place of the hearing. The department of tax and revenue
46 may appoint a hearing examiner to conduct the hearing
47 and then make a written recommendation to the
48 department of tax and revenue concerning the assessment
49 of a civil administrative penalty. Within thirty days
50 following the hearing, the department of tax and revenue
51 shall issue and furnish to the alleged violator a written
52 decision which explains the rationale for any assessment
53 of an administrative penalty. The authority to levy an
54 administrative penalty is in addition to all other
55 enforcement provisions of this article and the payment of
56 any assessment does not affect the availability of any other
57 enforcement provision in connection with the violation for
58 which the assessment is levied. No assessment levied
59 pursuant to this section becomes due and payable until the
60 procedures for review of such assessment as set out in this
61 subsection have been completed.

62 (d) The department of tax and revenue may seek an
63 injunction, or may institute a civil action against any
64 person allegedly in violation of the provisions of this
65 section, sections three hundred one and three hundred two
66 of this article. An application for injunctive relief or civil
67 action under this section may be filed and relief granted

68 notwithstanding the fact that all administrative remedies
69 provided for in this article have not been exhausted or
70 invoked against the person or persons against whom such
71 relief is sought. Upon request of the department of tax
72 and revenue, the division or the prosecuting attorney of
73 the county in which the violation occurs shall assist the
74 department of tax and revenue in any civil action under
75 this section.

76 (e) Independently of the department of tax and
77 revenue, with respect to any action brought by the division
78 or a private citizen regarding unfair or deceptive acts or
79 practices, or abusive acts or practices under the provisions
80 of this article or under other applicable consumer
81 protection laws set forth in this code, the division or a
82 private citizen may also apply to the court for appropriate
83 relief under this section against a person violating the
84 provisions of sections three hundred one and three
85 hundred two of this article, pending final determination of
86 the proceedings.

87 (f) Any funds recovered and all registration fees, as
88 provided for in this article, shall be paid into the state
89 treasury to the credit of a special revenue fund to be
90 known as the "telemarketer registration fund" which is
91 hereby created. The moneys so credited to the fund shall
92 be used solely for the purposes of administering and
93 enforcing the registration and security requirements of
94 this article.

§46A-6F-304. Record keeping requirements.

1 (a) A telemarketer shall keep for a period of four
2 years from the date the record is produced the following
3 records related to its telemarketing activities:

4 (1) One of each advertisement, brochure and other
5 promotional materials;

6 (2) The name and last known address of each prize
7 recipient and the prize awarded for prizes that are
8 represented, directly or by implication, to have a value of
9 twenty-five dollars or more;

10 (3) The name and last known address of each
11 customer, the goods or services purchased, the date such
12 goods or services were shipped or provided, and the
13 amount paid by the customer for the goods or services;

14 (4) The name, last known home address and telephone
15 number, and the job title for all current and former
16 employees directly involved in telephone sales;

17 (5) All verifiable authorizations required to be
18 provided or received under this article; and

19 (6) A copy of all scripts, outlines or presentation
20 material the seller will require the telemarketer to use when
21 soliciting, as well as all sales information to be provided by
22 the seller to a purchaser in connection with any
23 solicitation.

24 (b) A seller or telemarketer may keep the records
25 required by subsection (a) of this section in any form, and
26 in any manner, format, or place as they keep such records
27 in the ordinary course of business. Failure to keep all
28 records required by subsection (a) of this section shall be
29 a violation of this article.

30 (c) The telemarketer is responsible for complying with
31 the above provisions.

32 (d) In the event of any dissolution or termination of
33 the seller's or telemarketer's business, the principal of that
34 telemarketer shall maintain all records as required under
35 this section. In the event of any sale, assignment or other
36 change in ownership of the seller's business, the successor
37 shall maintain all records required under this section.

38 (e) (1) The division may require a telemarketer to file
39 true copies of all scripts, outlines and promotional material
40 and any modifications thereto with the division of
41 consumer protection for a time period to be determined
42 by the division. Such filing may be required upon an
43 investigation and finding by the division that:

44 (A) A telemarketer is using scripts, outlines or
45 presentation material that contain material
46 misrepresentations or that fail to state material facts; or

47 (B) A telemarketer is deviating from scripts, outlines
48 or presentation material so as to make material
49 misrepresentations or to fail to state material facts.

50 (2) The attorney general shall comply with the
51 requirements of article five, chapter twenty-nine-a of this
52 code for hearings requested pursuant to Part III.

PART IV. DISCLOSURES AND CONTRACT REQUIREMENTS.

§46A-6F-401. Mandatory disclosures.

1 (a) A telemarketer shall promptly disclose, in a clear
2 and conspicuous manner, the following material
3 information when making a telemarketing communication
4 with a consumer:

5 (1) The true identity of the telemarketer;

6 (2) That the purpose of the call is to sell consumer
7 goods or services; and

8 (3) The nature of the goods or services offered for
9 sale.

10 (b) Before a consumer pays for the goods or services
11 offered for sale, the telemarketer shall disclose, in a clear
12 and conspicuous manner, the following material
13 information:

14 (1) The total costs to purchase, receive or use the
15 consumer goods or services that are the subject of the
16 telemarketing communication;

17 (2) The quantity of the consumer goods or services
18 that are the subject of the telemarketing solicitation;

19 (3) All material restrictions, limitations or conditions
20 to purchase, receive, or use the consumer goods or services
21 that are the subject of the telemarketing solicitation;

22 (4) All material aspects of the performance, quality,
23 efficacy, nature or basic characteristics of the consumer
24 goods or services that are the subject of the telemarketing
25 solicitation;

- 26 (5) All material aspects of the nature or terms of the
27 telemarketer's refund, cancellation, exchange or
28 repurchase policies;
- 29 (6) All material aspects of a prize promotion, disclosed
30 prior to requesting the consumer to enter into a sale or
31 lease, including, but not limited to, the following:
- 32 (A) A description of the prizes, gifts or awards offered
33 or to be given to consumers participating in the prize
34 promotion;
- 35 (B) A statement of the true retail value of each prize,
36 gift or award offered or to be given to participating
37 consumers;
- 38 (C) A clear identification of the person or entity on
39 whose behalf the contest or promotion is conducted;
- 40 (D) A description of all material conditions which a
41 participant must satisfy;
- 42 (E) A clear and unequivocal statement that the
43 consumer is not required to make any purchase, lease or
44 rental of consumer goods or services in order to qualify
45 for any prize, gift or award or to otherwise participate in
46 the prize promotion;
- 47 (F) A clear and unequivocal statement that the
48 consumer is not required to pay any handling or shipping
49 costs or to make any other payment of any kind in order
50 to win or receive a prize, gift or award or to otherwise
51 participate in the prize promotion;
- 52 (G) The actual numbers of the prizes, gifts or awards
53 to be awarded;
- 54 (H) The odds of receiving a prize, gift or award; and
- 55 (I) A clear explanation of the no-purchase/no-
56 payment method of participating in the prize promotion,
57 with instructions on how to participate.
- 58 (7) All material aspects of any investment opportunity
59 being offered, including, but not limited to, a description
60 of the following factors:

- 61 (A) Risk;
- 62 (B) Liquidity;
- 63 (C) Earnings potential;
- 64 (D) Profitability;
- 65 (E) Benefits; and
- 66 (F) If applicable, the value, price and location of any
- 67 real or personal property that the consumer will acquire
- 68 by investing.

§46A-6F-402. Accepting returns or canceling services.

- 1 (a) Every telemarketer shall, at a minimum, have the
- 2 following policy:
 - 3 (1) Accepting returns or canceling services for a
 - 4 period of not less than seven days after the date of
 - 5 delivery to the consumer and providing a cash refund for
 - 6 a cash purchase or issuing a credit for a credit purchase,
 - 7 which credit is applied to the account to which the
 - 8 purchase was debited in connection with the return of its
 - 9 unused and undamaged merchandise or canceled services.
 - 10 For purposes of this subsection, it will be presumed that
 - 11 goods were received seven days after they were mailed
 - 12 unless it can be clearly demonstrated that the goods were
 - 13 not received or received at a later date;
 - 14 (2) Disclosing the telemarketer's return and refund
 - 15 policy to the buyer, orally by telephone or in writing with
 - 16 advertising, promotional material, or with delivery of the
 - 17 products or service; and
 - 18 (3) Restoring such payment or issuing such credit, as
 - 19 required under subdivision (1) of this section, within thirty
 - 20 days after the date on which the telemarketer receives
 - 21 returned merchandise or notice of cancellation of services.
 - 22 A seller who discloses, in writing, that a sale is made or
 - 23 provided "satisfaction guaranteed", with "free
 - 24 inspection", "no risk guarantee", or similar words or
 - 25 phrases, shall be deemed to meet the requirements of the
 - 26 review and return for refund policy set forth in this
 - 27 subparagraph.

28 (b) Failure to comply with the provisions of this
29 section is unfair or deceptive act or practice.

PART V. UNFAIR OR DECEPTIVE ACTS OR PRACTICES; PENALTIES.

§46A-6F-501. Unfair or deceptive acts or practices.

1 It is an unfair or deceptive act or practice and a
2 violation of this article for any seller or telemarketer to
3 engage in the following conduct:

4 (1) To advertise or represent that registration as a
5 telemarketer equals an endorsement or approval by the
6 state or any governmental agency of the state;

7 (2) To request or receive payment of any fee or
8 consideration for goods or services represented to remove
9 derogatory information from, or improve, a person's credit
10 history, credit record, or credit rating until:

11 (A) The time frame in which the telemarketer has
12 represented all of the goods or services will be provided to
13 that person has expired; and

14 (B) The telemarketer has provided the person with
15 documentation in the form of a consumer report from a
16 consumer reporting agency demonstrating that the
17 promised results have been achieved, such report having
18 been issued more than six months after the results were
19 achieved;

20 (3) To obtain or submit for payment a check, draft, or
21 other form of negotiable paper drawn on a person's
22 checking, savings, share, or similar account, without that
23 person's express verifiable authorization. Such
24 authorization shall be deemed verifiable if any of the
25 following means are employed:

26 (A) Express written authorization by the customer,
27 which may include the customer's signature on the
28 negotiable instrument; or

29 (B) Express oral authorization which is tape recorded
30 and made available upon request to the customer's bank
31 and which evidences clearly both the customer's
32 authorization of payment for the goods and services that

33 are the subject of the sales offer and the customer's receipt
34 of all of the following information:

- 35 (i) The date of the draft(s);
- 36 (ii) The amount of the draft(s);
- 37 (iii) The payor's name;
- 38 (iv) The number of draft payments (if more than one);
- 39 (v) A telephone number for customer inquiry that is
40 answered during normal business hours; and
- 41 (vi) The date of the customer's oral authorization.

42 (C) Written confirmation of the transaction, sent to the
43 customer prior to submission for payment of the
44 customer's check, draft, or other form of negotiable paper,
45 that includes:

46 (i) All of the information contained in subparagraphs
47 (i) through (vi), paragraph (B), subdivision (3) of this
48 section; and

49 (ii) The procedures by which the customer can obtain
50 a refund from the telemarketer in the event the
51 confirmation is inaccurate;

52 (4) To procure the services of any professional
53 delivery, courier or other pick-up service to obtain
54 immediate receipt and possession of a consumer's
55 payment unless:

56 (A) Such service is requested by the consumer;

57 (B) The consumer is informed that he or she can
58 inspect the goods or services prior to payment and may
59 refuse to accept the goods or services; and

60 (C) The consumer is actually afforded an opportunity
61 to inspect the goods or services prior to payment;

62 (5) To engage in any other unfair or deceptive
63 conduct which will create a likelihood of confusion or
64 misunderstanding to any reasonable consumer;

65 (6) To misrepresent the requirements of this section;

66 (7) To provide substantial assistance or support to any
67 telemarketer when that person knows or consciously
68 avoids knowing that the telemarketer is engaged in any act
69 or practice that violates this section.

70 (8) To engage in any "unfair methods of competition
71 and unfair or deceptive acts or practices" as specified in
72 subsection (f), section one hundred two, article six of this
73 chapter and made unlawful by the provisions of section
74 one hundred four, article six of this chapter.

**§46A-6F-502. Causes of action arising out of unfair or
deceptive acts or practices; limitation of
actions.**

1 (1) If a telemarketer violates the provisions of section
2 five hundred one of this article, the consumer has a cause
3 of action to recover actual damages and, in addition, a
4 right to recover from the violator a penalty in an amount,
5 to be determined by the court, of not less than one
6 hundred dollars nor more than three thousand dollars. No
7 action brought pursuant to the provisions of this
8 subsection may be brought more than two years after the
9 date upon which the violation occurred or the due date of
10 the last scheduled payment of the agreement, whichever is
11 later.

12 (2) If a telemarketer violates the provisions of section
13 five hundred one of this article, any sale or lease of
14 consumer goods or services is void and the consumer is
15 not obligated to pay either the principal or any finance
16 charge. If the consumer has paid any part of the principal
17 or of the finance charge, he or she has a right to recover
18 the payment from the violator or from any assignee of the
19 violator's rights who undertakes direct collection of
20 payments or enforcement of rights arising from the debt.

21 (3) A consumer is not obligated to pay a charge in
22 excess of that allowed by the sales agreement, and if the
23 consumer has paid an excess charge, he or she has a right
24 to a refund. A refund may be made by reducing the
25 consumer's obligation by the amount of the excess charge.
26 If the consumer has paid an amount in excess of the
27 lawful obligation under the agreement, the consumer may

28 recover in an action the excess amount from the person
29 who made the excess charge or from an assignee of that
30 person's rights who undertakes direct collection of
31 payments from or enforcement of rights against the
32 consumer arising from the debt.

33 (4) If a telemarketer has contracted for or received a
34 charge in excess of that allowed by the sales agreement,
35 the consumer may, in addition to recovering such excess
36 charge, also recover from the telemarketer or the person
37 liable in an action a penalty in an amount determined by
38 the court not less than one hundred dollars nor more than
39 three thousand dollars. No action brought pursuant to the
40 provisions of this subsection may be brought more than
41 two years after the date upon which the violation occurred
42 or the due date of the last scheduled payment of the
43 agreement, whichever is later.

44 (5) A telemarketer has no liability for a penalty under
45 subsection (1) or subsection (4) of this section if, within
46 fifteen days after discovering an error, and prior to the
47 institution of an action under this section or the receipt of
48 written notice of the error, the telemarketer notifies the
49 consumer of the error and corrects the error.

50 (6) If the telemarketer establishes by a preponderance
51 of evidence that a violation is unintentional or the result of
52 a bona fide error of fact notwithstanding the maintenance
53 of procedures reasonably adapted to avoid any such
54 violation or error, no liability is imposed under
55 subsections (1), (2) and (4) of this section, and the validity
56 of the transaction is not affected.

**§46A-6F-503. Operating a criminal recovery service;
penalties.**

1 (a) A person is guilty of operating a criminal recovery
2 service when the person:

3 (1) Makes a representation that he will recover all or
4 any portion of the consideration that a consumer has paid
5 to a telemarketer in response to a telemarketing
6 solicitation;

7 (2) Does not intend to make such recovery or has no
8 reasonable expectation to anticipate that recovery will be
9 made; and

10 (3) Receives any remuneration from the consumer
11 before a recovery of consideration is made.

12 (b) Any person who violates the provisions of this
13 section is guilty of a felony and, upon conviction thereof,
14 shall be imprisoned in a state correctional center not less
15 than one year nor more than ten years, or fined not more
16 than five thousand dollars and confined in a state
17 correctional center not less than one year nor more than
18 ten years.

PART VI. ABUSIVE ACTS OR PRACTICES; PENALTIES.

§46A-6F-601. Abusive acts or practices.

1 (a) It is an abusive telemarketing act or practice and a
2 violation of this article for any telemarketer to engage in
3 the following conduct:

4 (1) Threaten, intimidate or use profane or obscene
5 language;

6 (2) Engage any person repeatedly or continuously
7 with behavior a reasonable person would deem to be
8 annoying, abusive or harassing;

9 (3) Initiate an outbound telephone call to a person
10 when that person previously has stated that he or she does
11 not wish to receive an outbound telephone call made by or
12 on behalf of the telemarketer whose goods or services are
13 being offered;

14 (4) Engage in telemarketing to a person's residence at
15 any time other than between eight a.m. and nine p.m.
16 local time, Monday through Sunday, at the called person's
17 location; or

18 (5) Engage in any other conduct which would be
19 considered abusive to any reasonable consumer.

20 (b) A telemarketer will not be liable for violating
21 subdivision (3), subsection (a) of this section if:

22 (1) It has established and implemented written
23 procedures to avoid outbound telephone calls to persons
24 who have previously stated that they do not wish to receive
25 such calls;

26 (2) It has trained its personnel in the procedures
27 established pursuant to subdivision (1) of this subsection;

28 (3) The telemarketer has maintained and recorded lists
29 of persons who have previously stated that they do not
30 wish to receive such calls; and

31 (4) Any subsequent call is the result of error.

PART VII. REMEDIES.

§46A-6F-701. Civil remedies.

1 (a) If a telemarketer violates the provisions of section
2 six hundred one of this article, the consumer has a cause
3 of action to recover actual damages and, in addition, a
4 right to recover from the violator a penalty in an amount,
5 to be determined by the court, of not less than one
6 hundred dollars nor more than three thousand dollars. No
7 action brought pursuant to the provisions of this
8 subsection may be brought more than two years after the
9 date upon which the violation occurred or the due date of
10 the last scheduled payment of the agreement, whichever is
11 later.

12 (b) If a telemarketer violates the provisions of section
13 six hundred one of this article, any sale or lease of
14 consumer goods or services is void and the consumer is
15 not obligated to pay either the principal or any finance
16 charge. If the consumer has paid any part of the principal
17 or of the finance charge, he or she has a right to recover
18 the payment from the violator or from any assignee of the
19 violator's rights who undertakes direct collection of
20 payments or enforcement of rights arising from the debt.

21 (c) Any consumer that suffers harm as a result of any
22 abusive act or practice shall receive injunctive or
23 declaratory relief.

24 (d) The state, on behalf of its residents who have
25 suffered a loss or harm as a result of a violation of this
26 article, may seek injunctive or declaratory relief, actual
27 damages, consumer restitution, civil penalties, forfeiture of
28 bond, attachment of property, costs, attorney's fees and
29 any other remedies available to the division under the
30 provisions of this chapter or otherwise provided by law.

31 (e) In any action brought under this article where
32 damages are awarded to a consumer, the court may adjust
33 the damages to account for inflation from the first day of
34 July, one thousand nine hundred ninety-eight, to the time
35 of the award of damages, in an amount determined by the
36 application of data from the consumer price index.
37 Consumer price index means the last consumer price
38 index for all consumers published by the United States
39 department of labor.

§46A-6F-702. Remedies not exclusive.

1 Nothing contained in this article shall be construed to
2 adversely alter or affect a right or benefit accruing to a
3 consumer or the state in accordance with other provisions
4 of this chapter, or to limit any civil or criminal remedy
5 otherwise provided for by law. In the case of provisions
6 contained in this article that exempt a person from the
7 requirements of this article or that otherwise limit the
8 applicability of this article to a person, those provisions are
9 exclusive to this article and shall not be construed to
10 otherwise exempt a person or to limit the applicability of
11 any other provisions of this code.

§46A-6F-703. Service of process on certain nonresidents.

1 Any nonresident person, except a nonresident
2 corporation authorized to do business in this state
3 pursuant to the provisions of chapter thirty-one of this
4 code, who directs telemarketing solicitations to persons
5 residing in this state, shall be conclusively presumed to
6 have appointed the department of tax and revenue as his
7 attorney-in-fact with authority to accept service of notice
8 and process in any action or proceeding brought against

9 him arising out of such consumer credit sale, consumer
10 lease or consumer loan. A person shall be considered a
11 nonresident hereunder if he is a nonresident at the time
12 such service of notice and process is sought. No act of
13 such person appointing the department of tax and revenue
14 shall be necessary. Immediately after being served with or
15 accepting any such process or notice, of which process or
16 notice two copies for each defendant shall be furnished
17 the department of tax and revenue with the original notice
18 or process, together with the fee required by section two,
19 article one, chapter fifty-nine of this code, the department
20 of tax and revenue shall file in his office a copy of such
21 process or notice, with a note thereon endorsed of the time
22 of service or acceptance, as the case may be, and transmit
23 one copy of such process or notice by registered or
24 certified mail, return receipt requested, to such person at
25 his address, which address shall be stated in such process
26 or notice: *Provided*, That such return receipt shall be
27 signed by such person or an agent or employee of such
28 person if a corporation, or the registered or certified mail
29 so sent by said department of tax and revenue is refused
30 by the addressee and the registered or certified mail is
31 returned to said department of tax and revenue, or to his
32 office, showing thereon the stamp of the U.S. postal
33 service that delivery thereof has been refused, and such
34 return receipt or registered or certified mail is appended to
35 the original process or notice and filed therewith in the
36 clerk's office of the court from which such process or
37 notice was issued. But no process or notice shall be served
38 on the department of tax and revenue or accepted fewer
39 than ten days before the return date thereof. The court
40 may order such continuances as may be reasonable to
41 afford each defendant opportunity to defend the action or
42 proceeding.

43 The provisions for service of process or notice herein
44 are cumulative and nothing herein contained shall be
45 construed as a bar to the plaintiff in any action from
46 having process or notice in such action served in any other
47 mode and manner provided by law.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.**ARTICLE 4. FORGERY AND CRIMES AGAINST THE CURRENCY.****§61-4-5. Forging or uttering other writing; penalty; creation of unauthorized demand draft.**

1 (a) If any person forge any writing, other than such as
2 is mentioned in the first and third sections of this article, to
3 the prejudice of another's right, or utter or attempt to
4 employ as true such forged writing, knowing it to be
5 forged, he shall be guilty of a felony and, upon
6 conviction, shall be confined in the penitentiary not less
7 than one nor more than ten years, or, in the discretion of
8 the court, be confined in jail not more than one year and
9 be fined not exceeding five hundred dollars.

10 (b) It is a violation of this section to create a demand
11 draft under the purported authority of another person for
12 the purpose of charging the other person's account with a
13 bank or other financial institution, or to utter or attempt to
14 employ as true such demand draft, if the demand draft is
15 created with the intent to defraud, and either or both of the
16 following elements is present:

17 (1) The person does not, in fact, have the authority to
18 charge the other person's account; or

19 (2) The amount of the demand draft exceeds the
20 amount authorized to be charged.

21 (c) If a person creates a demand draft without
22 authority or which exceeds the amount authorized to be
23 charged to an account, and the demand draft contains the
24 account holder's printed or typewritten name or account
25 number, or a notation that the account holder authorized
26 the draft, or a statement "No signature required",
27 "Authorization on file", "Signature on file", or words to
28 that effect, the demand draft is the equivalent of a check
29 on which the drawer's signature is forged or altered.

30 (d) For purposes of this section, the term "demand
31 draft" shall have the meaning ascribed to it in section one
32 hundred four, article three, chapter forty-six of this code.

CHAPTER 315

(Com. Sub. for H. B. 2395—By Delegates Manuel, Doyle,
Douglas, Amores and C. White)

[Passed March 14, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article ten, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section five-u; to amend article twelve of said chapter by adding thereto a new section, designated section four-a; and to amend and reenact sections two, three and seven, article nine-a, chapter sixteen of said code, all relating to disclosures of persons making retail sales of tobacco products; requiring certain agencies to compile, distribute, report and make available lists of those who intend to sell tobacco products; requiring retailers of tobacco products to provide additional information upon business registration and annual renewals; modifying the penalty for minors found to possess or use tobacco products; modifying the penalty for businesses and individuals who sell or give tobacco or tobacco products to minors; providing legal protection for minors who participate in inspection; authorizing the commissioner of the alcohol beverage control commission, the state police, sheriffs and local police to assist in the enforcement of youth smoking laws and to use minors in the inspection of retailers who sell tobacco products; requiring clerks of courts to record certain convictions and to notify the commissioner of the alcohol beverage control administration of payment of fines and satisfaction of community service penalties.

Be it enacted by the Legislature of West Virginia:

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

Chapter

- 11. Taxation.
- 16. Public Health.

CHAPTER 11. TAXATION.**Article**

- 10. Procedure and Administration.
- 12. Business Registration Tax.

ARTICLE 10. PROCEDURE AND ADMINISTRATION.**§11-10-5u. Disclosure of persons making retail sales of tobacco products.**

1 Notwithstanding any provision of this article to the
2 contrary, the tax commissioner shall, at least semi-
3 annually, provide to the commissioner of the West
4 Virginia alcohol beverage control administration, the
5 superintendent of the West Virginia state police and the
6 secretary of the West Virginia department of health and
7 human resources by the first day of April and October of
8 each year, a list of the names and business locations of
9 each person who indicates on a new application for a
10 business registration certificate or on a current application
11 for renewal of a business registration certificate that the
12 person sells or intends to sell cigarettes or other tobacco
13 products to consumers: *Provided*, That when available, the
14 tax commissioner will provide the name of the business
15 owner, county of location, and the business description
16 code: *Provided, however*, That the tax commissioner may
17 also file a copy of the list provided to the commissioner of
18 the West Virginia alcohol beverage control administration,
19 the superintendent of the West Virginia state police and
20 the secretary of the West Virginia department of health
21 and human resources in the state register maintained by
22 the secretary of state, who shall make the list available for
23 inspection and copying: *Provided further*, That the results
24 of the inspections of retail establishments which sell
25 tobacco products may be reported to the federal
26 government by the commissioner of the West Virginia
27 alcohol beverage control administration.

ARTICLE 12. BUSINESS REGISTRATION TAX.

§11-12-4a. Retailers of tobacco products to provide additional information.

1 For registration years beginning on or after the first
2 day of July, one thousand nine hundred ninety-eight, each
3 person applying for a business registration certificate and
4 each person applying for renewal of a business
5 registration certificate shall indicate in the application for
6 a business registration certificate or for the renewal of a
7 business registration certificate whether the person is
8 selling or intends to sell cigarettes or other tobacco
9 products to consumers during the registration period.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 9A. TOBACCO USAGE RESTRICTIONS.

§16-9A-2. Sale or gift of cigarette, cigarette paper, pipe, cigar, snuff, or chewing tobacco to persons under eighteen; penalty.

§16-9A-3. Use or possession of tobacco or tobacco products by persons under the age of eighteen years; penalty.

§16-9A-7. Enforcement of youth smoking laws; retail tobacco outlet inspections; use of minors in inspections; annual reports; penalties; defenses.

§16-9A-2. Sale or gift of cigarette, cigarette paper, pipe, cigar, snuff, or chewing tobacco to persons under eighteen; penalty.

1 No person or business entity may sell, give or furnish,
2 or cause to be sold, given or furnished, to any person
3 under the age of eighteen years:

4 (a) Any cigarette, cigarette paper or any other paper
5 prepared, manufactured or made for the purpose of
6 smoking any tobacco or tobacco product; or

7 (b) Any cigar, pipe, snuff, chewing tobacco or tobacco
8 product, in any form.

9 Any firm or corporation which violates any of the
10 provisions of subdivision (a) or (b) of this section is guilty
11 of a misdemeanor and, upon conviction thereof, shall be
12 fined twenty-five dollars for the first offense. Upon any
13 subsequent violation by that firm or corporation at the
14 same location or operating unit, the firm or corporation

15 shall be fined as follows: At least fifty dollars but not
16 more than one hundred dollars for the second offense, if it
17 occurs within two years of the first conviction; at least fifty
18 dollars but not more than two hundred dollars for the
19 third offense, if it occurs within two years of the first
20 conviction; at least one hundred dollars but not more than
21 three hundred dollars for the fourth offense, if it occurs
22 within five years of the first conviction; and at least one
23 hundred dollars but not more than three hundred fifty
24 dollars for the fifth and any subsequent offenses, if the
25 fifth or subsequent offense occurs within five years of the
26 first conviction. Any person who violates any provision of
27 subdivision (a) or (b) of this section is guilty of a
28 misdemeanor and, upon conviction thereof, shall be fined
29 not less than ten nor more than twenty-five dollars.

**§16-9A-3. Use or possession of tobacco or tobacco products
by persons under the age of eighteen years;
penalty.**

1 No person under the age of eighteen years shall have
2 on or about his or her person or premises or use any
3 cigarette, or cigarette paper or any other paper prepared,
4 manufactured or made for the purpose of smoking any
5 tobacco products, in any form; or, any pipe, snuff,
6 chewing tobacco or tobacco product: *Provided*, That
7 minors participating in the inspection of locations where
8 tobacco products are sold or distributed pursuant to
9 section seven of this article and chapter shall not be
10 deemed to violate the provisions of this section: *Provided*,
11 *however*, That any person violating the provisions of this
12 section is punishable by eight hours of community
13 service: *Provided further*, That notwithstanding the
14 provisions of section two, article five, chapter forty-nine,
15 the magistrate court shall have concurrent jurisdiction.

**§16-9A-7. Enforcement of youth smoking laws; retail tobacco
outlet inspections; use of minors in inspections;
annual reports; penalties; defenses.**

1 (a) The commissioner of the West Virginia alcohol
2 beverage control administration, the superintendent of the
3 West Virginia state police, the sheriffs of the counties of
4 this state and the chiefs of police of municipalities of this
5 state, may periodically conduct unannounced inspections

6 at locations where tobacco products are sold or distributed
7 to ensure compliance with the provisions of sections two
8 and three of this article and in such manner as to conform
9 with applicable federal and state laws, rules and
10 regulations. Persons under the age of eighteen years may
11 be enlisted by such commissioner, superintendent, sheriffs
12 or chiefs of police or employees or agents thereof to test
13 compliance with these sections: *Provided*, That the minors
14 may be used to test compliance only if the testing is
15 conducted under the direct supervision of the
16 commissioner, superintendent, sheriffs or chiefs of police
17 or employees or agents thereof and written consent of the
18 parent or guardian of such person is first obtained and
19 such minors shall not be in violation of section three of
20 this article and chapter when acting under the direct
21 supervision of the commissioner, superintendent, sheriffs
22 or chiefs of police or employees or agents thereof and
23 with the written consent of the parent or guardian. It is
24 unlawful for any person to use persons under the age of
25 eighteen years to test compliance in any manner not set
26 forth herein and the person so using a minor is guilty of a
27 misdemeanor and, upon conviction thereof, shall be fined
28 the same amounts as set forth in section two of this article.

29 (b) A person charged with a violation of section two
30 or three of this article as the result of an inspection under
31 subsection (a) of this section has a complete defense if, at
32 the time the cigarette or other tobacco product or cigarette
33 wrapper was sold, delivered, bartered, furnished or given:

34 (1) The buyer or recipient falsely evidenced that he
35 was eighteen years of age or older;

36 (2) The appearance of the buyer or recipient was such
37 that a prudent person would believe the buyer or recipient
38 to be eighteen years of age or older; and

39 (3) Such person carefully checked a driver's license
40 or an identification card issued by this state or another
41 state of the United States, a passport or a United States
42 armed services identification card presented by the buyer
43 or recipient and acted in good faith and in reliance upon
44 the representation and appearance of the buyer or
45 recipient in the belief that the buyer or recipient was
46 eighteen years of age or older.

47 (c) Any fine collected after a conviction of violating
48 section two of this article shall be paid to the clerk of the
49 court in which the conviction was obtained: *Provided,*
50 That the clerk of the court upon receiving the fine shall
51 promptly notify the commissioner of the West Virginia
52 alcohol beverage control administration of the conviction
53 and the collection of the fine: *Provided, however,* That
54 any community service penalty imposed after a conviction
55 of violating section three of this article shall be recorded
56 by the clerk of the court in which the conviction was
57 obtained: *Provided further,* That the clerk of the court
58 upon being advised that community service obligations
59 have been fulfilled shall promptly notify the
60 commissioner of the West Virginia alcohol beverage
61 control administration of the conviction and the
62 satisfaction of imposed community service penalty.

63 (d) The commissioner of the West Virginia alcohol
64 beverage control administration or his or her designee
65 shall prepare and submit to the governor on the last day of
66 September of each year a report of the enforcement and
67 compliance activities undertaken pursuant to this section
68 and the results of the same, with a copy to the secretary of
69 the West Virginia department of health and human
70 resources. The report shall be in the form and substance
71 that the governor shall submit to the applicable state and
72 federal programs.

CHAPTER 316

(Com. Sub. for S. B. 191—By Senators Ross, Anderson, Helmick,
Love and Buckalew)

[Passed March 12, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section thirteen, article four, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections one, three, five, six, seven, eight, nine, ten, twelve,

fifteen and sixteen of said article; and to amend and reenact section thirty-one, article six, chapter thirty-three of said code, all relating to repealing the requirement that accident reports be confidential; revising accident reporting requirements; revising accident report forms; revising reporting requirements for garages; and revising reporting requirements to the commissioner of motor vehicles under certain motor vehicle insurance policies.

Be it enacted by the Legislature of West Virginia:

That section thirteen, article four, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that sections one, three, five, six, seven, eight, nine, ten, twelve, fifteen and sixteen of said article be amended and reenacted; and that section thirty-one, article six, chapter thirty-three of said code be amended and reenacted, all to read as follows:

Chapter

17C. Traffic Regulations and Laws of the Road.

33. Insurance.

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

ARTICLE 4. ACCIDENTS.

- §17C-4-1. Accidents involving death or personal injuries.
- §17C-4-3. Duty to give information and render aid.
- §17C-4-5. Duty upon striking fixtures upon a highway.
- §17C-4-6. Immediate reports of accidents.
- §17C-4-7. Written reports of accidents.
- §17C-4-8. When driver unable to report.
- §17C-4-9. Accident report forms.
- §17C-4-10. Penalty for failure to report.
- §17C-4-12. Garages to report bullet damage.
- §17C-4-15. Any incorporated city, town, etc., may require accident reports.
- §17C-4-16. Accidents involving state and municipal property; reports to be provided.

§17C-4-1. Accidents involving death or personal injuries.

- 1 (a) The driver of any vehicle involved in an accident
- 2 resulting in injury to or death of any person shall

3 immediately stop such vehicle at the scene of such
4 accident or as close thereto as possible but shall then
5 forthwith return to and in every event shall remain at the
6 scene of the accident until he has fulfilled the
7 requirements of section three of this article. Every such
8 stop shall be made without obstructing traffic more than is
9 necessary.

10 (b) Any person failing to stop or to comply with said
11 requirements under such circumstances shall upon
12 conviction be punished by imprisonment for not less than
13 thirty days nor more than one year or by fine of not less
14 than one hundred dollars nor more than five thousand
15 dollars, or by both such fine and imprisonment.

16 (c) The commissioner shall revoke the license or
17 permit to drive and any nonresident operating privilege of
18 the person so convicted for a period of one year.

§17C-4-3. Duty to give information and render aid.

1 The driver of any vehicle involved in an accident
2 resulting in injury to or death of any person or damage to
3 any vehicle which is driven or attended by any person
4 shall give his or her name, address and the registration
5 number of the vehicle he or she is driving and shall upon
6 request and if available exhibit his or her driver's license
7 to the person struck or the driver or occupant of or person
8 attending any vehicle collided with and shall render to any
9 person injured in such accident reasonable assistance,
10 including the carrying, or the making arrangements for
11 the carrying of such person to a physician, surgeon or
12 hospital for medical or surgical treatment if it is apparent
13 that such treatment is necessary or if such carrying is
14 requested by the injured person.

§17C-4-5. Duty upon striking fixtures upon a highway.

1 The driver of any vehicle involved in an accident
2 resulting only in damage to fixtures or other property
3 legally upon or adjacent to a highway shall take
4 reasonable steps to locate and notify the owner or person
5 in charge of such property of such fact and of his or her
6 name and address and of the registration number of the

7 vehicle he or she is driving and shall upon request and if
8 available exhibit his or her driver's license and shall make
9 report of such accident when and as required in section
10 seven of this article.

§17C-4-6. Immediate reports of accidents.

1 The driver of a vehicle involved in an accident
2 resulting in injury to or death of any person or total
3 property damage to an apparent extent of two hundred
4 fifty dollars or more shall immediately by the quickest
5 means of communication, whether oral or written, give
6 notice of such accident to the local police department if
7 such accident occurs within a municipality, otherwise to
8 the office of the county sheriff or the nearest office of the
9 West Virginia state police.

§17C-4-7. Written reports of accidents.

1 Every law-enforcement officer who, in the regular
2 course of duty, investigates a motor vehicle accident
3 occurring on the public highways of this state resulting in
4 bodily injury to or death of any person or total property
5 damage to an apparent extent of two hundred fifty dollars
6 or more shall, either at the time of and at the scene of the
7 accident or thereafter by interviewing participants or
8 witnesses shall, within twenty-four hours after completing
9 such investigation, forward a written report of such
10 accident to the division. The division shall prepare a form
11 for such accident report and, after approval of such form
12 by the commissioner, the superintendent of the West
13 Virginia state police and the commissioner of highways,
14 shall supply copies of such form to police departments,
15 sheriffs and other appropriate law-enforcement agencies.
16 Every accident report required under the provisions of this
17 section shall be made on such form.

§17C-4-8. When driver unable to report.

1 Whenever the driver of a vehicle is physically
2 incapable of making an immediate report of an accident
3 as required in section six of this article and there was
4 another occupant in the vehicle at the time of the accident

5 capable of making a report, such occupant shall make or
6 cause to be made said report not made by the driver.

§17C-4-9. Accident report forms.

1 (a) The division shall prepare and upon request supply
2 to police departments, coroners, sheriffs, division of
3 natural resources, and other suitable agencies or
4 individuals, forms for accident reports required hereunder,
5 appropriate with respect to the persons required to make
6 such reports and the purposes to be served. The written
7 reports to be made by investigating officers shall call for
8 sufficiently detailed information to disclose with reference
9 to a traffic accident the cause, conditions then existing,
10 and the persons and vehicles involved.

11 (b) Every accident report required to be made in
12 writing shall be made on the appropriate form approved
13 by the division and shall contain all of the information
14 required therein unless not available.

15 (c) Every such report shall also contain information
16 sufficient to enable the commissioner to determine
17 whether the requirements for security upon motor vehicles
18 is in effect in accordance with chapter seventeen-d of this
19 code.

§17C-4-10. Penalty for failure to report.

1 The commissioner may suspend the license or permit
2 to drive and any nonresident operating privileges of any
3 person failing to report an accident as herein provided
4 under section six of this article until such report has been
5 filed. Any person convicted of failing to make a report as
6 required herein shall be punished as provided in section
7 one, article eighteen of this chapter.

§17C-4-12. Garages to report bullet damage.

1 The person in charge of any garage or repair shop to
2 which is brought any motor vehicle which shows evidence
3 of having been struck by any bullet, shall report to the
4 local law-enforcement agency within twenty-four hours
5 after such motor vehicle is received, giving the engine

6 number, registration number, and the name and address of
7 the owner or operator of such vehicle.

§17C-4-15. Any incorporated city, town, etc., may require accident reports.

1 Any incorporated city, town, village or other
2 municipality may by ordinance require that the driver of a
3 vehicle involved in an accident shall file with a designated
4 city department a report of such accident. All such
5 reports shall be for the confidential use of the city
6 department.

§17C-4-16. Accidents involving state and municipal property; reports to be provided.

1 Whenever a report of a motor vehicle accident
2 prepared by a member of the West Virginia state police,
3 conservation officer of the division of natural resources, a
4 member of a county sheriff's department or a municipal
5 police officer, in the regular course of their duties,
6 indicates that as a result of such accident damage has
7 occurred to any bridge, sign, guardrail or other property,
8 exclusive of licensed motor vehicles, a copy of such report
9 shall, in the case of such property belonging to the
10 division of highways, be provided to the commissioner of
11 the division of highways, and, in the case of such property
12 belonging to a municipality, be provided to the mayor of
13 that municipality. The copies of such reports shall be
14 provided to the commissioner or mayor, as applicable,
15 without cost to them.

CHAPTER 33. INSURANCE.

ARTICLE 6. THE INSURANCE POLICY.

§33-6-31. Motor vehicle policy; omnibus clause; uninsured and underinsured motorists' coverage; conditions for recovery under endorsement; rights and liabilities of insurer.

1 (a) No policy or contract of bodily injury liability
2 insurance, or of property damage liability insurance,
3 covering liability arising from the ownership, maintenance
4 or use of any motor vehicle, shall be issued or delivered in

5 this state to the owner of such vehicle, or shall be issued or
6 delivered by any insurer licensed in this state upon any
7 motor vehicle for which a certificate of title has been
8 issued by the division of motor vehicles of this state, unless
9 it shall contain a provision insuring the named insured and
10 any other person, except a bailee for hire and any persons
11 specifically excluded by any restrictive endorsement
12 attached to the policy, responsible for the use of or using
13 the motor vehicle with the consent, expressed or implied,
14 of the named insured or his or her spouse against liability
15 for death or bodily injury sustained or loss or damage
16 occasioned within the coverage of the policy or contract as
17 a result of negligence in the operation or use of such
18 vehicle by the named insured or by such person:
19 *Provided*, That in any such automobile liability insurance
20 policy or contract, or endorsement thereto, if coverage
21 resulting from the use of a nonowned automobile is
22 conditioned upon the consent of the owner of such motor
23 vehicle, the word "owner" shall be construed to include the
24 custodian of such nonowned motor vehicles.
25 Notwithstanding any other provision of this code, if the
26 owner of a policy receives a notice of cancellation
27 pursuant to article six-a of this chapter and the reason for
28 the cancellation is a violation of law by a person insured
29 under the policy, said owner may by restrictive
30 endorsement specifically exclude the person who violated
31 the law and the restrictive endorsement shall be effective in
32 regard to the total liability coverage provided under the
33 policy, including coverage provided pursuant to the
34 mandatory liability requirements of section two, article
35 four, chapter seventeen-d of this code, but nothing in such
36 restrictive endorsement shall be construed to abrogate the
37 "family purpose doctrine".

38 (b) Nor shall any such policy or contract be so issued
39 or delivered unless it shall contain an endorsement or
40 provisions undertaking to pay the insured all sums which
41 he shall be legally entitled to recover as damages from the
42 owner or operator of an uninsured motor vehicle, within
43 limits which shall be no less than the requirements of
44 section two, article four, chapter seventeen-d of this code,
45 as amended from time to time: *Provided*, That such

46 policy or contract shall provide an option to the insured
47 with appropriately adjusted premiums to pay the insured
48 all sums which he shall be legally entitled to recover as
49 damages from the owner or operator of an uninsured
50 motor vehicle up to an amount of one hundred thousand
51 dollars because of bodily injury to or death of one person
52 in any one accident and, subject to said limit for one
53 person, in the amount of three hundred thousand dollars
54 because of bodily injury to or death of two or more
55 persons in any one accident and in the amount of fifty
56 thousand dollars because of injury to or destruction of
57 property of others in any one accident: *Provided*,
58 *however*, That such endorsement or provisions may
59 exclude the first three hundred dollars of property
60 damage resulting from the negligence of an uninsured
61 motorist: *Provided further*, That such policy or contract
62 shall provide an option to the insured with appropriately
63 adjusted premiums to pay the insured all sums which he
64 shall legally be entitled to recover as damages from the
65 owner or operator of an uninsured or underinsured motor
66 vehicle up to an amount not less than limits of bodily
67 injury liability insurance and property damage liability
68 insurance purchased by the insured without setoff against
69 the insured's policy or any other policy. Regardless of
70 whether motor vehicle coverage is offered and provided to
71 an insured through a multiple vehicle insurance policy or
72 contract, or in separate single vehicle insurance policies or
73 contracts, no insurer or insurance company providing a
74 bargained for discount for multiple motor vehicles with
75 respect to underinsured motor vehicle coverage shall be
76 treated differently from any other insurer or insurance
77 company utilizing a single insurance policy or contract
78 for multiple covered vehicles for purposes of determining
79 the total amount of coverage available to an insured.
80 "Underinsured motor vehicle" means a motor vehicle with
81 respect to the ownership, operation or use of which there is
82 liability insurance applicable at the time of the accident,
83 but the limits of that insurance are either: (i) Less than
84 limits the insured carried for underinsured motorists'
85 coverage; or (ii) has been reduced by payments to others
86 injured in the accident to limits less than limits the insured
87 carried for underinsured motorists' coverage. No sums

88 payable as a result of underinsured motorists' coverage
89 shall be reduced by payments made under the insured's
90 policy or any other policy.

91 (c) As used in this section, the term "bodily injury"
92 shall include death resulting therefrom and the term
93 "named insured" shall mean the person named as such in
94 the declarations of the policy or contract and shall also
95 include such person's spouse if a resident of the same
96 household and the term "insured" shall mean the named
97 insured and, while resident of the same household, the
98 spouse of any such named insured and relatives of either,
99 while in a motor vehicle or otherwise, and any person,
100 except a bailee for hire, who uses, with the consent,
101 expressed or implied, of the named insured, the motor
102 vehicle to which the policy applies or the personal
103 representative of any of the above; and the term
104 "uninsured motor vehicle" shall mean a motor vehicle as to
105 which there is no: (i) Bodily injury liability insurance and
106 property damage liability insurance both in the amounts
107 specified by section two, article four, chapter seventeen-d
108 of this code, as amended from time to time; or (ii) there is
109 such insurance, but the insurance company writing the
110 same denies coverage thereunder; or (iii) there is no
111 certificate of self-insurance issued in accordance with the
112 provisions of said section. A motor vehicle shall be
113 deemed to be uninsured if the owner or operator thereof
114 be unknown: *Provided*, That recovery under the
115 endorsement or provisions shall be subject to the
116 conditions hereinafter set forth.

117 (d) Any insured intending to rely on the coverage
118 required by subsection (b) of this section shall, if any
119 action be instituted against the owner or operator of an
120 uninsured or underinsured motor vehicle, cause a copy of
121 the summons and a copy of the complaint to be served
122 upon the insurance company issuing the policy, in the
123 manner prescribed by law, as though such insurance
124 company were a named party defendant; such company
125 shall thereafter have the right to file pleadings and to take
126 other action allowable by law in the name of the owner, or
127 operator, or both, of the uninsured or underinsured motor
128 vehicle or in its own name.

129 Nothing in this subsection shall prevent such owner or
130 operator from employing counsel of his or her own
131 choice and taking any action in his or her own interest in
132 connection with such proceeding.

133 (e) If the owner or operator of any motor vehicle
134 which causes bodily injury or property damage to the
135 insured be unknown, the insured, or someone in his or her
136 behalf, in order for the insured to recover under the
137 uninsured motorist endorsement or provision, shall:

138 (i) Within twenty-four hours after the insured discover,
139 and being physically able to report the occurrence of such
140 accident, the insured, or someone in his or her behalf, shall
141 report the accident to a police, peace or to a judicial
142 officer, unless the accident shall already have been
143 investigated by a police officer;

144 (ii) Notify the insurance company, within sixty days
145 after such accident, that the insured or his or her legal
146 representative has a cause or causes of action arising out
147 of such accident for damages against a person or persons
148 whose identity is unknown and setting forth the facts in
149 support thereof; and, upon written request of the insurance
150 company communicated to the insured not later than five
151 days after receipt of such statement, shall make available
152 for inspection the motor vehicle which the insured was
153 occupying at the time of the accident; and

154 (iii) Upon trial establish that the motor vehicle, which
155 caused the bodily injury or property damage, whose
156 operator is unknown, was a "hit and run" motor vehicle,
157 meaning a motor vehicle which causes damage to the
158 property of the insured arising out of physical contact of
159 such motor vehicle therewith, or which causes bodily
160 injury to the insured arising out of physical contact of
161 such motor vehicle with the insured or with a motor
162 vehicle which the insured was occupying at the time of the
163 accident. If the owner or operator of any motor vehicle
164 causing bodily injury or property damage be unknown, an
165 action may be instituted against the unknown defendant as
166 "John Doe", in the county in which the accident took place

167 or in any other county in which such action would be
168 proper under the provisions of article one, chapter fifty-
169 six of this code; service of process may be made by
170 delivery of a copy of the complaint and summons or other
171 pleadings to the clerk of the court in which the action is
172 brought, and service upon the insurance company issuing
173 the policy shall be made as prescribed by law as though
174 such insurance company were a party defendant. The
175 insurance company shall have the right to file pleadings
176 and take other action allowable by law in the name of
177 John Doe.

178 (f) An insurer paying a claim under the endorsement
179 or provisions required by subsection (b) of this section
180 shall be subrogated to the rights of the insured to whom
181 such claim was paid against the person causing such
182 injury, death or damage to the extent that payment was
183 made. The bringing of an action against the unknown
184 owner or operator as John Doe or the conclusion of such
185 an action shall not constitute a bar to the insured, if the
186 identity of the owner or operator who caused the injury or
187 damages complained of, becomes known, from bringing
188 an action against the owner or operator theretofore
189 proceeded against as John Doe. Any recovery against
190 such owner or operator shall be paid to the insurance
191 company to the extent that such insurance company shall
192 have paid the insured in the action brought against such
193 owner or operator as John Doe, except that such insurance
194 company shall pay its proportionate part of any
195 reasonable costs and expenses incurred in connection
196 therewith, including reasonable attorney's fees. Nothing in
197 an endorsement or provision made under this subsection,
198 nor any other provision of law, shall operate to prevent the
199 joining, in an action against John Doe, of the owner or
200 operator of the motor vehicle causing injury as a party
201 defendant, and such joinder is hereby specifically
202 authorized.

203 (g) No such endorsement or provisions shall contain
204 any provision requiring arbitration of any claim arising
205 under any such endorsement or provision, nor may

206 anything be required of the insured except the
207 establishment of legal liability, nor shall the insured be
208 restricted or prevented in any manner from employing
209 legal counsel or instituting legal proceedings.

210 (h) The provisions of subsections (a) and (b) of this
211 section shall not apply to any policy of insurance to the
212 extent that it covers the liability of an employer to his or
213 her employees under any workers' compensation law.

214 (i) The commissioner of insurance shall formulate and
215 require the use of standard policy provisions for the
216 insurance required by this section, but use of such
217 standard policy provisions may be waived by the
218 commissioner in the circumstances set forth in section ten
219 of this article.

220 (j) A motor vehicle shall be deemed to be uninsured
221 within the meaning of this section, if there has been a valid
222 bodily injury or property damage liability policy issued
223 upon such vehicle, but which policy is uncollectible, in
224 whole or in part, by reason of the insurance company
225 issuing such policy upon such vehicle being insolvent or
226 having been placed in receivership. The right of
227 subrogation granted insurers under the provisions of
228 subsection (f) of this section shall not apply as against any
229 person or persons who is or becomes an uninsured
230 motorist for the reasons set forth in this subsection.

231 (k) Nothing contained herein shall prevent any insurer
232 from also offering benefits and limits other than those
233 prescribed herein, nor shall this section be construed as
234 preventing any insurer from incorporating in such terms,
235 conditions and exclusions as may be consistent with the
236 premium charged.

237 (l) The insurance commissioner shall review on an
238 annual basis the rate structure for uninsured and
239 underinsured motorists' coverage as set forth in subsection
240 (b) of this section and shall report to the Legislature on
241 said rate structure on or before the fifteenth day of
242 January, one thousand nine hundred eighty-three, and on
243 or before the fifteenth day of January of each of the next
244 two succeeding years.

CHAPTER 317

(S. B. 472—By Senators Wooton, Ball, Bowman, Dittmar,
Hunter, Kessler, Ross, Snyder, White and Scott)

[Passed March 10, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article six, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to when municipalities may lower the twenty-five mile per hour speed limit in residential areas.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. SPEED RESTRICTIONS.

§17C-6-3. When local authorities may alter speed limits.

1 (a) *At intersection.* — Whenever local authorities
2 within their respective jurisdictions determine upon the
3 basis of an engineering and traffic investigation that the
4 speed permitted under this chapter at any intersection is
5 greater than is reasonable or safe under the conditions
6 found to exist at such intersection, such local authority
7 subject to subsection (e) of this section shall determine
8 and declare a reasonable and safe speed limit thereat,
9 which shall be effective at all times or during hours of
10 daylight or darkness or at such other times as may be
11 determined when appropriate signs giving notice thereof
12 are erected at such intersection or upon the approaches
13 thereto.

14 (b) *Authority to increase twenty-five mile limit.* —
15 Local authorities in their respective jurisdictions may in
16 their discretion, but subject to subsection (e) of this
17 section, authorize by ordinance higher speeds than those
18 stated in section one of this article upon through highways
19 or upon highways or portions thereof where there are no

20 intersections or between widely spaced intersections, which
21 higher speed shall be effective at all times or during hours
22 of daylight or at such other times as may be determined
23 when signs are erected giving notice of the authorized
24 speed, but local authorities shall not have authority to
25 modify or alter the basic rule set forth in subsection (a),
26 section one of this article or in any event to authorize by
27 ordinance a speed in excess of fifty-five miles per hour.

28 (c) *Authority to decrease fifty-five mile limit.* —
29 Whenever local authorities within their respective
30 jurisdictions determine upon the basis of an engineering
31 and traffic investigation that the speed under this chapter
32 upon open country highway outside a business or
33 residence district is greater than is reasonable or safe
34 under the conditions found to exist upon such street or
35 highway, the local authority may determine and declare a
36 reasonable and safe limit thereon but in no event less than
37 thirty-five miles per hour and subject to subsection (e) of
38 this section, which reduced limit shall be effective at all
39 times or during hours of darkness or at other times as may
40 be determined when appropriate signs giving notice
41 thereof are erected upon such street or highway.

42 (d) *Authority to decrease twenty-five mile limit.* — A
43 municipality may in its discretion, but subject to
44 subsection (e) of this section, authorize by ordinance
45 lower speeds than those stated in subdivision (2),
46 subsection (b), section one of this article upon local
47 dedicated rights-of-way in a residential district or portions
48 thereof, which lower speed shall be effective at all times or
49 during hours of daylight or at such other times as may be
50 determined when signs are erected giving notice of the
51 authorized speed.

52 (e) *Alteration of limits on state highways in*
53 *municipalities.* — Alteration of limits on state highways or
54 extensions thereof in a municipality by local authorities
55 shall not be effective until such alteration has been
56 approved by the commissioner of highways.

CHAPTER 318

(H. B. 2625—By Delegates Anderson, Stalnaker, Border,
Warner, Everson, Williams and Clements)

[Passed March 12, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article thirteen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to stopping, standing and parking in specified places.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 13. STOPPING, STANDING AND PARKING.

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

- 1 (a) No person shall stop, stand or park a vehicle,
- 2 except when necessary to avoid conflict with other traffic
- 3 or in compliance with law or the directions of a police
- 4 officer or traffic-control device, in any of the following
- 5 places:
- 6 (1) On a sidewalk;
- 7 (2) In front of a public or private driveway;
- 8 (3) Within an intersection;
- 9 (4) Within fifteen feet of a fire hydrant;
- 10 (5) In a properly designated fire lane;
- 11 (6) On a crosswalk;
- 12 (7) Within twenty feet of a crosswalk at an intersection;
- 13 (8) Within thirty feet upon the approach to any
- 14 flashing beacon, stop sign or traffic-control signal located
- 15 at the side of a roadway; ◊

16 (9) Between a safety zone and the adjacent curb or
17 within thirty feet of points on the curb immediately
18 opposite the ends of a safety zone, unless a different
19 length is indicated by signs or markings;

20 (10) Within fifty feet of the nearest rail of a railroad
21 crossing;

22 (11) Within twenty feet of the driveway entrance to
23 any fire station and on the side of a street opposite the
24 entrance to any fire station within seventy-five feet of the
25 entrance (when properly signposted);

26 (12) Alongside or opposite any street excavation or
27 obstruction when stopping, standing or parking would
28 obstruct traffic;

29 (13) On the roadway side of any vehicle stopped or
30 parked at the edge or curb of a street;

31 (14) On any bridge or other elevated structure on a
32 highway or within a highway tunnel;

33 (15) At any place where official signs prohibit
34 stopping;

35 (16) Within twenty feet of any mail receptacle served
36 regularly by a carrier using a motor vehicle for daily
37 deliveries, if the parking interferes with or causes delay in
38 the carrier's schedule;

39 (17) On any controlled-access highway;

40 (18) At any place on any highway where the safety
41 and convenience of the traveling public is thereby
42 endangered;

43 (19) In front of a wheelchair accessible ramp or curb
44 cut which is part of a sidewalk designed for use by the
45 general public when the ramp or curb cut is properly
46 marked with yellow paint.

47 (b) No person shall move a vehicle not lawfully under
48 his or her control into any prohibited area or away from a
49 curb such distance as is unlawful.

CHAPTER 319

(Com. Sub. for H. B. 4120—By Delegates Caputo, Kuhn, Given,
Pettit, Warner, Sparks and Boggs)

[Passed March 14, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article seventeen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section six-a, relating to the transportation of compressed gas containers; defining a misdemeanor offense of transporting compressed gas containers unsecured, uncapped or with gauges attached, subject to criminal penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 17. SIZE, WEIGHT AND LOAD.

§17C-17-6a. Vehicles transporting compressed gas containers.

1 It is unlawful for any person operating a vehicle
2 transporting any container of compressed gas as a cargo
3 or part of a cargo upon a highway in an open motor
4 vehicle to transport a container designed to receive a valve
5 protection cap that is unsecured, uncapped or that has a
6 gauge attached: *Provided*, That propane gas used for
7 household use shall be exempt.

8 The commissioner of the division of highways is
9 hereby authorized and directed to propose a legislative
10 rule governing the transportation of compressed gas
11 containers by vehicles upon the highways for
12 promulgation in accordance with the provisions of chapter
13 twenty-nine-a of this code.

CHAPTER 320

(Com. Sub. for H. B. 4444—By Mr. Speaker, Mr. Kiss, and Delegate Ashley)
[By Request of the Executive]

[Passed March 14, 1998; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, three and twelve, article one, chapter twelve 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 twelve-a; to amend and reenact sections fourteen, seventeen and eighteen, article one, chapter thirteen of said code; and to amend and reenact section two, article two of said chapter, all relating to the clarification and technical clean-up of language concerning the responsibilities of the state treasurer; authorizing investment accounts by the state treasurer; authorizing money needed for current operation purposes to be invested in short term investments not to exceed five days; authorizing the state treasurer to designate banks as depositories for interest earning deposits of the state and to apportion such interest earning deposits; authorizing the treasurer to invest up to one hundred twenty-five million dollars of the operating funds of the state to meet current operational needs; clarifying the meaning of operating funds; limiting investments by the state treasurer; and authorizing the treasurer to be bond payor and registrar.

Be it enacted by the Legislature of West Virginia:

That sections two, three and twelve, article one, chapter twelve 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 twelve-a; that sections fourteen, seventeen and eighteen, article one, chapter thirteen of said code be amended and reenacted; and that section two, article two of said chapter be amended and reenacted, all to read as follows:

Chapter**12. Public Moneys and Securities.****13. Public Bonded Indebtedness.****CHAPTER 12. PUBLIC MONEYS AND SECURITIES.****ARTICLE 1. STATE DEPOSITORIES.**

§12-1-2. Depositories for demand deposits; categories of demand deposits; competitive bidding for disbursement accounts; maintenance of deposits by state treasurer.

§12-1-3. Depositories for interest earning deposits; qualifications.

§12-1-12. When treasurer shall make funds available to the investment management board; depositories outside the state.

§12-1-12a. Investment of operating funds for cash flow needs.

§12-1-2. Depositories for demand deposits; categories of demand deposits; competitive bidding for disbursement accounts; maintenance of deposits by state treasurer.

1 The state treasurer shall designate the state and
2 national banks in this state which shall serve as
3 depositories for all state funds placed in demand deposits.
4 Any such state or national bank shall, upon request to the
5 treasurer, be designated as a state depository for such
6 deposits, if such bank meets the requirements set forth in
7 this chapter.

8 Demand deposit accounts shall consist of receipt and
9 disbursement. Receipt accounts shall be those accounts in
10 which are deposited moneys belonging to or due the state
11 of West Virginia or any official, department, board,
12 commission or agency thereof.

13 Disbursement accounts shall be those accounts from
14 which are paid moneys due from the state of West Virginia
15 or any official, department, board, commission, political
16 subdivision or agency thereof to any political subdivision,
17 person, firm or corporation, except moneys paid from
18 investment accounts.

19 Investment accounts shall be those accounts
20 established by the West Virginia investment management

21 board or the state treasurer for the buying and selling of
22 securities for investment for the state of West Virginia.

23 The state treasurer shall promulgate rules, in
24 accordance with the provisions of article three, chapter
25 twenty-nine-a of this code, concerning depositories for
26 receipt accounts prescribing the selection criteria,
27 procedures, compensation and such other contractual
28 terms as it considers to be in the best interests of the state
29 giving due consideration to: (1) The activity of the
30 various accounts maintained therein; (2) the reasonable
31 value of the banking services rendered or to be rendered
32 the state by such depositories; and (3) the value and
33 importance of such deposits to the economy of the
34 communities and the various areas of the state affected
35 thereby.

36 The state treasurer shall select depositories for
37 disbursement accounts through competitive bidding by
38 eligible banks in this state. The treasurer shall promulgate
39 rules in accordance with the provisions of article three,
40 chapter twenty-nine-a of this code, prescribing the
41 procedures and criteria for the bidding and selection. The
42 treasurer shall, in the invitations for bids, specify the
43 approximate amounts of deposits, the duration of
44 contracts to be awarded and such other contractual terms
45 as it considers to be in the best interests of the state,
46 consistent with obtaining the most efficient service at the
47 lowest cost.

48 The amount of money needed for current operation
49 purposes of the state government, as determined by the
50 state treasurer, shall be maintained at all times in the state
51 treasury, in cash, in short term investments not to exceed
52 five days, or in disbursement accounts with banks
53 designated as depositories in accordance with the
54 provisions of this section. No state officer or employee
55 shall make or cause to be made any deposits of state funds
56 in banks not so designated.

**§12-1-3. Depositories for interest earning deposits; quali-
fications.**

1 Any state or national bank or any state or federal
2 savings and loan association in this state shall, upon
3 request made to the state treasurer, be designated as an
4 eligible depository for interest earning deposits of state
5 funds if such bank or state or federal savings and loan
6 association meets the requirements set forth in this
7 chapter. For purposes of this article, the term "interest
8 earning deposits" includes certificates of deposit. The
9 state treasurer shall make and apportion such interest
10 earning deposits and shall prescribe the interest rates,
11 terms and conditions of such deposits, all in accordance
12 with the provisions of article six of this chapter: *Provided*,
13 That state or federal savings and loan associations insured
14 by an agency of the federal government shall be eligible
15 for such deposits not in excess of one hundred thousand
16 dollars: *Provided, however*, That notwithstanding any
17 provision of this article to the contrary, no such interest
18 earning deposits may be deposited in any depository
19 which has been in existence over a period of five years
20 which does not have a loan to deposit ratio of fifty percent
21 or more and which does not have farm, single or
22 multifamily residential unit loans in an amount greater
23 than twenty-five percent of the amount of loans
24 representing a loan-to-deposit ratio of fifty percent. For
25 the purpose of making the foregoing calculation, the
26 balances due the depository on the following loans shall
27 be given effect: (1) Qualifying residential loans held by
28 the depository; (2) qualifying loans made in participation
29 with other financial institutions; (3) qualifying loans made
30 in participation with agencies of the state, federal or local
31 governments; and (4) qualifying loans originated and
32 serviced by the depository but owned by an out-of-state
33 investor. The computation of the criteria for eligibility
34 specified above shall be based on the average daily
35 balances of deposits, the average daily balances of total
36 loans and qualifying residential loans for the period being
37 reported.

§12-1-12. When treasurer shall make funds available to the investment management board; depositories outside the state.

1 When the funds in the treasury exceed the amount
2 needed for current operational purposes, as determined by
3 the treasurer, the treasurer shall make all of such excess
4 available for investment by the investment management
5 board which shall invest the excess for the benefit of the
6 general revenue fund: *Provided*, That the state treasurer,
7 after reviewing the cash flow needs of the state, may
8 withhold and invest amounts not to exceed one hundred
9 twenty-five million dollars of the operating funds needed
10 to meet current operational purposes. Investments made
11 by the state treasurer under this section shall be made in
12 short term investments not to exceed five days. Operating
13 funds means the consolidated fund established in section
14 eight, article six of this chapter, including all cash and
15 investments of the fund.

16 Whenever the funds in the treasury exceed the amount
17 for which depositories within the state have qualified, or
18 the depositories within the state which have qualified are
19 unwilling to receive larger deposits the treasurer may
20 designate depositories outside the state, disbursement
21 accounts being bid for in the same manner as required by
22 depositories within the state, and when such depositories
23 outside the state have qualified by giving the bond
24 prescribed in section four of this article, the state treasurer
25 shall deposit funds therein in like manner as funds are
26 deposited in depositories within the state under this article.

27 The state treasurer may transfer funds to banks outside
28 the state to meet obligations to paying agents outside the
29 state and any such transfer must meet the same bond
30 requirements as set forth in this article.

§12-1-12a. Investment of operating funds for cash flow needs.

1 (a) The Legislature hereby finds and declares that the
2 cash flow needs of the state require short term and liquid
3 investments, and that up to one hundred twenty-five
4 million dollars of the operating funds of the state should
5 be sufficient to meet cash flow needs. The Legislature
6 further finds that the state treasurer may withhold from
7 transfer to the investment management board up to one
8 hundred twenty-five million dollars of the operating funds

9 of the state and invest those funds in short term and liquid
10 investments.

11 (b) The state treasurer may exercise any and all
12 powers reasonably necessary or appropriate to carry out
13 and effectuate the purposes of this section.

14 (c) Investments shall be made in accordance with the
15 provisions of the "Uniform Prudent Investor Act" codified
16 as article six-c, chapter forty-four of this code.

17 (d) The state treasurer is authorized to invest the funds
18 in repurchase agreements fully collateralized by
19 obligations of the United States government or its agencies
20 or instrumentalities.

21 (e) The state treasurer shall prepare monthly a report
22 of the investments he or she administers. A copy of each
23 report shall be furnished to the president of the Senate,
24 speaker of the House, legislative auditor, council of
25 finance and administration, and upon request to any
26 legislative committee, banking institution, state or federal
27 savings and loan association in this state, and any member
28 of the news media. The report shall also be kept available
29 for inspection by the public.

CHAPTER 13. PUBLIC BONDED INDEBTEDNESS.

ARTICLE 1. BOND ISSUES FOR ORIGINAL INDEBTEDNESS.

§13-1-14. Resolution authorizing issuance and fixing terms of bonds.

§13-1-17. Bonds may be registered; coupon bonds may be registered as to principal.

§13-1-18. Registration of coupon bonds as to interest; exchange of registered bond for coupon bond.

§13-1-14. Resolution authorizing issuance and fixing terms of bonds.

1 If three fifths of all the votes cast for and against the
2 proposition to incur debt and issue negotiable bonds shall
3 be in favor of the same, the governing body of the
4 political division shall, by resolution, authorize the
5 issuance of such bonds in an amount not exceeding the
6 amount stated in the proposition; fix the date thereof; set
7 forth the denominations in which they shall be issued,
8 which denominations shall be one hundred dollars or

9 multiples thereof; determine the rate or rates of interest
10 which the bonds shall bear, which rate or rates of interest
11 shall be within the maximum rate stated in the proposition
12 submitted to vote and payable semiannually; prescribe the
13 medium with which the bonds shall be payable; require
14 that the bonds shall be made payable at the office of the
15 state treasurer and at such other place or places as the
16 body issuing the same may designate; provide for a
17 sufficient levy to pay the annual interest on the bonds and
18 the principal at maturity; fix the times within the
19 maximum period, as contained in the proposition
20 submitted to vote, when the bonds shall become payable,
21 which shall not exceed thirty-four years from the date
22 thereof; determine whether all or a portion of the bonds
23 shall be subject to redemption prior to the maturity
24 thereof and, if so, the terms of the redemption; and
25 prescribe a form for executing the bonds authorized.

§13-1-17. Bonds may be registered; coupon bonds may be registered as to principal.

1 The bonds issued hereunder may be registered or
2 coupon bonds. Coupon bonds may be registered as to the
3 principal in the owner's name by the state treasurer on
4 books which shall be kept at its office for the purpose and
5 the registration shall also be noted on the bonds, after
6 which no transfer shall be valid unless made by the state
7 treasurer on the books of registration and similarly noted
8 on the bonds. Bonds registered as to principal may be
9 discharged from registration by being transferred to
10 bearer, after which they shall be transferable by delivery;
11 but may again, and from time to time, be registered as to
12 the principal amount as before. The registration of
13 coupon bonds as to the principal sum shall not affect the
14 negotiability of the interest coupons, but title to the same
15 shall pass by delivery.

§13-1-18. Registration of coupon bonds as to interest; exchange of registered bond for coupon bond.

1 Coupon bonds may also be registered as to the interest
2 by the holder surrendering the bonds with the unpaid
3 coupons attached, which bonds and coupons shall be
4 canceled by the state treasurer. New bonds of the same
5 date and tenor and for the same amounts as the bonds
6 surrendered, or, at the option of the holder, a single bond

7 for the aggregate amount of the bonds surrendered, but
8 without interest coupons attached, shall be issued in the
9 place of the coupon bonds and registered in the manner
10 required in the preceding section. A registered bond may
11 at any time be surrendered and be exchanged by the
12 holder for a coupon bond by the holder delivering the
13 registered bond to the state treasurer who shall cancel the
14 same and who shall cause a new bond of the same date
15 and tenor and for the same amount to be issued, and with
16 interest coupons for the interest thereafter to accrue
17 thereon attached, and deliver the same to the holder of the
18 surrendered bond. The governing body of the county,
19 municipal corporation or school district which issued the
20 original bond shall issue and execute the new bond
21 required by this section and shall pass the resolutions and
22 ordinances necessary to authorize the same. The expense
23 of such registration shall in all cases be paid by the holder
24 of the bonds.

ARTICLE 2. REFUNDING BONDS.

§13-2-2. Terms of refunding bonds; time, place and amount of payments.

1 Upon determining to issue such refunding bonds, the
2 governing body of such political division shall, by
3 resolution, authorize the issuance of such bonds in an
4 amount not exceeding the principal amount permitted by
5 section one of this article, fix the date thereof, the rate or
6 rates of interest which such bonds shall bear, payable
7 semiannually, and require that the bonds shall bear,
8 payable at the office of the state treasurer and at such
9 other place or places as the body issuing the same may
10 designate. Such resolution shall also provide that such
11 bonds shall mature serially in annual installments
12 beginning not more than three years after the date thereof,
13 and the last of such annual installments shall mature in not
14 exceeding thirty-four years from the date of such bonds.
15 The amount payable in each year on the refunding bonds,
16 together with any unrefunded or unissued bonds of the
17 prior issue, may be so fixed that, when the amount of
18 interest is added to the principal amount to be paid during
19 the respective years, the total amount payable in each year
20 shall be as nearly equal as practicable; or such bonds may
21 be made payable in annual installments as nearly equal in
22 principal as may be practicable.

23 All or a portion of the refunding bonds may be
24 subject to redemption prior to the maturity thereof, at the
25 option of the body issuing the same, at such times and
26 prices and on such terms as shall be designated in the
27 resolution required by this section. The body issuing the
28 refunding bonds may not levy taxes in connection with
29 the redemption of any refunding bonds in excess of the
30 taxes that would have been levied for the payment of
31 principal of and interest on such refunding bonds in such
32 year.

CHAPTER 321

(S. B. 605—By Senators Wooton, Ball, Bowman, Dittmar,
Kessler, Oliverio, Ross, Schoonover, Snyder,
White, Buckalew and Scott)

[Passed March 13, 1998; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section seventeen, article one-a, chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section sixteen, article six of said chapter; to amend and reenact section nine, article nine of said chapter; and to amend and reenact sections two and nineteen, article ten of said chapter, all relating generally to unemployment compensation; clarifying certain exclusions from the definition of employment; changing references to federal statutes; recognizing authority of certain federal levies against benefits; allowing disclosure of unemployment compensation information to child support agencies; and continuing authority to expend Reed Act funds.

Be it enacted by the Legislature of West Virginia:

That section seventeen, article one-a, chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section sixteen, article six of said chapter be amended and reenacted; that section nine, article nine of said chapter be amended and reenacted; and

that sections two and nineteen, article ten of said chapter be amended and reenacted, all to read as follows:

Article

1 A. Definitions.

6. Employee Eligibility; Benefits.

9. Unemployment Compensation Administration Fund.

10. General Provisions.

ARTICLE 1A. DEFINITIONS.

§21A-1A-17. Exclusions from employment.

1 The term "employment" does not include:

2 (1) Service performed in the employ of the United
3 States or any instrumentality of the United States exempt
4 under the constitution of the United States from the
5 payments imposed by this law, except that to the extent
6 that the Congress of the United States permits states to
7 require any instrumentalities of the United States to make
8 payments into an unemployment fund under a state
9 unemployment compensation law, all of the provisions of
0 this law are applicable to the instrumentalities and to
11 service performed for the instrumentalities in the same
12 manner, to the same extent and on the same terms as to all
13 other employers, employing units, individuals and
14 services: *Provided*, That if this state is not certified for any
15 year by the secretary of labor under
16 26 U.S.C. §3404, subsection (c), the payments required of
17 the instrumentalities with respect to the year shall be
18 refunded by the commissioner from the fund in the same
19 manner and within the same period as is provided in
20 section nineteen, article five of this chapter, with respect to
21 payments erroneously collected;

22 (2) Service performed with respect to which
23 unemployment compensation is payable under the
24 Railroad Unemployment Insurance Act and service with
25 respect to which unemployment benefits are payable
26 under an unemployment compensation system for
27 maritime employees established by an act of Congress.
28 The commissioner may enter into agreements with the
29 proper agency established under an act of Congress to

30 provide reciprocal treatment to individuals who, after
31 acquiring potential rights to unemployment compensation
32 under an act of Congress, or who have, after acquiring
33 potential rights to unemployment compensation under an
34 act of Congress, acquired rights to benefit under this
35 chapter. Such agreement shall become effective ten days
36 after the publications which shall comply with the general
37 rules of the department;

38 (3) Service performed by an individual in agricultural
39 labor, except as provided in subdivision (12), section
40 sixteen of this article, the definition of "employment". For
41 purposes of this subdivision, the term "agricultural labor"
42 includes all services performed:

43 (A) On a farm, in the employ of any person, in
44 connection with cultivating the soil, or in connection with
45 raising or harvesting any agricultural or horticultural
46 commodity, including the raising, shearing, feeding,
47 caring for, training and management of livestock, bees,
48 poultry and fur-bearing animals and wildlife;

49 (B) In the employ of the owner or tenant or other
50 operator of a farm, in connection with the operation,
51 management, conservation, improvement or maintenance
52 of the farm and its tools and equipment, or in salvaging
53 timber or clearing land of brush and other debris left by a
54 hurricane, if the major part of the service is performed on
55 a farm;

56 (C) In connection with the production or harvesting of
57 any commodity defined as an agricultural commodity in
58 section fifteen (g) of the Agricultural Marketing Act, as
59 amended, as codified in 12 U.S.C. §1141j, subsection (g),
60 or in connection with the ginning of cotton, or in
61 connection with the operation or maintenance of ditches,
62 canals, reservoirs or waterways, not owned or operated for
63 profit, used exclusively for supplying and storing water
64 for farming purposes;

65 (D) (i) In the employ of the operator of a farm in
66 handling, planting, drying, packing, packaging,
67 processing, freezing, grading, storing or delivering to
68 storage or to market or to a carrier for transportation to

69 market, in its unmanufactured state, any agricultural or
70 horticultural commodity; but only if the operator
71 produced more than one half of the commodity with
72 respect to which the service is performed; or (ii) in the
73 employ of a group of operators of farms (or a cooperative
74 organization of which the operators are members) in the
75 performance of service described in subparagraph (i) of
76 this paragraph, but only if the operators produced more
77 than one half of the commodity with respect to which the
78 service is performed; but the provisions of subparagraphs
79 (i) and (ii) of this paragraph are not applicable with
80 respect to service performed in connection with
81 commercial canning or commercial freezing or in
82 connection with any agricultural or horticultural
83 commodity after its delivery to a terminal market for
84 distribution for consumption;

85 (E) On a farm operated for profit if the service is not
86 in the course of the employer's trade or business or is
87 domestic service in a private home of the employer. As
88 used in this subdivision, the term "farm" includes stock,
89 dairy, poultry, fruit, fur-bearing animals, truck farms,
90 plantations, ranches, greenhouses, ranges and nurseries, or
91 other similar land areas or structures used primarily for
92 the raising of any agricultural or horticultural
93 commodities;

94 (4) Domestic service in a private home except as
95 provided in subdivision (13), section sixteen of this article,
96 the definition of "employment";

97 (5) Service performed by an individual in the employ
98 of his or her son, daughter or spouse;

99 (6) Service performed by a child under the age of
100 eighteen years in the employ of his or her father or
101 mother;

102 (7) Service as an officer or member of a crew of an
103 American vessel, performed on or in connection with the
104 vessel, if the operating office, from which the operations
105 of the vessel operating on navigable waters within or
106 without the United States are ordinarily and regularly

107 supervised, managed, directed and controlled, is without
108 this state;

109 (8) Service performed by agents of mutual fund
110 broker-dealers or insurance companies, exclusive of
111 industrial insurance agents, or by agents of investment
112 companies, who are compensated wholly on a commission
113 basis;

114 (9) Service performed: (A) In the employ of a church
115 or convention or association of churches, or an
116 organization which is operated primarily for religious
117 purposes and which is operated, supervised, controlled or
118 principally supported by a church or convention or
119 association of churches; or (B) by a duly ordained,
120 commissioned or licensed minister of a church in the
121 exercise of his or her ministry or by a member of a
122 religious order in the exercise of duties required by the
123 order; or (C) by an individual receiving rehabilitation or
124 remunerative work in a facility conducted for the purpose
125 of carrying out a program of either: (i) Rehabilitation for
126 individuals whose earning capacity is impaired by age or
127 physical or mental deficiency or injury; or (ii) providing
128 remunerative work for individuals who because of their
129 impaired physical or mental capacity cannot be readily
130 absorbed in the competitive labor market: *Provided*, That
131 this exemption does not apply to services performed by
132 individuals if they are not receiving rehabilitation or
133 remunerative work on account of their impaired capacity;
134 or (D) as part of an unemployment work-relief or work-
135 training program assisted or financed, in whole or in part,
136 by any federal agency or an agency of a state or political
137 subdivision thereof, by an individual receiving the work
138 relief or work training; or (E) by an inmate of a custodial
139 or penal institution;

140 (10) Service performed in the employ of a school,
141 college or university, if the service is performed: (A) By a
142 student who is enrolled and is regularly attending classes
143 at the school, college or university; or (B) by the spouse of
144 a student, if the spouse is advised, at the time the spouse
145 commences to perform the service, that: (i) The
146 employment of the spouse to perform the service is

147 provided under a program to provide financial assistance
148 to the student by the school, college or university; and (ii)
149 the employment will not be covered by any program of
150 unemployment insurance;

151 (11) Service performed by an individual who is
152 enrolled at a nonprofit or public educational institution
153 which normally maintains a regular faculty and
154 curriculum and normally has a regularly organized body
155 of students in attendance at the place where its educational
156 activities are carried on as a student in a full-time program,
157 taken for credit at the institution, which combines
158 academic instruction with work experience, if the service is
159 an integral part of the program, and the institution has so
160 certified to the employer, except that this subdivision does
161 not apply to service performed in a program established
162 for or on behalf of an employer or group of employers;

163 (12) Service performed in the employ of a hospital, if
164 the service is performed by a patient of the hospital, as
165 defined in this article;

166 (13) Service in the employ of a governmental entity
167 referred to in subdivision (9), section sixteen of this article,
168 the definition of "employment" if the service is performed
169 by an individual in the exercise of duties: (A) As an
170 elected official; (B) as a member of a legislative body, or a
171 member of the judiciary, of a state or political subdivision;
172 (C) as a member of the state national guard or air national
173 guard; (D) as an employee serving on a temporary basis in
174 case of fire, storm, snow, earthquake, flood or similar
175 emergency; (E) in a position which, under or pursuant to
176 the laws of this state, is designated as: (i) A major
177 nontenured policymaking or advisory position; or (ii) a
178 policymaking or advisory position the performance of the
179 duties of which ordinarily does not require more than
180 eight hours per week;

181 (14) Service performed by a bona fide partner of a
182 partnership for the partnership; and

183 (15) Service performed by a person for his or her own
184 sole proprietorship.

185 Notwithstanding the foregoing exclusions from the
186 definition of "employment", services, except agricultural
187 labor and domestic service in a private home, are in
188 employment if with respect to the services a tax is required
189 to be paid under any federal law imposing a tax against
190 which credit may be taken for contributions required to be
191 paid into a state unemployment compensation fund, or
192 which as a condition for full tax credit against the tax
193 imposed by the federal Unemployment Tax Act are
194 required to be covered under this chapter.

ARTICLE 6. EMPLOYEE ELIGIBILITY; BENEFITS.

§21A-6-16. Child support intercept of unemployment benefits.

1 (a) An individual filing a new claim for
2 unemployment compensation shall, at the time of filing
3 such claim, disclose whether or not the individual owes
4 child support obligations as hereafter defined under
5 subsection (g) of this section. If any such individual
6 discloses that he or she owes child support obligations and
7 is determined to be eligible for unemployment
8 compensation, the commissioner shall notify the child
9 support enforcement division of the department of health
10 and human resources that the individual has been
11 determined to be eligible for unemployment
12 compensation.

13 (b) The commissioner shall deduct and withhold from
14 any unemployment compensation payable to an
15 individual that owes such child support obligations as
16 defined under subsection (g) of this section:

17 (1) The amount specified by the individual to the
18 commissioner to be deducted and withheld under this
19 subsection, if neither subdivision (2) nor subdivision (3) is
20 applicable;

21 (2) The amount, if any, determined pursuant to an
22 agreement submitted to the commissioner under section
23 454 (19)(B)(i) of the Social Security Act, (B)(i), by the
24 department of health and human resources, unless
25 subdivision (3) is applicable; or

26 (3) Any amount otherwise required to be deducted
27 and withheld from such unemployment compensation
28 pursuant to legal process, as that term is defined in section
29 459 (i)(5) of the Social Security Act, as codified in
30 42 U.S.C. §659 (i)(5), properly served upon the
31 commissioner.

32 (c) Any amount deducted and withheld under
33 subsection (b) of this section shall be paid by the
34 commissioner to the child support enforcement division of
35 the department of health and human resources.

36 (d) Any amount deducted and withheld under
37 subsection (b) of this section shall for all purposes be
38 treated as if it were paid to the individual as
39 unemployment compensation and paid by such individual
40 to the child support enforcement division of the
41 department of health and human resources in satisfaction
42 of the individual's child support obligations.

43 (e) For purposes of subsections (a) through (d) of this
44 section, the term "unemployment compensation" means
45 any compensation payable under this chapter, including
46 amounts payable by the commissioner pursuant to an
47 agreement under any federal law providing for
48 compensation, assistance or allowances with respect to
49 unemployment.

50 (f) This section applies only if appropriate
51 arrangements have been made for reimbursement by the
52 child support enforcement division of the department of
53 health and human resources for the administrative costs
54 incurred by the commissioner under this section which are
55 attributable to child support obligations being enforced by
56 the state or local child support enforcement agency.

57 (g) The term "child support obligations" means, for
58 purposes of these provisions, only obligations which are
59 being enforced pursuant to a plan described in section
60 454 of the Social Security Act, as codified in
61 42 U.S.C. §654, which has been approved by the secretary
62 of health and human services under Part D of Title IV of

63 the Social Security Act, as codified in 42 U.S.C. §§651
64 through 669b.

ARTICLE 9. UNEMPLOYMENT COMPENSATION ADMINISTRATION FUND.

§21A-9-9. Reed Act appropriations.

1 (a) There is hereby appropriated out of funds made
2 available to this state under section 903 of the Social
3 Security Act, as amended, as codified in 42 U.S.C. §1103,
4 the sum of four hundred thirty-four thousand five
5 hundred seventy-four dollars and eighty-four cents, or so
6 much thereof as may be necessary, to be used, for the
7 purpose of property improvements and/or automation
8 enhancements of the unemployment insurance or job
9 service activities within the bureau of employment
10 programs.

11 (b) No part of the money hereby appropriated may be
12 obligated after the ninth day of March, two thousand.

13 (c) The amount obligated pursuant to this section shall
14 not exceed at any time the amount by which: (1) The
15 aggregate of the amounts transferred to the account of this
16 state pursuant to section 903 of the Social Security Act, as
17 codified in 42 U.S.C. §1103; exceeds (2) the aggregate of
18 the amounts obligated for administration and paid out for
19 benefits and required by law to be charged against the
20 amounts transferred to the account of this state.

21 (d) This section is effective on and after the ninth day
22 of March, one thousand nine hundred ninety-eight.

23 (e) Notwithstanding any other provision of this
24 section, moneys credited to the state under section 903 of
25 the Social Security Act, as codified in 42 U.S.C. §1103,
26 with respect to federal fiscal years 1999, 2000 and 2001
27 are authorized to be used only for the administration of
28 the state's unemployment compensation program.

ARTICLE 10. GENERAL PROVISIONS.

§21A-10-2. Assignment of benefits invalid; exemption from process; exception.

§21A-10-19. Disclosure of information to child support agencies.

§21A-10-2. Assignment of benefits invalid; exemption from process; exception.

1 (a) An assignment, pledge or encumbrance of any
2 benefit due or payable under this chapter is invalid. Right
3 to benefits is exempt from levy, execution, attachment or
4 other processes for the collection of debt. Benefits
5 received by an individual so long as they are not mingled
6 with other funds of the recipient, are exempt from process
7 for the collection of a debt. The waiver of any exemption
8 provided in this section is void.

9 (b) The provisions of subsection (a) of this section do
10 not apply to:

11 (1) The assignment or collection of child support
12 payments under the provisions of section sixteen, article
13 six of this chapter;

14 (2) A levy by the internal revenue service authorized
15 by 26 U.S.C. §6331 subsection (h); or

16 (3) Collection of debts incurred for necessities
17 furnished to an individual, the individual's spouse or
18 dependents, during a period of unemployment.

§21A-10-19. Disclosure of information to child support agencies.

1 (a) The bureau of employment programs shall
2 disclose, upon request, to officers or employees of any
3 state or local child support enforcement agency, and to
4 employees of the federal secretary of health and human
5 services, any wage and benefit information with respect to
6 individuals which is contained in its records.

7 The term "state or local child support enforcement
8 agency" means any agency of a state or political
9 subdivision thereof operating pursuant to a plan described
10 in section 453, 453a or 454 of the Social Security Act, as

11 codified in 42 U.S.C. §§653, 653a and 654 which has
12 been approved by the secretary of health and human
13 services under Part D, Title IV of the Social Security Act,
14 as codified in 42 U.S.C. §§651 through 669b.

15 (b) The requesting agency shall agree that the
16 information is to be used only for the purpose of
17 establishing and collecting child support obligations from,
18 and locating, individuals owing the obligations which are
19 being enforced pursuant to a plan described in section
20 453, 453a or 454 of the Social Security Act, as codified in
21 42 U.S.C. §§653, 653a and 654 respectively, which has
22 been approved by the secretary of health and human
23 services under Part D, Title IV of the Social Security Act,
24 as codified in 42 U.S.C. §§651 through 669b, or as
25 otherwise authorized in 42 U.S.C. §653 (i)(1), (i)(3) and
26 (j).

27 (c) The information may not be released unless the
28 requesting agency agrees to reimburse the costs involved
29 for furnishing the information.

30 (d) In addition to the requirements of this section, all
31 other requirements with respect to confidentiality of
32 information obtained in the administration of this chapter
33 and the sanctions imposed on improper disclosure shall
34 apply to the use of the information by officers, and
35 employees of child support enforcement agencies. A state
36 or local child support enforcement agency may disclose to
37 any agent of the agency that is under contract with the
38 agency to carry out the purposes described in subsection
39 (b) of this section, wage information that is disclosed to an
40 officer or employee of the agency under subsection (a) of
41 this section. Any agent of a state or local child support
42 agency that receives wage information under this
43 paragraph shall comply with the safeguards established to
44 keep the information confidential and is subject to the
45 criminal provisions of subsection (g), section eleven of this
46 article.

CHAPTER 322

(S. B. 424—By Senators Wooton, White, Helmick, Ross, Prezioso, Walker,
Buckalew, Schoonover, Anderson and Sharpe)

[Passed March 10, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one hundred three, article one, chapter thirty-six-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the uniform common interest ownership act; providing for definitions; and allowing a resort owner to impose a charge to cover costs incurred for maintenance and improvements to real estate made available to unit owners without creating a common interest ownership community.

Be it enacted by the Legislature of West Virginia:

That section one hundred three, article one, chapter thirty-six-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. GENERAL PROVISIONS.

§36B-1-103. Definitions.

1 In the declaration and bylaws (section one hundred
2 six, article three of this chapter), unless specifically
3 provided otherwise or the context otherwise requires, and
4 in this chapter:

5 (1) "Affiliate of a declarant" means any person who
6 controls, is controlled by, or is under common control
7 with a declarant. A person "controls" a declarant if the
8 person: (i) Is a general partner, officer, director or
9 employer of the declarant; (ii) directly or indirectly or
10 acting in concert with one or more other persons, or
11 through one or more subsidiaries, owns, controls, holds
12 with power to vote, or holds proxies representing, more
13 than twenty percent of the voting interest in the declarant;

14 (iii) controls in any manner the election of a majority of
15 the directors of the declarant; or (iv) has contributed more
16 than twenty percent of the capital of the declarant. A
17 person "is controlled by" a declarant if the declarant: (i) Is
18 a general partner, officer, director or employer of the
19 person; (ii) directly or indirectly or acting in concert with
20 one or more other persons, or through one or more
21 subsidiaries, owns, controls, holds with power to vote, or
22 holds proxies representing, more than twenty percent of
23 the voting interest in the person; (iii) controls in any
24 manner the election of a majority of the directors of the
25 person; or (iv) has contributed more than twenty percent
26 of the capital of the person. Control does not exist if the
27 powers described in this paragraph are held solely as
28 security for an obligation and are not exercised.

29 (2) "Allocated interests" means the following interests
30 allocated to each unit: (i) In a condominium, the
31 undivided interest in the common elements, the common
32 expense liability, and votes in the association; (ii) in a
33 cooperative, the common expense liability and the
34 ownership interest and votes in the association; and (iii) in
35 a planned community, the common expense liability and
36 votes in the association.

37 (3) "Association" or "unit owners' association" means
38 the unit owners' association organized under section one
39 hundred one, article three of this chapter.

40 (4) "Common elements" means: (i) In a
41 condominium or cooperative, all portions of the common
42 interest community other than the units; and (ii) in a
43 planned community, any real estate within a planned
44 community owned or leased by the association, other than
45 a unit.

46 (5) "Common expenses" means expenditures made by,
47 or financial liabilities of, the association, together with any
48 allocations to reserves.

49 (6) "Common expense liability" means the liability for
50 common expenses allocated to each unit pursuant to
51 section one hundred seven, article two of this chapter.

52 (7) "Common interest community" means real estate
53 with respect to which a person, by virtue of his ownership
54 of a unit, is obligated to pay for real estate taxes, insurance
55 premiums, maintenance or improvement of other real
56 estate described in a declaration: *Provided*, That any
57 resort owner which, prior to the effective date of this
58 article, began the development of a resort and imposed
59 fees or assessments upon owners of real estate in the resort
60 for maintenance and care of the roads, streets, alleys,
61 sidewalks, parks, common areas and common facilities in
62 and around the resort, for fire and police protection and
63 for such other services as may be made available to owners
64 of real estate, may also impose the same fees and
65 assessments to be used for the same or similar purposes
66 upon persons purchasing real estate in the resort after the
67 effective date of this article without creating a common
68 interest community.

69 "Ownership of a unit" does not include holding a
70 leasehold interest of less than twenty years in a unit,
71 including renewal options.

72 (8) "Condominium" means a common interest
73 community in which portions of the real estate are
74 designated for separate ownership and the remainder of
75 the real estate is designated for common ownership solely
76 by the owners of those portions. A common interest
77 community is not a condominium unless the undivided
78 interest in the common elements are vested in the unit
79 owners.

80 (9) "Conversion building" means a building that at
81 any time before creation of the common interest
82 community was occupied wholly or partially by persons
83 other than purchasers and persons who occupy with the
84 consent of purchasers.

85 (10) "Cooperative" means a common interest
86 community in which the real estate is owned by an
87 association, each of whose members is entitled by virtue of
88 his ownership interest in the association to exclusive
89 possession of a unit.

90 (11) "Dealer" means a person in the business of
91 selling units for his own account.

92 (12) "Declarant" means any person or group of
93 persons acting in concert who: (i) As part of a common
94 promotional plan, offers to dispose of his or its interest in
95 a unit not previously disposed of; or (ii) reserves or
96 succeeds to any special declarant right.

97 (13) "Declaration" means any instruments, however
98 denominated, that create a common interest community,
99 including any amendments to those instruments.

100 (14) "Development rights" means any right or
101 combination of rights reserved by a declarant in the
102 declaration to: (i) Add real estate to a common interest
103 community; (ii) create units, common elements or limited
104 common elements within a common interest community;
105 (iii) subdivide units or convert units into common
106 elements; or (iv) withdraw real estate from a common
107 interest community.

108 (15) "Dispose" or "disposition" means a voluntary
109 transfer to a purchaser of any legal or equitable interest in
110 a unit, but the term does not include the transfer or release
111 of a security interest.

112 (16) "Executive board" means the body, regardless of
113 name, designated in the declaration to act on behalf of the
114 association.

115 (17) "Identifying number" means a symbol or address
116 that identifies only one unit in a common interest
117 community.

118 (18) "Leasehold common interest community" means
119 a common interest community in which all or a portion of
120 the real estate is subject to a lease, the expiration or
121 termination of which will terminate the common interest
122 community or reduce its size.

123 (19) "Limited common element" means a portion of
124 the common elements allocated by the declaration or by
125 operation of subdivision (2) or (4), section one hundred

126 two, article two of this chapter for the exclusive use of one
127 or more but fewer than all of the units.

128 (20) "Master association" means an organization
129 described in section one hundred twenty, article two of this
130 chapter, whether or not it is also an association described
131 in section one hundred one, article three of this chapter.

132 (21) "Offering" means any advertisement,
133 inducement, solicitation or attempt to encourage any
134 person to acquire any interest in a unit, other than as
135 security for an obligation. An advertisement in a
136 newspaper or other periodical of general circulation, or in
137 any broadcast medium to the general public, of a common
138 interest community not located in this state, is not an
139 offering if the advertisement states that an offering may be
140 made only in compliance with the law of the jurisdiction
141 in which the common interest community is located.

142 (22) "Person" means an individual, corporation,
143 business trust, estate, trust, partnership, association, joint
144 venture, government, governmental subdivision or agency,
145 or other legal or commercial entity. In the case of a trust,
146 the corpus of which is real estate, however, "person"
147 means the beneficiary of the trust rather than the trust or
148 the trustee.

149 (23) "Planned community" means a common interest
150 community that is not a condominium or a cooperative.
151 A condominium or cooperative may be part of a planned
152 community.

153 (24) "Proprietary lease" means an agreement with the
154 association pursuant to which a member is entitled to
155 exclusive possession of a unit in a cooperative.

156 (25) "Purchaser" means a person, other than a
157 declarant or a dealer, who by means of a voluntary
158 transfer acquires a legal or equitable interest in a unit
159 other than: (i) A leasehold interest (including renewal
160 options) of less than twenty years; or (ii) as security for an
161 obligation.

162 (26) "Real estate" means any leasehold or other estate
163 or interest in, over, or under land, including structures,
164 fixtures and other improvements and interest that by
165 custom, usage or law pass with a conveyance of land
166 though not described in the contract of sale or instrument
167 of conveyance. "Real estate" includes parcels with or
168 without upper or lower boundaries, and spaces that may be
169 filled with air or water.

170 (27) "Residential purposes" means use for dwelling or
171 recreational purposes, or both.

172 (28) "Resort" means a destination location which
173 consists of: (i) One or more persons offering recreational
174 facilities and services such as skiing, golf, tennis or boating
175 to the general public and commercial facilities such as
176 retail stores, restaurants and hotels or other lodging
177 accommodations; and (ii) at least one hundred residential
178 units, a majority of which are used as vacation or second
179 homes rather than primary residences.

180 (29) "Resort owner" means any person owning or
181 operating substantially all of the recreational facilities
182 located within a resort, or the predecessor in title of any
183 such person.

184 (30) "Security interest" means an interest in real estate
185 or personal property, created by contract or conveyance,
186 which secures payment or performance of an obligation.
187 The term includes a lien created by a mortgage, deed of
188 trust, trust deed, security deed, contract for deed, land sales
189 contract, lease intended as security, assignment of lease or
190 rents intended as security, pledge of an ownership interest
191 in an association, and any other consensual lien or title
192 retention contract intended as security for an obligation.

193 (31) "Special declarant rights" means rights reserved
194 for the benefit of a declarant to: (i) Complete
195 improvements indicated on plans and plans filed with the
196 declaration (section one hundred nine, article two of this
197 chapter) or, in a cooperative, to complete improvements
198 described in the public offering statement pursuant to
199 subdivision (2), subsection (a), section one hundred three,

200 article four of this chapter; (ii) exercise any development
201 right (section one hundred ten, article two of this chapter);
202 (iii) maintain sales offices, management offices, signs
203 advertising the common interest community, and models
204 (section one hundred fifteen, article two of this chapter);
205 (iv) use easements through the common elements for the
206 purpose of making improvements within the common
207 interest community or within real estate which may be
208 added to the common interest community (section one
209 hundred sixteen, article two of this chapter); (v) make the
210 common interest community subject to a master
211 association (section one hundred twenty, article two of this
212 chapter); (vi) merge or consolidate a common interest
213 community with another common interest community of
214 the same form of ownership (section one hundred twenty-
215 one, article two of this chapter); or (vii) appoint or remove
216 any officer of the association or any master association or
217 any executive board member during any period of
218 declarant control (subsection (d), section one hundred
219 three, article three of this chapter).

220 (32) "Time share" means a right to occupy a unit or
221 any of several units during five or more separated time
222 periods over a period of at least five years, including
223 renewal options, whether or not coupled with an estate or
224 interest in a common interest community or a specified
225 portion thereof.

226 (33) "Unit" means a physical portion of the common
227 interest community designated for separate ownership or
228 occupancy, the boundaries of which are described
229 pursuant to subdivision (5), subsection (a), section one
230 hundred five, article two of this chapter. If a unit in a
231 cooperative is owned by a unit owner or is sold, conveyed,
232 voluntarily or involuntarily encumbered or otherwise
233 transferred by a unit owner, the interest in that unit which
234 is owned, sold, conveyed, encumbered, or otherwise
235 transferred is the right to possession of that unit under a
236 proprietary lease, coupled with the allocated interests of
237 that unit, and the association's interest in that unit is not
238 thereby affected.

239 (34) "Unit owner" means a declarant or other person
240 who owns a unit, or a lessee of a unit in a leasehold
241 common interest community whose lease expires
242 simultaneously with any lease, the expiration or
243 termination of which will remove the unit from the
244 common interest community, but does not include a
245 person having an interest in a unit solely as security for an
246 obligation. In a condominium or planned community, the
247 declarant is the owner of any unit created by the
248 declaration. In a cooperative, the declarant is treated as
249 the owner of any unit to which allocated interests have
250 been allocated (section one hundred seven, article two of
251 this chapter) until that unit has been conveyed to another
252 person.

CHAPTER 323

(Com. Sub. for H. B. 4508—By Mr. Speaker, Mr. Kiss, and Delegate Ashley)
[By Request of the Executive]

[Passed March 14, 1998; 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 thirteen-d, relating to the establishment of the regional water and wastewater authority act; setting forth the purpose of the Legislature to enable public agencies to join together to secure and provide water for resale and other purposes, or to join together for the transportation and treatment of wastewater; providing definitions; setting forth requirements for agreements between public agencies; prohibiting competing services by public agencies in an agreement; requiring outstanding bond indebtedness to be retired before a public agency can withdraw from an agreement; authorizing public agencies to provide funds, personnel, and services to regional water authorities, regional wastewater authorities and regional water and wastewater authorities and

authorizing agreements between public agencies and such authorities; establishment of the authority as a quasi-public corporation; establishing requirements for the governing board of such authority; requiring meetings and an audit of the authority; establishing powers of the authority; authorizing the sale of bonds for constructing or acquiring water supply systems or for constructing or acquiring wastewater transportation and treatment facilities; authorizing items to be included as costs of properties; providing that the bonds may be secured by trust indenture; requiring the establishment of a sinking fund; establishing enforcement provisions for bondholders; establishing a statutory mortgage lien in favor of bondholders; providing for the requirement that the authority establish appropriate rates and charges for the use of services rendered; refunding issued bonds; exempting bonds and bond interest from taxation; establishing that bonds issued by authorities are legal investments; requiring the article to be liberally construed to effectuate its purposes; and providing for partial invalidity.

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 thirteen-d, to read as follows:

ARTICLE 13D. REGIONAL WATER AND WASTEWATER AUTHORITY ACT.

- §16-13D-1. Statement of purpose.
- §16-13D-2. Definitions.
- §16-13D-3. Joint exercise of powers by certain public agencies; agreements among agencies, contents; submission to public service commission; filing of agreement; prohibition against competition; retirement of bonds.
- §16-13D-4. Furnishing of funds, personnel or services by certain public agencies, agreements for purchase, sale, distribution, transmission, transportation and treatment of water or wastewater; terms and conditions.
- §16-13D-5. Declaration of authority organization, when quasi-governmental public corporation.
- §16-13D-6. Governing body; appointments; terms of members, voting rights.

- §16-13D-7. Meetings of governing body; annual audit.
- §16-13D-8. Powers of governing body.
- §16-13D-9. Revenue bonds.
- §16-13D-10. Items included in cost of properties.
- §16-13D-11. Bonds may be secured by trust indenture.
- §16-13D-12. Sinking fund for revenue bonds.
- §16-13D-13. Collection, etc., of revenues and enforcement of covenants; default; suit, etc., by bondholder or trustee to compel performance of duties; appointment and powers of receiver.
- §16-13D-14. Statutory mortgage lien created; foreclosure thereof.
- §16-13D-15. Rates and charges.
- §16-13D-16. Refunding revenue bonds.
- §16-13D-17. Exemption of bonds from taxation.
- §16-13D-18. Bonds made legal investments.
- §16-13D-19. Invalidity of part.
- §16-13D-20. Article to be liberally construed.
- §16-13D-21. Citation of article.

§16-13D-1. Statement of purpose.

1 It is the purpose of this article, to permit certain public
2 agencies to make the most efficient use of their powers
3 relating to public water supplies and the transportation and
4 treatment of wastewater by enabling them to cooperate
5 with other public agencies on a basis of mutual advantage
6 and thereby to provide services and facilities to
7 participating public agencies and to provide for the
8 establishment for such purpose of a quasi-governmental
9 public corporation which shall be known as a regional
10 water authority, or where appropriate, a regional
11 wastewater authority, or regional water and wastewater
12 authority. The function of the regional water authority
13 shall be to secure a source of water on a scale larger than
14 is feasible for individual public agencies acting alone, and
15 to sell such water to public service districts, municipalities,
16 publicly and privately owned water utilities, and others.
17 The function of the regional wastewater authority shall be
18 to enable public agencies to join together to provide the
19 most economical method of transportation and treatment
20 of wastewater and to provide such transportation and
21 treatment services to public service districts, municipalities,
22 publicly and privately owned wastewater utilities, and
23 others. The function of the regional water and wastewater

24 authority shall be to enable public agencies to join
25 together to carry out the joint functions of both regional
26 water authority and a regional wastewater authority.

27 In addition to the purposes for which it may have
28 originally been created, any authority created pursuant to
29 this article shall have the power to enter into agreements
30 with public agencies, privately owned utilities, and other
31 authorities, for the provision of related services including,
32 but not limited to the following: administration, operation
33 and maintenance, billing and collection.

§16-13D-2. Definitions.

1 For the purposes of this article:

2 (a) The term "authority" shall mean any regional water
3 authority, regional wastewater authority, or regional water
4 and wastewater authority organized pursuant to the
5 provisions of this article; and

6 (b) The term "public agency" shall mean any
7 municipality, county, public service district, or other
8 political subdivision of this state.

§16-13D-3. Joint exercise of powers by certain public agencies; agreements among agencies, contents; submission to public service commission; filing of agreement; prohibition against competition; retirement of bonds.

1 (a) Any powers, privileges or authority of a public
2 agency of this state relating to public water supplies, or the
3 transportation or treatment of wastewater, may be
4 exercised jointly with any other public agency of this state,
5 or with any agency of the United States to the extent that
6 the laws of the United States permit. Any agency of the
7 state government when acting jointly with any public or
8 private agency may exercise all of the powers, privileges
9 and authority conferred by this act upon a public agency.

10 (b) Any public agency may enter into agreements with
11 one or more other public agencies for the purpose of
12 organizing a regional water authority, regional wastewater
13 authority, or regional water and wastewater authority.

14 Appropriate action by ordinance, resolution or otherwise
15 pursuant to law of the governing bodies of the
16 participating public agencies shall be necessary before any
17 such agreement may enter into force.

18 (c) Any such agreement shall specify the following:

19 (1) Its duration;

20 (2) The precise organization, composition and nature
21 of the authority created thereby together with the powers
22 delegated thereto;

23 (3) Its purpose or purposes;

24 (4) The manner of financing for the authority and of
25 establishing and maintaining a budget therefor;

26 (5) The permissible methods for partial or complete
27 termination of the agreement and for disposing of
28 property upon such partial or complete termination;

29 (6) The manner of acquiring, holding and disposing
30 of real and personal property of the authority;

31 (7) Any other necessary and proper matters.

32 (d) Any such agreement may be amended to include
33 additional public agencies by consent of two thirds of the
34 signatories to the agreement, if no terms of agreement are
35 changed, otherwise a new agreement with the new public
36 agency shall be drawn. Where fewer than three public
37 agencies come together to form an authority, both parties
38 must consent to the amendment of the agreement to
39 include additional public agencies.

40 (e) Prior to taking effect, every agreement made
41 hereunder shall be submitted to the public service
42 commission for its approval. Failure to disapprove an
43 agreement submitted hereunder within ninety days of its
44 submission shall constitute approval thereof.

45 (f) Prior to taking effect, an agreement made
46 hereunder shall be filed with the clerk of the county
47 commission of each county in which a member of the
48 authority is located and such agreement then also shall be

49 filed with the secretary of state, accompanied by a
50 certificate from the clerk of the county commission of the
51 county, or counties, where filed, stating that such
52 agreement has been filed in such county.

53 (g) A public agency which enters into an agreement
54 made hereunder shall not offer or provide water or
55 wastewater services in competition with another public
56 agency entering into such agreement.

57 (h) A public agency which enters into an agreement
58 made hereunder shall not withdraw from the agreement
59 until such time as the outstanding bonded indebtedness of
60 the authority is retired or the bond holders are otherwise
61 protected.

**§16-13D-4. Furnishing of funds, personnel or services by
certain public agencies, agreements for
purchase, sale, distribution, transmission,
transportation and treatment of water or
wastewater; terms and conditions.**

1 Any public agency entering into an agreement
2 pursuant to this article may appropriate funds and may
3 sell, lease, give, or otherwise supply to the authority
4 created such personnel or services for the operation of
5 such authority as may be within its legal power to furnish.

6 Any public agency, whether or not a party to an
7 agreement pursuant to this article, and any publicly or
8 privately owned water distribution company may enter
9 into contracts with any regional water authority or
10 regional water and wastewater authority created pursuant
11 to this article for the purchase of water from such
12 authority or the sale of water to the authority, the
13 treatment of water by either party and the distribution or
14 transmission of water by either party and any such
15 authority may enter into such contracts, subject to the
16 prior approval of the public service commission pursuant
17 to the provisions of section twelve, article two of chapter
18 twenty-four of this code. Any public agency, whether or
19 not a party to an agreement pursuant to this act, and any
20 publicly or privately owned wastewater transportation or
21 treatment system may enter into contracts with any

22 regional wastewater authority or regional water and
23 wastewater authority created pursuant to this article for the
24 transportation and treatment of wastewater by either party
25 and any such authority may enter into such contracts,
26 subject to the prior approval of the public service
27 commission pursuant to the provisions of section twelve,
28 article two of chapter twenty-four of this code: *Provided,*
29 That if the public service commission has not acted on any
30 such proposed contract within ninety days of its filing,
31 such approval shall be deemed to have been granted. Any
32 such contract may include an agreement for the purchase
33 of water not actually received or the treatment of
34 wastewater not actually treated. No such contract shall be
35 made for a period in excess of forty years, but renewal
36 options may be included therein. The obligations of any
37 public agency under any such contract shall be payable
38 solely from the revenues produced from such public
39 agency's water or wastewater system, and the public service
40 commission, in the case of a public agency whose rates are
41 subject to its jurisdiction, shall permit the public agency to
42 recover through its rates revenues sufficient to meet its
43 obligations under such agreement.

§16-13D-5. Declaration of authority organization, when quasi-governmental public corporation.

1 Upon the approval of the public service commission
2 and filing with the secretary of state, the secretary of state
3 shall declare the authority organized and give it the
4 corporate name of regional water authority number __,
5 regional wastewater authority number __, or regional water
6 and wastewater authority number __, whichever is
7 appropriate. Thereupon the authority shall be a quasi-
8 governmental public corporation.

§16-13D-6. Governing body; appointments; terms of members, voting rights.

1 The governing body of the authority shall consist of
2 not less than three persons selected by the participating
3 public agencies. Each participating public agency shall
4 appoint at least one and not more than two members.
5 Each member's full term shall be not less than one year
6 nor more than four years and initial terms shall be

7 staggered in accordance with procedures set forth in the
8 agreement provided for in section three of this article and
9 amendments thereto. In the case of an authority which is
10 made up by the agreement of two public agencies, each
11 public agency shall appoint two representatives to the
12 governing body.

13 The manner of selection of such governing body and
14 terms of office shall be set forth in the agreement
15 provided for in section three of this article and
16 amendments thereto. The governing body of the
17 authority shall elect one of its members as president, one
18 as treasurer and one as secretary.

19 Each member shall have one vote in any matter that
20 comes before the authority for decision. However, the
21 member agencies shall, in the original agreement
22 establishing the authority, set forth any special weighing
23 of such votes based upon population served, volumes of
24 water purchased, volumes of wastewater treated, numbers
25 of customers, or some other criterion, so as to maintain
26 fairness in the decisions and operations of the authority.

§16-13D-7. Meetings of governing body; annual audit.

1 The governing body of the authority shall meet as
2 often as the needs of the authority require; but not less
3 frequently than on a quarterly basis. The governing body
4 shall cause to be made an annual audit of the financial
5 records of the authority, the cost of said audit to be paid
6 by the authority.

§16-13D-8. Powers of governing body.

1 For the purpose of providing a water supply,
2 transportation facilities, or treatment system to the
3 participating public agencies, and others, the governing
4 body of the authority shall have the following powers,
5 authorities and privileges:

6 (1) To accept by gift or grant from any person, firm,
7 corporation, trust or foundation, or from this state or any
8 other state or any political subdivision or municipality
9 thereof, or from the United States, any funds or property
10 or any interest therein for the uses and purposes of the

11 authority and to hold title thereto in trust or otherwise and
12 to bind the authority to apply the same according to the
13 terms of such gift or grant;

14 (2) To sue and be sued;

15 (3) To enter into franchises, contracts and agreements
16 with this or any other state or the United States or any
17 municipality, political subdivision or authority thereof, or
18 any of their agencies or instrumentalities, or any public or
19 private person, partnership, association, or corporation of
20 this state or of any other state or the United States, and this
21 state and any such municipality, political subdivision,
22 authority, or any of their agencies or instrumentalities, and
23 any such public or private person, partnership, association,
24 or corporation is hereby authorized to enter into contracts
25 and agreements with such authority for any term not
26 exceeding forty years for the planning, development,
27 construction, acquisition, maintenance, or operation of any
28 facility or for any service rendered to, for, or by said
29 authority;

30 (4) To borrow money and evidence the same by
31 warrants, notes, or bonds as hereinafter provided in this
32 article, and to refund the same by the issuance of
33 refunding obligations;

34 (5) To acquire land and interests in land by gift,
35 purchase, exchange or eminent domain, such power of
36 eminent domain to be exercised within or without the
37 boundaries of the authority in accordance with provisions
38 of article two, chapter fifty-four of this code;

39 (6) To acquire by purchase or lease, construct, install,
40 and operate reservoirs, pipelines, wells, check dams,
41 pumping stations, water purification plants, and other
42 facilities for the production, distribution and utilization of
43 water, and transportation facilities, pump stations, lift
44 stations, treatment facilities and other facilities for the
45 transportation and treatment of wastewater, and to own and
46 hold such real and personal property as may be necessary
47 to carry out the purposes of its organization, subject to the
48 advance approval of the public service commission for
49 any proposed acquisition, construction, installation or

50 operation: *Provided*, That the public service commission
51 shall act on all proposals submitted under this paragraph
52 within one hundred twenty days of filing with the
53 commission: *Provided, however*, That if the public service
54 commission has not acted within such period of time,
55 approval of such proposal shall be deemed granted;

56 (7) To have the general management, control, and
57 supervision of all the business, affairs, property and
58 facilities of the authority, and of the construction,
59 installation, operation and maintenance of authority
60 improvements, and to establish regulations relating
61 thereto;

62 (8) To hire and retain agents, employees, engineers
63 and attorneys and to determine their compensation. The
64 governing body shall select and appoint a general
65 manager of the authority who shall serve at the pleasure of
66 said governing body. The general manager shall have
67 training and experience in the supervision and
68 administration of the system or systems operated by the
69 authority and shall manage and control the system under
70 the general supervision of said governing body. All
71 employees, servants and agents of the authority shall be
72 under the immediate control and management of said
73 general manager. The general manager shall perform all
74 such other duties as may be prescribed by said governing
75 body and shall give the governing body a good and
76 sufficient surety company bond in a sum to be set and
77 approved by the governing body conditioned upon the
78 satisfactory performance of the general manager's duties.
79 The governing body may also require that any other
80 employees be bonded in such amount as it shall
81 determine. The cost of said bonds shall be paid out of the
82 funds of the authority;

83 (9) To adopt and amend rules and regulations not in
84 conflict with the constitution and laws of this state,
85 necessary for the carrying on of the business, objects and
86 affairs of the governing body and of the authority;

87 (10) To have and exercise all rights and powers
88 necessary or incidental to or implied from the specific
89 powers granted herein. Such specific powers shall not be

90 considered as a limitation upon any power necessary or
91 appropriate to carry out the purposes of this article.

§16-13D-9. Revenue bonds.

1 For constructing or acquiring any water supply,
2 wastewater transportation, or treatment system for the
3 authorized purposes of the authority, or necessary or
4 incidental thereto, and for constructing improvements and
5 extensions thereto, and also for reimbursing or paying the
6 costs and expenses of creating the authority, the governing
7 body of any such authority is hereby authorized to
8 borrow money from time to time and in evidence thereof
9 issue the revenue bonds of such authority. Such revenue
10 bonds are hereby made a lien on the revenues produced
11 from the operation of the authority's system, but shall not
12 be general obligations of the public agencies participating
13 in the agreement. All revenue bonds issued under this
14 article shall be signed by the president of the governing
15 body of the authority and attested by the secretary of the
16 governing body of the authority and shall contain recitals
17 stating the authority under which such bonds are issued
18 and that they are to be paid by the authority from the net
19 revenue derived from the operation of the authority's
20 system and not from any other fund or source and that
21 said bonds are negotiable and payable solely from the
22 revenues derived from the operation of the system under
23 control of the authority: *Provided*, That in the case of a
24 regional water and wastewater authority, the statutory lien
25 created hereby shall only be a lien on the revenues of that
26 service funded by the proceeds of the sale of the bonds, it
27 being understood that such combined authority shall
28 maintain separate books and records for its water and
29 wastewater operations. Such bonds may be issued in one
30 or more series, may bear such date or dates, may mature at
31 such time or times not exceeding forty years from their
32 respective dates, may bear interest at a rate not exceeding
33 two percent above the interest rate on treasury notes, bills
34 or bonds of the same term as the term of the bond or
35 bonds the week of closing on the bond or bonds as
36 reported by the treasury of the United States, may be
37 payable at such times, may be in such form, may carry
38 such registration privileges, may be executed in such

39 manner, may be payable at such place or places, may be
40 subject to such terms of redemption with or without
41 premium, may be declared or become due before maturity
42 date thereof, may be authenticated in any manner, and
43 upon compliance with such conditions, and may contain
44 such terms and covenants as may be provided by
45 resolution or resolutions of the governing body of such
46 authority. Notwithstanding the form or tenor thereof, and
47 in the absence of any express recital on the face thereof,
48 that the bond is nonnegotiable, all such bonds shall be,
49 and shall be treated as, negotiable instruments for all
50 purposes. Bonds bearing the signatures of officers in
51 office on the date of the signing thereof shall be valid and
52 binding for all purposes notwithstanding that before the
53 delivery thereof any or all of the persons whose signatures
54 appear thereon shall have ceased to be such officers.
55 Notwithstanding the requirements or provisions of any
56 other law, any such bonds may be negotiated or sold in
57 such manner and at such time or times as is found by the
58 governing body to be most advantageous, and all such
59 bonds may be sold at such price that the interest cost of
60 the proceeds therefrom does not exceed three percent
61 above the interest rate on treasury notes, bills or bonds of
62 the same term as the term of the bond or bonds the week
63 of closing on the bond or bonds as reported by the
64 treasury of the United States, based on the average
65 maturity of such bonds and computed according to
66 standard tables of bond values. Any resolution or
67 resolutions providing for the issuance of such bonds may
68 contain such covenants and restrictions upon the issuance
69 of additional bonds thereafter as may be deemed
70 necessary or advisable for the assurance of the payment of
71 the bonds thereby authorized.

§16-13D-10. Items included in cost of properties.

1 The cost of any water supply, wastewater
2 transportation or treatment system acquired or
3 constructed under the provisions of this article shall be
4 deemed to include the cost of the acquisition or
5 construction thereof, the cost of all property rights,
6 easements and franchises deemed necessary or convenient
7 therefor and for the improvements and extensions thereto;

8 interest upon bonds prior to and during construction or
9 acquisition and for six months after completion of
10 construction or of acquisition of the improvements and
11 extensions; engineering, fiscal agents and legal expenses;
12 expenses for estimates of cost and of revenues, expenses
13 for plans, specifications and surveys; other expenses
14 necessary or incident to determining the feasibility or
15 practicability of the enterprise, administrative expense, and
16 such other expenses as may be necessary or incident to the
17 financing herein authorized, and the construction or
18 acquisition of the properties and the placing of same in
19 operation, and the performance of the things herein
20 required or permitted, in connection with any thereof.

§16-13D-11. Bonds may be secured by trust indenture.

1 In the discretion and at the option of the governing
2 body of the authority, such bonds may be secured by a
3 trust indenture by and between the authority and a
4 corporate trustee, which may be a trust company or bank
5 having powers of a trust company within or without the
6 state of West Virginia, but no such trust indenture shall
7 convey, mortgage or create any lien upon the water
8 supply, wastewater transportation or treatment system or
9 any part thereof of the authority or its member public
10 agencies. The resolution authorizing the bonds and fixing
11 the details thereof may provide that such trust indenture
12 may contain such provisions for protecting and enforcing
13 the rights and remedies of bondholders as may be
14 reasonable and proper, not in violation of law, including
15 covenants setting forth the duties of the authority and the
16 members of its governing body and officers in relation to
17 the construction or acquisition of the water supply,
18 wastewater transportation or treatment system and the
19 improvement, extension, operation, repair, maintenance
20 and insurance thereof, and the custody, safeguarding and
21 application of all moneys, and may provide that all or any
22 part of the construction work shall be contracted for,
23 constructed and paid for, under the supervision and
24 approval of consulting engineers employed or designated
25 by the governing body and satisfactory to the original
26 bond purchasers, their successors, assignees or nominees,
27 who may be given the right to require the security given

28 by contractors and by any depository of the proceeds of
29 bonds or revenues of the water supply, wastewater
30 transportation or treatment system or other money
31 pertaining thereto be satisfactory to such purchasers, their
32 successors, assignees or nominees. Such indenture may
33 set forth the rights and remedies of the bondholders and
34 such trustee.

§16-13D-12. Sinking fund for revenue bonds.

1 At or before the time of the issuance of any bonds
2 under this article the governing body of the authority shall
3 by resolution or in the trust indenture provide for the
4 creation of a sinking fund and for monthly payments into
5 such fund from the revenues of the water supply,
6 wastewater transportation or treatment system operated by
7 the authority such sums in excess of the cost of
8 maintenance and operation of such properties as will be
9 sufficient to pay the accruing interest and retire the bonds
10 at or before the time each will respectively become due
11 and to establish and maintain reserves therefor. All sums
12 which are or should be, in accordance with such
13 provisions, paid into such sinking fund shall be used
14 solely for payment of interest and for the retirement of
15 such bonds at or prior to maturity as may be provided or
16 required by such resolutions.

§16-13D-13. Collection, etc., of revenues and enforcement of covenants; default; suit, etc., by bondholder or trustee to compel performance of duties; appointment and powers of receiver.

1 The governing body of any such authority shall have
2 power to insert enforceable provisions in any resolution
3 authorizing the issuance of bonds relating to the
4 collection, custody and application of revenues of the
5 authority from the operation of the water supply,
6 wastewater transportation or treatment system under its
7 control and to the enforcement of the covenants and
8 undertakings of the authority. In the event there shall be
9 default in the sinking fund provisions aforesaid or in the
10 payment of the principal or interest on any of such bonds
11 or, in the event the authority or its governing body or any
12 of its officers, agents or employees, shall fail or refuse to

13 comply with the provisions of this article, or shall default
14 in any covenant or agreement made with respect to the
15 issuance of such bonds or offered as security therefor,
16 then any holder or holders of such bonds and any such
17 trustee under the trust indenture, if there be one, shall have
18 the right by suit, action, mandamus or other proceeding
19 instituted in the circuit court for the county or any of the
20 counties wherein the authority extends, or in any other
21 court of competent jurisdiction, to enforce and compel
22 performance of all duties required by this article or
23 undertaken by the authority in connection with the
24 issuance of such bonds, and upon application of any such
25 holder or holders, or such trustee, such court shall, upon
26 proof of such defaults, appoint a receiver for the affairs of
27 the authority and its properties, which receiver so
28 appointed shall forthwith directly, or by his agents and
29 attorneys, enter into and upon and take possession of the
30 affairs of the authority and each and every part thereof,
31 and hold, use, operate, manage and control the same, and
32 in the name of the authority exercise all of the rights and
33 powers of such authority as shall be deemed expedient,
34 and such receiver shall have power and authority to collect
35 and receive all revenues and apply same in such manner as
36 the court shall direct. Whenever the default causing the
37 appointment of such receiver shall have been cleared and
38 fully discharged and all other defaults shall have been
39 cured, the court may in its discretion and after such notice
40 and hearing as it deems reasonable and proper direct the
41 receiver to surrender possession of the affairs of the
42 authority to its governing body. Such receiver so
43 appointed shall have no power to sell, assign, mortgage, or
44 otherwise dispose of any assets of the authority except as
45 hereinbefore provided.

§16-13D-14. Statutory mortgage lien created; foreclosure thereof.

1 There shall be and is hereby created a statutory
2 mortgage lien upon such water supply, wastewater
3 transportation or treatment system of the authority, which
4 shall exist in favor of the holders of bonds hereby
5 authorized to be issued, and each of them, and such
6 system shall remain subject to such statutory mortgage
7 lien until payment in full of all principal of and interest on
8 such bonds.

§16-13D-15. Rates and charges.

1 The governing body shall by appropriate resolution
2 make provisions for the payment of said bonds by fixing
3 rates, fees and charges, for the use of all services rendered
4 by such authority, which rates, fees and charges shall be
5 sufficient to pay the costs of operation, improvement and
6 maintenance of the authority's water supply or wastewater
7 transportation and/or treatment system, to provide an
8 adequate depreciation fund, provide an adequate sinking
9 fund to retire said bonds and pay interest thereon when
10 due, and to create reasonable reserves for such purposes.
11 Said fees, rates or charges shall be sufficient to allow for
12 miscellaneous and emergency or unforeseen expenses.
13 The resolution of the governing body authorizing the
14 issuance of revenue bonds may include agreements,
15 covenants or restrictions deemed necessary or advisable by
16 the governing body to effect the efficient operation of the
17 system and to safeguard the interests of the holders of the
18 revenue bonds and to secure the payment of the bonds
19 and the interest thereon.

§16-13D-16. Refunding revenue bonds.

1 The authority having issued bonds under the
2 provisions of this article is hereby empowered thereafter
3 by resolution to issue refunding bonds of such authority
4 for the purpose of retiring or refinancing such
5 outstanding bonds, together with any unpaid interest
6 thereon and redemption premium thereunto appertaining
7 and all of the provisions of this article relating to the
8 issuance, security and payment of bonds shall be
9 applicable to such refunding bonds, subject, however, to
10 the provisions of the proceedings which authorized the
11 issuance of the bonds to be so refunded.

§16-13D-17. Exemption of bonds from taxation.

1 Said bonds and the interest thereon, together with all
2 properties and facilities of the authority owned or used in
3 connection with the water or wastewater system, and all the
4 moneys, revenues and other income of such authority
5 derived from such water or wastewater system shall be
6 exempt from all taxation by the state of West Virginia or
7 any county, municipality, political subdivision or agency
8 thereof.

§16-13D-18. Bonds made legal investments.

1 Bonds issued under the provisions of this article shall
2 be legal investments for banks, building and loan
3 associations, and insurance companies organized under
4 the laws of this state and for a business development
5 corporation organized pursuant to chapter thirty-one,
6 article fourteen of the code of West Virginia.

§16-13D-19. Invalidity of part.

1 If any section or sections of this article be declared
2 unconstitutional or invalid, this shall not invalidate any
3 other section of this article.

§16-13D-20. Article to be liberally construed.

1 This article is necessary for the public health, safety
2 and welfare and shall be liberally construed to effectuate
3 its purposes.

§16-13D-21. Citation of article.

1 This article may be known and cited as the "Regional
2 Water and Wastewater Authority Act".

CHAPTER 324

(S. B. 64—By Senators Jackson and Tomblin, Mr. President)

[Passed March 6, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections four and fourteen, chapter two hundred fifty-five, acts of the Legislature, regular session, one thousand nine hundred ninety-five, all relating to making the president of southern West Virginia community college a voting member of the Corridor G regional development authority board; and requiring notice be published in lieu of publishing annual report.

Be it enacted by the Legislature of West Virginia:

That sections four and fourteen, chapter two hundred fifty-five, acts of the Legislature, regular session, one thousand nine hundred ninety-five, be amended and reenacted, all to read as follows:

CORRIDOR G REGIONAL DEVELOPMENT AUTHORITY.

- §4. Management and control of county authority vested in board; appointment and terms of members; vacancies; removal of members.
- §14. Contributions by members counties, local entity and others; fund and accounts; reports; audit and examination of books, records and accounts.
- §4. Management and control of county authority vested in board; appointment and terms of members; vacancies; removal of members.**

1 (a) The management and control of the authority, its
2 property, operations, business and affairs shall be lodged
3 in a board of seventeen voting members and four
4 nonvoting ex officio members to be appointed as follows:
5 Each of the county commissions of the counties of Boone,
6 Lincoln, Logan and Mingo shall appoint four voting
7 members to the authority, one of whom shall be a member
8 of the county commission; the member of the county
9 commission shall serve at the will and pleasure of the
10 county commission; the initial terms of the other voting
11 members appointed by a county commission are as
12 follows: One member shall be appointed for a term of
13 one year; one member shall be appointed for a term of
14 two years; and one member shall be appointed for a term
15 of three years; all successive appointments shall be for a
16 term of three years. A member may be reappointed for
17 such additional term or terms as the appointing agency
18 may deem proper. If a member resigns, is removed or for
19 any other reason his or her membership terminates during
20 his or her term of office, a successor shall be appointed by
21 the appointing county to fill out the remainder of the
22 term. Members in office at the expiration of their
23 respective terms shall continue to serve until their
24 successors have been appointed and have qualified. The
25 president of the southern West Virginia community
26 college shall be an ex officio voting member.

27 (b) The directors of the county development
28 authorities of each of the member counties shall be ex
29 officio nonvoting members.

30 (c) Should a vacancy occur, the person appointed to
31 fill the vacancy shall serve only for the unexpired portion
32 thereof.

33 (d) Any voting member appointed to the authority by
34 a county commission may be removed by the appointing
35 county commission for such causes and reasons as a
36 member of such county commission may be removed
37 from office.

38 (e) All initial members shall be appointed on or before
39 the first day of July, one thousand nine hundred ninety-
40 five.

**§14. Contributions by members counties, local entity and
others; fund and accounts; reports; audit and
examination of books, records and accounts.**

1 Contributions may be made to the authority from time
2 to time by the member counties or local entities, and by
3 any persons, firms or corporations which shall desire to do
4 so. All such funds and all other funds received by the
5 authority shall be deposited in such bank or banks as the
6 authority may direct and shall be withdrawn therefrom in
7 such manner as the authority may direct. The authority
8 shall keep strict account of all its receipts and
9 disbursements for the preceding year, and such annual
10 report shall be delivered to the county commission of each
11 member county and a notice that the annual report is
12 available from the authority shall be published as a Class I
13 legal advertisement in compliance with the provisions of
14 section two, article three, chapter fifty-nine of the code of
15 West Virginia, and the publication area for such
16 publication shall be the member counties. The books,
17 records and accounts of the authority shall be subject to
18 audit and examination by the office of the state tax
19 commissioner of West Virginia and by any other proper
20 public official or body in the manner provided by law.

CHAPTER 325

(Com. Sub. for H. B. 4448—By Delegates Seacrist, Amores,
Walters, Rowe and Hunt)

[Passed March 14, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to authorize and empower the county commission of Kanawha County to appoint an emergency operations center board to oversee the operation of the enhanced emergency telephone system serving Kanawha County and to authorize and empower the county commission of Cabell County to appoint an emergency operations center board to oversee the operation of the enhanced emergency telephone system serving Cabell County.

Be it enacted by the Legislature of West Virginia:

EMERGENCY OPERATIONS CENTER BOARDS FOR KANAWHA COUNTY AND CABELL COUNTY.

- §1. Kanawha County authorized to appoint an emergency operations center board.
- §2. Cabell County authorized to appoint an emergency operations center board.

§1. Kanawha County authorized to appoint an emergency operations center board.

1 The county commission of Kanawha County is hereby
2 authorized and empowered to appoint a board to be
3 known as the "Emergency Operations Center Board"
4 with the power to oversee the operation of the enhanced
5 emergency telephone system serving Kanawha County.

§2. Cabell County authorized to appoint an emergency operations center board.

1 The county commission of Cabell County is hereby
2 authorized and empowered to appoint a board to be
3 known as the "Emergency Operations Center Board"
4 with the power to oversee the operation of the enhanced
5 emergency telephone system serving Cabell County.

CHAPTER 326

(S. B. 471—By Senators Jackson, Tomblin, Mr. President, and Bailey)

[Passed March 14, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to transfer land located on Lower Mud River in Carroll District of Lincoln County to the Lincoln County Commission and to transfer land situate along U. S. Route 219 in Huttonsville District of Randolph County to the Randolph County Commission from the department of agriculture of the state of West Virginia.

Be it enacted by the Legislature of West Virginia:

LAND TRANSFERS FROM THE DEPARTMENT OF AGRICULTURE TO THE LINCOLN COUNTY COMMISSION AND TO THE RANDOLPH COUNTY COMMISSION.

§1. Land transfer to Lincoln County Commission; description.

1 The department of agriculture of the state of West
2 Virginia shall transfer to the Lincoln County Commission,
3 without consideration, the parcel of land on the Lower
4 Mud River Road in Carroll District of Lincoln County
5 described as follows:

6 Beginning at an iron stake a distance of 15 feet
7 southeast of a culvert under the state road on Lower Mud
8 River, said stake being in the southwest right-of-way line
9 of said road; thence in a straight line in a southwesterly
10 direction a distance of 765 feet to an iron stake; thence N.
11 80° 30' W. 440 feet to an iron stake; thence N. 87° 30' E.
12 700 feet to an iron stake in the right-of-way line of said
13 state road; thence with the right-of-way line of said road
14 N. 63° 05' E. 226.6 feet to a stake; S. 22° 00' E. 68.6 feet
15 to a stake; thence continuing with the right-of-way line of
16 said road in a southeasterly direction a distance of 219
17 feet to the place of beginning, containing eight acres,
18 more or less.

§2. Land transfer to Randolph County Commission; description.

1 The department of agriculture of the state of West
2 Virginia shall transfer to the Randolph County
3 Commission, without consideration, the parcel of land on
4 U. S. route 219 in Huttonsville District of Randolph
5 County described as follows:

6 Beginning at a culvert on the southerly side of U. S.
7 Route 219 and a 3/4" x 42" rebar with plastic cap (set)
8 thence proceeding northerly along U. S. Route 219, N 11°
9 09' E 589.08 feet to PC sta 1061; thence Δ -26" 07', D-10"
10 00', R-573.0 feet, chord- N 24° 41' E 258.97 feet to a
11 point along side U. S. Route 219; thence proceeding
12 along the southerly side of U. S. Route 219 N 38° 13' E
13 91.80 feet; thence along side said route S 51° 47' E 5 feet;
14 thence along side of said route N 38° 13' E 49.34 feet to a
15 3/4" x 42" rebar with plastic cap and metal guard post
16 (set); thence proceeding along side said U. S. Route 219 N
17 38° 13' E 452.56 feet to a point; thence N 36° 50' E 52.00
18 feet along said route; thence N 53° 10' W 5.00 feet along
19 side said route; thence N 36° 50' E 18.5 feet to a 3/4" x
20 42" rebar with plastic cap and metal guard post (set) 20
21 feet from the center of the highway; thence departing U.
22 S. Route 219 S 66° 46' E 1,958.56 feet to a 3/4" x 42"
23 rebar with alum. cap (set) in concrete; thence S 2° 30' W
24 541.75 feet to 3/4" x 42" rebar with alum. cap (set) in
25 concrete under power line; thence S 65° 09' W 2,495.98
26 feet to a 3/4" x 42" rebar with plastic cap (set); thence N
27 49° 34' W 141.68 feet to a black walnut at fence corner;
28 thence N 38° 03' E 729.83 feet to a maple (found) at
29 fence corner; thence N 40° 16' W 205.5 feet to a 3/4" x
30 42" rebar with plastic cap and metal guard post (set);
31 thence N 48° 18' W 250.65 feet to a 3/4" x 36" rebar with
32 plastic cap and metal guard post (set); thence N 77° 40' W
33 170.00 feet to a 3/4" x 42" rebar with plastic cap (set) at
34 the place of beginning, containing 75.01 acres, being two
35 tracts, with Tract No. 1 containing 50.36 acres and a part
36 of the real estate conveyed by Deed and of record in the
37 Office of the County Commission of Randolph County in
38 Deed Book 146 at page 482 and Tract No. 2 containing
39 24.85 acres and being a part of the real property
40 conveyed by Deed which is of record in the office of the
41 aforesaid clerk Deed Book 146 at page 482, as shown and
42 depicted upon that certain map or plat by Leon B. Mallow,
43 Licensed Professional Surveyor No. 567, dated September
44 15, 1997, and entitled "Plat of Survey for WV Board of
45 Control", scale 1 inch = 400 feet, and being a part of a
46 251.04 acre tract of land as was conveyed by Tucker H.
47 Ward, et al through Order of Condemnation to the West
48 Virginia Board of Control on October 5, 1938, as
49 recorded in Deed Book 146 at page 482, Tax Map Sheet
50 112, Part of Parcel No. 6, reference being made to said
51 deed, maps and survey for all pertinent purposes.

CHAPTER 327

(H. B. 4334—By Delegate Fantasia)

[Passed March 3, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to extend the time for the county commission of Marion County, West Virginia, to meet as a levying body for the purpose of presenting to the voters of the county an election to extend an additional county levy for parks and recreation equipment and development in Marion County from between the seventh and twenty-eighth days of March until the twenty-first day of May, one thousand nine hundred ninety-eight.

Be it enacted by the Legislature of West Virginia:

MARION COUNTY COMMISSION MEETING AS LEVYING BODY EXTENDED.

§1. Extending time for Marion County commission to meet as levying body for election of additional levy for parks and recreation equipment and development.

1 Notwithstanding the provisions of article eight, chapter
2 eleven of the code of West Virginia, one thousand nine
3 hundred thirty-one, as amended, to the contrary, the
4 county commission of Marion County is hereby
5 authorized to extend the time for its meeting as a levying
6 body and certifying its actions to the state tax
7 commissioner from between the seventh and twenty-eighth
8 days of March until the twenty-first day of May, one
9 thousand nine hundred ninety-eight, for the purpose of
10 submitting to the voters of Marion County an additional
11 county levy for parks and recreation equipment and
12 development in Marion County.

CHAPTER 328

(Com. Sub. for S. B. 616—By Senators Anderson, Ball, Ross, Sharpe, Dittmar, Love, Helmick, Bailey, Schoonover, Snyder, McKenzie, Kimble, Kessler, Buckalew, Bowman, Fanning, Walker, Chafin, Oliverio, Sprouse, Tomblin, Mr. President and Hunter)

[Passed March 14, 1998; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, chapter one hundred seventy-six, acts of the Legislature, regular session, one thousand nine hundred eighty-five, as last amended and reenacted by chapter one hundred thirty-six, acts of the Legislature, regular session, one thousand nine hundred eighty-eight; and to amend and reenact section two-a, chapter one hundred thirty-six, acts of the Legislature, regular session, one thousand nine hundred eighty-eight, all relating to the New River parkway authority; requiring a development certification process for issuance of certifications of compliance with the authority's plan or plans; providing an appeal process; providing injunctive relief to force compliance with the authority's plans; and redefining the territory included in the parkway.

Be it enacted by the Legislature of West Virginia:

That section two, chapter one hundred seventy-six, acts of the Legislature, regular session, one thousand nine hundred eighty-five, as last amended and reenacted by chapter one hundred thirty-six, acts of the Legislature, regular session, one thousand nine hundred eighty-eight, be amended and reenacted; and that section two-a, chapter one hundred thirty-six, acts of the Legislature, regular session, one thousand nine hundred eighty-eight, be amended and reenacted, all to read as follows:

NEW RIVER PARKWAY AUTHORITY.

- §2. Members; appointment; powers and duties generally; officers; bylaws; rules; compensation.
- §2a. Setting of standards and a development certification process for the regulation of use of property within the parkway corridor; definition of corridor; presentation of standards to governmental entities; requirement that governmental entities adopt and enforce standards; process of appeals and injunctive relief.

§2. Members; appointment; powers and duties generally; officers; bylaws; rules; compensation.

1 (a) The authority consists of nine voting members and
2 four to six ex officio nonvoting members.

3 (b) Three voting members shall be appointed by the
4 Mercer County commission. Three voting members shall
5 be appointed by the Raleigh County commission. Three
6 voting members shall be appointed by the Summers
7 County commission. No more than two of the three
8 voting members appointed by a county commission may
9 be members of the same political party, which said
10 members shall not be elected to, appointed to or hold any
11 other public office during their tenure as members of the
12 authority. The regular term of a voting member is three
13 years, provided that the terms of the voting members
14 initially appointed by a county commission are as follows:
15 One member shall be appointed for a term of one year,
16 one member shall be appointed for a term of two years
17 and one member shall be appointed for a term of three
18 years. Should a vacancy occur, the person appointed to
19 fill the vacancy shall serve only for the unexpired portion
20 thereof. All voting members are eligible for
21 reappointment. Any voting member may be removed for
22 cause by the appointing county commission.

23 (c) The ex officio nonvoting members are the
24 commissioner of the division of highways or his or her
25 designee, the director of the division of natural resources
26 or his or her designee, the commissioner of agriculture or
27 his or her designee, the commissioner of commerce or his
28 or her designee, and, if they choose to serve, the district
29 engineer of the Huntington district of the United States
30 army corps of engineers or his or her designee and the
31 superintendent of the New River gorge national river or
32 his or her designee. Any designee serving as a nonvoting
33 member may be removed at the will and pleasure of the
34 officer designating the member.

35 (d) Each voting member of the authority may be
36 compensated monthly by the county commission which
37 appointed such member in an amount to be fixed by said
38 county commission.

39 (e) There shall be an annual meeting of the authority
40 on the second Monday in July in each year and a monthly

41 meeting on a day and at such time as the authority may
42 designate in its bylaws. A special meeting may be called
43 by the president, the secretary or any three voting
44 members of the authority and may be held only after all
45 voting and nonvoting members are given notice thereof in
46 writing. Five voting members constitute a quorum for all
47 meetings. At each annual meeting of the authority, it shall
48 elect a president, vice president, secretary and treasurer.
49 The authority shall adopt such bylaws and rules that are
50 necessary for its operation and management.

51 (f) The authority has all powers necessary, incidental,
52 convenient and advisable to accomplish the following
53 purposes:

54 (1) The preparation of a plan or plans for the New
55 River parkway and the New River parkway corridor;

56 (2) To create and administer a development
57 certification process for issuance by the authority, where
58 appropriate, of certifications of compliance with the
59 authority's plan or plans;

60 (3) To hear and decide appeals from initial decisions
61 made upon requests for certification of compliance with
62 the authority's plan or plans;

63 (4) Advocating actions consistent with the plan or
64 plans, to or before any governmental entity or any private
65 person or entity; and

66 (5) Otherwise acting in an advisory capacity with
67 regard to any aspect of the New River parkway and New
68 River parkway corridor upon or without request to any
69 governmental entity or private person or entity. The
70 authority shall not own or hold any real estate or real
71 property and shall not operate or maintain the parkway.

§2a. Setting of standards and a development certification process for the regulation of use of property within the parkway corridor; definition of corridor; presentation of standards to governmental entities; requirement that governmental entities adopt and enforce standards; process of appeals and injunctive relief.

1 (a) The authority may develop and set for land-use
2 regulations performance standards which are necessary to
3 implement the authority's plan or plans and which are
4 consistent with the purpose of this chapter. The standards
5 apply to the New River parkway corridor. New
6 development within the parkway corridor requires
7 certification by the authority that all requirements of its
8 plan or plans have been complied with and that a
9 certificate of compliance has been issued for the new
10 development. The certification process shall be included
11 in the authority's plan or plans and shall include the right
12 of appeal by any person adversely affected by the process
13 as provided for in subdivision (3), subsection (f), section
14 two of this article. For purposes of this chapter, "New
15 River parkway corridor" or "corridor" means that area
16 within five hundred feet of the parkway centerline, from
17 interstate 64 to the Hinton New River bridge, as delineated
18 on an official parkway corridor map. Areas which the
19 standards may address include:

20 (1) Buffer areas between the roadway and paved
21 parking areas;

22 (2) Landscaping or vegetation requirements, or both;

23 (3) Land coverage, frontage, setback, design and
24 building height for new structures;

25 (4) Siting of new structures to enhance the scenic
26 qualities of the parkway and avoid visual intrusions;

27 (5) Design and placement of on-site advertising signs
28 along the parkway;

29 (6) The dumping or storing of refuse to prevent
30 deterioration of the natural or traditional parkway scene:
31 *Provided*, That the standards shall not discourage
32 constructive development and uses of the property which
33 are consistent with the purpose of this chapter; and

34 (7) Any other area, if regulation over such area is
35 consistent with the purpose of this chapter. Standards
36 which are developed by the authority shall not apply to

37 structures existing in the corridor prior to the effective
38 date of this section.

39 (b) Upon the development of standards and a
40 development certification process, the authority shall
41 present the standards and certification process to relevant
42 governmental entities within the corridor. The
43 presentation shall include relevant findings as to whether
44 local plans and ordinances conform with the authority's
45 performance standards and certification process and this
46 presentation shall specify deviations, if any, from the
47 performance standards and certification process.

48 (c) Within ninety days of the presentation of the
49 authority's performance standards and development
50 certification process, the relevant governmental entities
51 shall adopt and enforce the standards and certification
52 process in the parkway corridor.

53 (d) The development certification process as provided
54 for in subdivision (3), subsection (f), section two of this
55 article, included in the authority's plan or plans and
56 adopted by the relevant governmental entities shall include
57 an appeals process. The appeals process shall include an
58 informal administrative appeal by which an adversely
59 affected person may appeal the initial decision regarding a
60 request for issuance of certification for proposed new
61 development within the parkway corridor. If the appeal of
62 the initial decision regarding certification is affirmed, the
63 adversely affected person has the right to judicial review in
64 the circuit court of the county where the relevant portion
65 of the parkway corridor is located. The review is de novo.
66 The burden is on the adversely affected person to prove
67 the initial decision of the authority is contrary to the
68 requirements of the authority's plan or plans as adopted
69 by the relevant governmental entity.

70 (e) The circuit court of the county where the relevant
71 portion of the parkway corridor is located has the power
72 to and may grant injunctive relief to compel compliance
73 by any person with the plan or plans of the authority
74 adopted by the relevant governmental entity.

CHAPTER 329

(H. B. 4708—By Delegates C. White, Damron, Yeager and Louisos)

[Passed March 14, 1998; in effect from passage. Approved by the Governor.]

AN ACT to extend the time for the city council of Richwood, Nicholas County, West Virginia, to meet as a levying body for the purpose of presenting to the voters of the city an election to impose an additional city levy for street maintenance and improvements, police and fire protection in the city of Richwood from between the seventh and twenty-eighth days of March until the thirty-first day of May, one thousand nine hundred ninety-eight.

Be it enacted by the Legislature of West Virginia:

CITY OF RICHWOOD MEETING AS LEVYING BODY EXTENDED.

§1. Extending time for the City of Richwood to meet as levying body for election to impose an additional city levy for street maintenance and improvements, police and fire protection.

1 Notwithstanding the provisions of sections nine and
2 fourteen, article eight, chapter eleven of the code of West
3 Virginia, one thousand nine hundred thirty-one, as
4 amended, to the contrary, the city council of Richwood is
5 hereby authorized to extend the time for its meeting as a
6 levying body and certifying its actions to the state tax
7 commissioner from between the seventh and twenty-eighth
8 days of March until the thirty-first day of May, one
9 thousand nine hundred ninety-eight, for the purpose of
10 submitting to the voters of the city of Richwood an
11 additional city levy for street maintenance and
12 improvements, police and fire protection.

CHAPTER 330

(Com. Sub. for S. B. 661—By Senators Walker and Buckalew)

[Passed March 14, 1998; in effect from passage. Approved by the Governor.]

AN ACT authorizing the state building commission to sell the land, together with the building thereon, known as the former Thomas Jefferson Junior High School in Charleston.

Be it enacted by the Legislature of West Virginia.

SALE OF PROPERTY.

§1. Land sale; description.

1 The executive director of the state building
2 commission is authorized to solicit interest in, enter into a
3 contract for sale, sell and convey, for good and valuable
4 consideration as negotiated by the executive director of
5 the state building commission, after publishing notice of
6 the opportunity to submit sealed bids to purchase the
7 property and selecting from among the bids so solicited,
8 the parcel of land, together with the three-story brick
9 building thereon, located on Morris Street, Charleston,
10 Kanawha County, described as follows:

11 That certain lot or parcel of land, together with the
12 three-story brick building thereon, known as Thomas
13 Jefferson Junior High School, described as Charleston East
14 tax map number seventeen (17), parcel one hundred fifty-
15 nine (159), situate at the corner of Quarrier and Morris
16 Streets, in the city of Charleston, Kanawha County, West
17 Virginia, fronting two hundred thirty feet (230), more or
18 less, on the easterly side of Morris Street and extending
19 back approximately one hundred fifty-six feet to an alley
20 as described in a deed dated May 2, 1979.

21 The executive director of the state building
22 commission shall not sell said property for anything less
23 than the appraised value of the property as determined by
24 an appraisal of the property performed by an
25 appraiser licensed in this state that is completed within one
26 year prior to the date of the sale of the property.

27 Proceeds from the sale of the property shall first be
28 applied for the expenses related to the relocation of the
29 occupants of the Thomas Jefferson Junior High School,
30 including, but not limited to, the moving of the employees
31 and remodeling and renovating office space to be used by
32 the relocated employees and the remainder shall be
33 deposited in the account of the state building commission.

CHAPTER 331

(Com. Sub. for H. B. 4631—By Delegate Pettit)

[Passed March 13, 1998: in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, chapter one hundred seventy-six, acts of the Legislature, regular session, one thousand nine hundred ninety-one, relating to directing the commissioner of highways to issue a permit to certain users of two highways in the city of Weirton and allowing the increasing of gross weight limitations on certain roads in the city of Weirton, West Virginia.

Be it enacted by the Legislature of West Virginia:

That section one, chapter one hundred seventy-six, acts of the Legislature, regular session, one thousand nine hundred ninety-one, be amended and reenacted to read as follows:

SIZE, WEIGHT AND LOAD LIMITATIONS ON CERTAIN ROADS IN WEIRTON, WEST VIRGINIA.

§1. Authority of the commissioner of the division of highways to increase weight limitations upon highways within the city of Weirton, West Virginia.

1 If the commissioner of the division of highways
2 determines that the design, construction and safety of the
3 highways within the city of Weirton, West Virginia, are
4 such that tonnage limits may be increased without undue
5 damage, the commissioner may increase them. The

6 commissioner shall then set new weight limitations
7 applicable to said highways or portions thereof.

8 The commissioner may not establish any weight
9 limitation in excess of or in conflict with any weight
10 limitation prescribed by or pursuant to acts of Congress
11 with respect to the national system of interstate and
12 defense highways.

13 If the commissioner determines that the portion of
14 State Route 2 located in the city of Weirton in the counties
15 of Hancock and Brooke, named "Main Street" and that
16 portion of U.S. Route 22 within the city of Weirton in the
17 county of Brooke named "Freedom Way" are designed
18 and constructed to allow the gross weight limitation to be
19 increased up to one hundred twenty thousand pounds
20 without undue damage, the commissioner may increase
21 the weight limitations from eighty thousand pounds up to
22 one hundred twenty thousand pounds on those sections
23 of State Route 2 and U.S. Route 22 described above:
24 *Provided*, That any person, organization or corporation
25 exceeding eighty thousand pounds gross weight limitation
26 while using said routes shall first obtain a permit from the
27 commissioner before proceeding and shall provide the
28 commissioner with a bond sufficient to cover any potential
29 undue damage which may result from the use: *Provided*,
30 *however*, That if it is the determination of the
31 commissioner that said routes, as specifically described
32 herein, are in need of repaving, those persons,
33 organizations or corporations shall pay the cost of
34 repaving in amounts as assessed, from time to time, by the
35 commissioner: *Provided further*, That the commissioner
36 also determines that the increased limitation is not barred
37 by an act of the United States Congress and the
38 commissioner has received approval from the United
39 States department of transportation to increase the weight
40 limitation.

41 The director of the enforcement division of the
42 division of highways shall identify the trucks exceeding
43 eighty thousand pounds gross weight using the said routes
44 and the companies they represent and report this
45 information to the commissioner of the division of
46 highways.

47 The commissioner of the division of highways shall,
48 every six months, review the damages to the said routes
49 and report the damages to: (1) The local legislative
50 delegation, consisting of two delegates from Brooke
51 County and two delegates from Hancock County and the
52 two senators representing the first senatorial district; and
53 (2) the companies identified by the director of the
54 enforcement division.

55 The commissioner shall assess the damages to the
56 companies, identified by the director of the enforcement
57 division, using the said routes. Notification, by the
58 commissioner, of the amount of the assessment to the
59 companies shall be by certified mail. A copy of the notice
60 of the assessment of damages shall also be forwarded to
61 the local legislative delegation.

62 The companies must pay the assessed damages to the
63 division of highways within thirty days of receipt of the
64 notice or penalties. If such payments are not made within
65 thirty days, a penalty in the amount of ten percent per
66 annum of the outstanding assessment shall be imposed
67 quarterly. The division of highways shall, to the best of its
68 ability, commence the repair of the damaged routes within
69 six months of the assessment.

70 The commissioner of the division of highways shall
71 report to the Legislature before the fifteenth day of
72 January, two thousand one. The report shall contain: (1)
73 How the increased weight of trucks has affected the said
74 routes; (2) damages caused; (3) how much was assessed in
75 damages; and (4) how much was paid. After review by the
76 Legislature, the Legislature shall continue, amend, or
77 terminate this practice.

RESOLUTIONS

(Only Resolutions of general interest are included herein.)

SENATE RESOLUTION 6

(By Senator Plymale)

[Adopted January 28, 1998]

Creating a Select Committee on Public Employees' Insurance.

Resolved by the Senate:

That for a period of time not to exceed the term of the seventy-third Legislature there is hereby created a Senate Select Committee on Public Employees' Insurance. This committee shall consist of nine members as appointed by the President who may authorize payment of members' expenses incurred since January 14, 1998. Notwithstanding the provisions of any Senate rule to the contrary, this committee shall have jurisdiction of legislative proposals affecting the insurance requirements and needs of the employees of the State of West Virginia as the President may deem appropriate: *Provided*, That reference of a bill to the Select Committee on Public Employees' Insurance shall not preclude a standing committee of the Senate from consideration of legislation addressing the same subject within its jurisdiction. The rules of the Senate governing standing committees shall govern the actions and proceedings of this committee insofar as applicable.

HOUSE CONCURRENT RESOLUTION 3

(By Mr. Speaker, Mr. Kiss, and Delegate Martin
and all other members of the House)

[Adopted January 20, 1998]

Requesting the President of the United States to carefully consider all possible economic and social effects of the Kyoto Protocol to the United Nations Framework Convention on Global

Climate Change (FCCC) and not to sign the Protocol unless it is certain that the provisions of the Protocol will not result in serious negative effects upon the economy of the United States, upon the economies of states economically dependent upon fossil fuel industry and upon the daily financial well being of the American citizen; and urging the Senate of the United States to, in the event of its deliberation over the Protocol for ratification, consider the same effects and to reject the Protocol so long as the above mentioned effects are possible.

WHEREAS, The United States is a signatory to the 1992 United Nations Framework Convention on Global Climate Change; and

WHEREAS, In December, 1997, the United States participated in negotiations in Kyoto, Japan, resulting in the agreement known as the Kyoto Protocol, which calls for the United States to reduce emissions of greenhouse gases by 7 percent from 1990 levels during the period A.D. 2008 to 2012, with potentially larger reductions thereafter; and

WHEREAS, The United States delegation signed the Protocol on December 10, 1997; and

WHEREAS, The Kyoto Protocol calls for reductions by other industrial nations from 1990 levels by 6 to 8 percent during the same period; and

WHEREAS, Developing nations are exempted from greenhouse gas emission limitation requirements of the Framework Convention and refused to accept any new commitments for such limitations during the negotiations of the Kyoto Protocol; and

WHEREAS, The United States relies on carbon-based fossil fuels for more than 90 percent of its total energy supply; and

WHEREAS, The requirements of the Protocol would bind the United States to more than a 35 percent reduction in carbon dioxide emissions between 2008 and 2012; and

WHEREAS, Research has not reached convincing proof that fossil fuel related emissions is in fact creating global climate changes; and

WHEREAS, Economic impact studies by the United States government estimate that the requirements of the treaty could

result in the loss of 900,000 jobs, increased energy prices, losses of output in energy intensive industries such as aluminum, steel, rubber, chemical and utility production and especially the coal industry; and

WHEREAS, The State of West Virginia, being dependent upon these industries and especially upon the coal industry, would experience these effects severely, including the possible loss of thousands of jobs; and

WHEREAS, The President of the United States pledged on October 22, 1997, that the United States will not assume binding obligations unless key developing nations meaningfully participate in this effort; and

WHEREAS, The failure of key developing nations to participate will create unfair competitive imbalances between the United States and these developing nations, potentially leading to the transfer of jobs vital to the West Virginia economy to developing nations; and

WHEREAS, On July 25, 1997, the United States Senate adopted Senate Resolution No. 98, expressing the sense of the Senate that the United States should not be a signatory to any protocol or to any other agreement which would require the advice and consent of the Senate to ratify, and which would mandate new commitments to mitigate greenhouse gas emissions unless the protocol or agreement mandates commitments and compliance by developing nations; therefore, be it

Resolved by the Legislature of West Virginia:

That the President of the United States is requested not to sign the Kyoto Protocol so long as the possibility of all above mentioned negative effects upon the American economy exists; and, be it

Further Resolved, That, in the event that the President signs the Kyoto Protocol, the Senate of the United States is requested to refuse ratification of the Protocol so long as the possibility of said effects exists; and, be it

Further Resolved, That the Clerk of the House of Delegates shall, immediately upon its adoption, transmit duly authenticated copies of this resolution to the President of the United States, to

the President Pro Tempore and the Secretary of the United States Senate, and to the United States Senators representing West Virginia.

**COMMITTEE SUBSTITUTE
FOR
HOUSE CONCURRENT RESOLUTION 62**

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

[Adopted March 14, 1998]

Providing for the issuance of two hundred twenty million dollars of bonds pursuant to the "Safe Roads Amendment of 1996" and chapter seventeen, article twenty-six of the code of West Virginia, 1931, as amended.

Resolved by the Legislature of West Virginia:

That state road bonds in the par value of two hundred twenty million dollars are authorized to be sold by the governor during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-nine. The bonds shall be issued in registered form, in such denominations, maturing at such times and bear such date or dates as the governor may determine.

All such bonds shall be payable at the office of the treasurer of the State of West Virginia, or at some bank in the City of Charleston to be designated by the governor. The bonds shall bear interest at a rate not exceeding seven percent per annum, in the aggregate, payable semiannually, beginning not more than nine months following the date of issue. The State Treasurer shall pay the interest then due on the bonds to the registered owners thereon, at the addresses shown by the record of registration.

The bonds shall be signed as provided in section two, article twenty-six, chapter seventeen of the code of West Virginia.

The bonds may be redeemable on such date or dates prior to maturity as determined by the governor.

The governor shall sell the bonds herein mentioned at such time or times during the fiscal year as he may determine necessary to provide funds for the purposes provided below, upon recommendation of the commissioner of highways. All sales shall be at par plus accrued interest, if any.

The net proceeds of sale of all bonds herein authorized shall be paid into the state road fund created by section one, article three, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and used for the purposes set forth in article twenty-six, chapter seventeen of the code of West Virginia and in the Safe Roads Amendment of 1996.

**COMMITTEE SUBSTITUTE
FOR
HOUSE JOINT RESOLUTION 104**

(By Mr. Speaker, Mr. Kiss, and Delegates Martin,
Michael, Mezzatesta, Ashley, Pino and Fleischauer)

[Adopted March 9, 1998]

Proposing an amendment to the Constitution of the State of West Virginia, amending article ten thereof by adding thereto a new section, designated section eight-a, relating to the authority of the Legislature to define types of improvement projects and to authorize the issuance by counties or municipalities of bonds to be payable from revenues derived from increased real or personal property taxes on such improvement projects in the county or municipality upon approval by majority vote in the county or counties and in the municipality where the proposed project is located; numbering and designating the proposed amendment; and providing a summarized statement of the purpose of the proposed amendment.

Resolved by the Legislature of West Virginia, two thirds of the members elected to each house agreeing thereto:

That the question of ratification or rejection of an amendment to the Constitution of the State of West Virginia be submitted to the voters of the State at the next general election to be held in the year one thousand nine hundred ninety-eight,

which proposed amendment is that article ten thereof be amended by adding thereto a new section, designated section eight-a, to read as follows:

ARTICLE X. TAXATION AND FINANCE.

§8a. Issuance of bonds payable from incremental increases in property taxes; voter approval required.

Notwithstanding any other provisions of this constitution to the contrary, the Legislature by general law may define and prescribe specific types of material improvements to real and personal property which constitute economic development projects and authorize the issuance by counties or municipalities of bonds to finance the public portion of those economic development projects. The Legislature may further determine the rights, remedies and conditions governing the projects, which may be located upon one or more parcels of real estate owned by one or more public or private entities.

The economic development projects shall be entered, valued and assessed on the land and personal property tax records of the appropriate taxing authority. The entries shall be made separately from the property so improved and, if located in more than one county or municipality, by separate entry for each applicable tax rate. The separate assessment is in addition to, and not in lieu of, the assessment for the property prior to the improvement. The bonds are payable from the property taxes on the private portion of the economic development projects.

No tax revenues of the county or municipality may be pledged to, or used for, the payment of the bonds, except for the increased tax revenues. The bonds issued shall be for a term not to exceed forty tax years, and may provide for the pledge of any other funds as the owner of the improvements may by contract or otherwise be required to pay. Upon payment in full of the bonds, the increased tax revenues shall revert to the appropriate levying bodies. The increased tax revenues from which the bonds may be paid shall not include taxes from excess levies, bond levies or other special levies.

No bonds may be issued unless the issuance of the bonds is approved by a majority of the voters of the county or counties if it is the issuing body, or if a municipality is the issuing body, by

a majority of the voters in both the municipality and the county in which the municipality is located.

Resolved further, That in accordance with the provisions of article eleven, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, this proposed amendment is hereby numbered "Amendment No. 1" and designated as the "Local Option Economic Development Amendment", and the purpose of the proposed amendment is summarized as follows: "To amend the State Constitution to permit the Legislature to authorize the financing of the public portion of economic development projects through the issuance by counties or municipalities of bonds payable from increases in real and personal property taxes, not including taxes from excess levies, bond levies or other special levies, on the private portion of the economic development projects. Upon payment in full of the bonds, for a term not to exceed forty years, the increased tax revenues revert to the appropriate levying bodies. No tax revenues of the county or counties or municipality may be pledged to, or used for, the payment of the bonds, except for the increased tax revenues. No bonds may be issued unless the issuance of the bonds is approved by a majority of the voters of the county if it is the issuing body, or if a municipality is the issuing body, by a majority of the voters in both the municipality and the county in which the municipality is located."

HOUSE JOINT RESOLUTION 116

(By Delegates Fleischauer, Staton, Osborne, Givens,
Kominar, Webb and Smirl)

[Adopted March 14, 1998]

Proposing an amendment to the Constitution of the State of West Virginia, amending sections one and five, article eight thereof, authorizing the Legislature to create courts of original and appellate jurisdiction; numbering and designating such proposed amendment; and providing a summarized statement of the purpose of such proposed amendment.

Resolved by the Legislature of West Virginia, two thirds of the members elected to each house agreeing thereto:

That the question of ratification or rejection of an amendment to the Constitution of the State of West Virginia be submitted to the voters of the State at the next general election to be held in the year one thousand nine hundred ninety-eight, which proposed amendment is that sections one and five, article eight thereof be amended to read as follows:

ARTICLE VIII. THE JUDICIARY.

§1. Judicial Power.

The judicial power of the state shall be vested solely in a supreme court of appeals, in the circuit courts and in such other courts, subordinate to the supreme court of appeals, of original or appellate jurisdiction as the Legislature may from time to time establish and in the justices, judges and magistrates of such courts.

Resolved further, That in accordance with the provisions of article eleven, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, such proposed amendment is hereby numbered "Amendment No. 2" and designated as the "Judicial Reform Amendment" and the purpose of the proposed amendment is summarized as follows: "To amend the Constitution of West Virginia to authorize the Legislature to create additional courts of original and appellate jurisdiction."

LEGISLATURE OF WEST VIRGINIA

ACTS

FIRST EXTRAORDINARY SESSION, 1998

CHAPTER 1

**(H. B. 5002—By Mr. Speaker, Mr. Kiss, and Delegate Ashley)
[By Request of the Executive]**

[Passed March 21, 1998; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public moneys out of the treasury from the balance of moneys remaining as an unappropriated balance in the state fund, general revenue, to the executive - governor's office, account no. fund 0101, fiscal year 1998, organization 0100, in the amount of five hundred thousand dollars, all supplementing and amending the appropriation for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight.

WHEREAS, The governor submitted to the Legislature the executive budget document, dated January 14, 1998, which included a statement of the state fund, general revenue, setting forth therein the cash balance and investments as of July 1, 1997, and further included the estimate of revenues for fiscal year 1997-98, less net appropriation balances forwarded and regular appropriations for fiscal year 1997-98; and

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

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, to the executive - governor's office, account no. fund 0101, fiscal year 1998, organization 0100, be supplemented and amended by increasing the total appropriation by five hundred thousand dollars as follows:

1	TITLE II—APPROPRIATIONS.		
2	Sec. 1. Appropriations from general revenue.		
3	EXECUTIVE		
4	5— <i>Governor's Office</i>		
5	(WV Code Chapter 5)		
6	Account No.		
7	Fund <u>0101</u> FY <u>1998</u> Org <u>0100</u>		
8		Act-	General
9		ivity	Revenue
10			Fund
11	5 Unclassified	099	\$ 500,000

12 Any unexpended balance remaining in the
 13 appropriation for Unclassified (fund 0101, activity 099) at
 14 the close of the fiscal year 1997-98 is hereby
 15 reappropriated for expenditure during the fiscal year
 16 1998-99.

17 The purpose of this supplementary appropriation bill
 18 is to supplement this account in the budget act for the
 19 fiscal year ending the thirtieth day of June, one thousand
 20 nine hundred ninety-eight, by adding five hundred
 21 thousand dollars to the existing appropriation for
 22 expenditure during fiscal year one thousand nine hundred
 23 ninety-eight.

CHAPTER 2

(H. B. 5004—By Delegate Michael)

[Passed March 21, 1998; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public moneys out of the treasury from the balance of moneys remaining as an unappropriated balance in the state fund, general revenue, to the department of administration - office of the secretary, account no. fund 0186, fiscal year 1998, organization 0201, in the amount of three million five hundred fifty thousand dollars, all supplementing and amending the appropriation for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight.

WHEREAS, The governor submitted to the Legislature the executive budget document, dated January 14, 1998, which included a statement of the state fund, general revenue, setting forth therein the cash balance and investments as of July 1, 1997, and further included the estimate of revenues for fiscal year 1997-98, less net appropriation balances forwarded and regular appropriations for fiscal year 1997-98; and

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

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, to the department of administration - office of the secretary, account no. fund 0186, fiscal year 1998, organization 0201, be supplemented and amended by increasing the total appropriation by three million five hundred fifty thousand dollars as follows:

1 TITLE II—APPROPRIATIONS.

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

3 DEPARTMENT OF ADMINISTRATION

4 *20—Department of Administration—*
 5 *Office of the Secretary*

6 (WV Code Chapter 5F)

7 Account No.

8 Fund 0186 FY 1998 Org 0201

9	Act-	General
10	ivity	Revenue
11		Fund

12 1a Public Employees' Insurance		
13 1b Match(R)-Transfer	012	\$3,550,000

14 Any unexpended balance remaining in the
 15 appropriation for Public Employees' Insurance Match
 16 (R)-Transfer (fund 0186, activity 012) at the close of the
 17 fiscal year 1997-98 is hereby reappropriated for
 18 expenditure during the fiscal year 1998-99. The above
 19 appropriation for Public Employees' Insurance Match
 20 (R)-Transfer (fund 0186, activity 012) shall be transferred
 21 to the Public Employees Insurance Agency for
 22 expenditure.

23 The purpose of this supplementary appropriation bill
 24 is to supplement this account in the budget act for the
 25 fiscal year ending the thirtieth day of June, one thousand
 26 nine hundred ninety-eight, by adding three million five
 27 hundred fifty thousand dollars to the existing
 28 appropriation in a new line item for expenditure during
 29 fiscal year one thousand nine hundred ninety-eight.

CHAPTER 3

(H. B. 5005—By Delegate Michael)

[Passed March 21, 1998; in effect from passage. Approved by the Governor.]

AN ACT expiring funds to the unappropriated surplus balance in the state fund, general revenue, for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, in the amount of three million eighty-one thousand two hundred sixty-eight dollars from the department of education and the arts-board of trustees of the university system of West Virginia control account, account no. fund 0327, organization 0461 (activity 435), and making supplementary appropriations of public moneys out of the treasury from the unappropriated surplus balance for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, to the department of education and the arts, board of trustees of the university system of West Virginia control account, account no. fund 0327, fiscal year 1998, organization 0461; to the department of health and human services, division of health-central office, account no. fund 0407, fiscal year 1998, organization 0506; to the department of health and human resources, division of human services, account no. fund 0403, fiscal year 1998, organization 0511; and to the department of military affairs and public safety, division of juvenile services, account no. fund 0570, fiscal year 1998, organization 0621, all for expenditure during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight.

WHEREAS, The Legislature finds that the fund balance in the department of education and the arts-board of trustees of the university system of West Virginia control account, account no. fund 0327, organization 0461 (activity 435) 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, one thousand nine hundred ninety-eight; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of funds in the department of education and the arts-board of trustees of the university system of West Virginia control account, account no. fund 0327, organization 0461 (activity 435), be decreased by expiring the amount of three million eighty-one thousand two hundred sixty-eight dollars to the unappropriated surplus balance of the state fund, general revenue, and that the total appropriation for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, to account no. fund 0327, organization 0461, be supplemented and amended by increasing the total appropriation by five hundred thousand dollars as follows:

1 TITLE II—APPROPRIATIONS.
2 Section 1. Appropriations from general revenue.
3 DEPARTMENT OF EDUCATION AND THE ARTS

4 46—Board of Trustees of the
5 University System of West Virginia
6 Control Account

7 (WV Code Chapter 18B)

8 Account No.

9 Fund 0327 FY 1998 Org 0461

10		General
11		Revenue
12		Fund
13	17a Jackson’s Mill	461 \$500,000

14 Any unexpended balances remaining in the
15 appropriation for Jackson’s Mill (fund 0327, activity 461)
16 at the close of the fiscal year 1997-98 are hereby
17 reappropriated for expenditure during the fiscal year
18 1998-1999. The appropriation to Jackson’s Mill (fund
19 0327, activity 461) is made for the purpose of providing
20 for a joint venture between Jackson’s Mill and West
21 Virginia university to establish a fire training facility.

22 That the total appropriation for fiscal year ending the
 23 thirtieth day of June, one thousand nine hundred ninety-
 24 eight, to account no. fund 0407, organization 0506, be
 25 supplemented and amended by increasing the total
 26 appropriation by one million four hundred thousand
 27 dollars as follows:

28 TITLE II—APPROPRIATIONS.

29 Section 1. Appropriations from general revenue.

30 DEPARTMENT OF HEALTH AND HUMAN
 31 RESOURCES

32 *51—Division of Health—*
 33 *Central Office*

34 (WV Code Chapter 16)

35 Account No.

36 Fund 0407 FY 1998 Org 0506

37			General
38		Act-	Revenue
39		ivity	Fund
40	33 Primary Care Support	628	\$200,000
41	36a Grant Memorial Hospital	834	\$500,000
42	36b County Health Departments	833	\$700,000

43 Any unexpended balances remaining in the
 44 appropriations for County Health Departments (fund
 45 0407, activity 833), Primary Care Support (fund 0407,
 46 activity 628) and Grant Memorial Hospital (fund 0407,
 47 activity 834) at the close of the fiscal year 1997-98 are
 48 hereby reappropriated for expenditure during the fiscal
 49 year 1998-1999.

50 That the total appropriation for fiscal year ending the
 51 thirtieth day of June, one thousand nine hundred ninety-
 52 eight, to account no. fund 0403, fiscal year 1998,
 53 organization 0511, be supplemented and amended by
 54 increasing the total appropriation by six hundred eighty-
 55 one thousand two hundred sixty-eight dollars as follows:

56 TITLE II—APPROPRIATIONS.

57 **Section 1. Appropriations from general revenue.**58 DEPARTMENT OF HEALTH
59 AND HUMAN SERVICES60 *56—Division of Human Services—*

61 (WV Code Chapters 9, 48 and 49)

62 Account No.

63 Fund 0403 FY 1998 Org 0511

64			
65		Act-	General
66		ivity	Revenue
			Fund

67 35c Juvenile Gatekeeping System . . . 835 \$681,268

68 Any unexpended balances remaining in the
69 appropriation for Juvenile Gatekeeping System (fund
70 0403, activity 835) at the close of the fiscal year 1997-98
71 is hereby reappropriated for expenditure during the fiscal
72 year 1998-1999.

73 And, that the total appropriation for fiscal year ending
74 the thirtieth day of June, one thousand nine hundred
75 ninety-eight, to account no. fund 0570, organization
76 0621, be supplemented and amended by increasing the
77 total appropriation by five hundred thousand dollars as
78 follows:

79 TITLE II—APPROPRIATIONS.

80 **Section 1. Appropriations from general revenue.**81 DEPARTMENT OF MILITARY AFFAIRS
82 AND PUBLIC SAFETY83 *68a—Division of Juvenile Services—*

84 (WV Code Chapter 49)

85 Account No.

86 Fund 0570 FY 1998 Org 0621

87			General
88		Act-	Revenue
89		ivity	Fund
90	1a Juvenile Gatekeeping System	835	\$500,000

91 Any unexpended balances remaining in the
 92 appropriation for Juvenile Gatekeeping System (fund
 93 0570, activity 835) at the close of the fiscal year 1997-98
 94 is hereby reappropriated for expenditure during the fiscal
 95 year 1998-1999.

96 The purpose of this bill is to expire the sum of three
 97 million eighty-one thousand two hundred sixty-eight
 98 dollars from the department of education and the arts,
 99 board of trustees of the university system of West Virginia
 100 control account, account no. fund 0327, organization
 101 0461 (activity 435), and to supplement the department of
 102 education and the arts, board of trustees of the university
 103 system of West Virginia control account, account no. fund
 104 0327, organization 0461, in the budget act for the fiscal
 105 year ending the thirtieth day of June, one thousand nine
 106 hundred ninety-eight, by adding five hundred thousand
 107 dollars to the existing appropriation; to supplement the
 108 department of health and human services, division of
 109 health-central office, account no. fund 0407, fiscal year
 110 1998, organization 0506, in the budget act for the fiscal
 111 year ending the thirtieth day of June, one thousand nine
 112 hundred ninety-eight, by adding one million four
 113 hundred thousand dollars to the existing appropriation; to
 114 supplement the department of health and human
 115 resources, division of human services, account no. fund
 116 0403, fiscal year 1998, organization 0511, in the budget
 117 act for the fiscal year ending the thirtieth day of June, one
 118 thousand nine hundred ninety-eight, by adding six
 119 hundred eighty-one thousand two hundred sixty-eight
 120 dollars to the existing appropriation; and to supplement
 121 the department of military affairs and public safety,
 122 division of juvenile services, account no. fund 0570, fiscal
 123 year 1998, organization 0621, in the budget act for the
 124 fiscal year ending the thirtieth day of June, one thousand
 125 nine hundred ninety-eight, by adding five hundred
 126 thousand dollars to the existing appropriation, for
 127 expenditure during fiscal year one thousand nine hundred
 128 ninety-eight.

CHAPTER 4

(H. B. 5003—By Delegate Michael)

[Passed March 21, 1998; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public moneys out of the treasury from the balance of moneys remaining as an unappropriated balance in the state fund, general revenue, to the department of tax and revenue - tax division, account no. fund 0470, fiscal year 1998, organization 0702, in the amount of three hundred fifty thousand dollars, all supplementing and amending the appropriation for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight.

WHEREAS, The governor submitted to the Legislature the executive budget document, dated January 14, 1998, which included a statement of the state fund, general revenue, setting forth therein the cash balance and investments as of July 1, 1997, and further included the estimate of revenues for fiscal year 1997-98, less net appropriation balances forwarded and regular appropriations for fiscal year 1997-98; and

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

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, to the department of tax and revenue - tax division, account no. fund 0470, fiscal year 1998, organization 0702, be supplemented and amended by increasing the total appropriation by three hundred fifty thousand dollars in a new line item as follows:

- 1 TITLE II—APPROPRIATIONS.
- 2 **Sec. 1. Appropriations from general revenue.**
- 3 DEPARTMENT OF TAX AND REVENUE
- 4 70—Tax Division

5	(WV Code Chapter 11)		
6	Account No.		
7	Fund <u>0470</u> FY <u>1998</u> Org <u>0702</u>		
8		Act-	General
9		ivity	Revenue
10			Fund
11	5b Property Tax and Coal Reserve		
12	5c Valuation Automation Projects . .	831	\$350,000
13	Any unexpended balance remaining in the		
14	appropriation for Property Tax and Coal Reserve		
15	Valuation Automation Projects (fund 0470, activity 831)		
16	at the close of the fiscal year 1997-98 is hereby		
17	reappropriated for expenditure during the fiscal year		
18	1998-99.		
19	The purpose of this supplementary appropriation bill		
20	is to supplement this account in the budget act for the		
21	fiscal year ending the thirtieth day of June, one thousand		
22	nine hundred ninety-eight, by adding three hundred fifty		
23	thousand dollars in a new line item to the existing		
24	appropriation for expenditure during fiscal year one		
25	thousand nine hundred ninety-eight.		

CHAPTER 5

(H. B. 5006—By Delegate Michael)

[Passed March 21, 1998; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public moneys out of the treasury from the balance of moneys remaining as an unappropriated balance in the state fund, general revenue, to the department of transportation - office of the secretary, account no. fund 0500, fiscal year 1998, organization 0801, in the amount of one hundred thousand dollars, all supplementing and amending the appropriation

for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight.

WHEREAS, The governor submitted to the Legislature the executive budget document, dated January 14, 1998, which included a statement of the state fund, general revenue, setting forth therein the cash balance and investments as of July 1, 1997, and further included the estimate of revenues for fiscal year 1997-98, less net appropriation balances forwarded and regular appropriations for fiscal year 1997-98; and

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

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, to the department of transportation - office of the secretary, account no. fund 0500, fiscal year 1998, organization 0801, be supplemented and amended by increasing the total appropriation by one hundred thousand dollars as follows:

1 TITLE II—APPROPRIATIONS.

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

3 DEPARTMENT OF TRANSPORTATION

4 72—*Department of Transportation—*
5 *Office of the Secretary*

6 (WV Code Chapter 5F)

7 Account No.

8 Fund 0500 FY 1998 Org 0801

9 10 11	Act- ivity	General Revenue Fund
12 3 Port Authority (R)	443	\$100,000

13 Any unexpended balance remaining in the
14 appropriation for Port Authority (R) (fund 0500, activity
15 443) at the close of the fiscal year 1997-98 is hereby
16 reappropriated for expenditure during the fiscal year
17 1998-99.

18 The purpose of this supplementary appropriation bill
19 is to supplement this account in the budget act for the
20 fiscal year ending the thirtieth day of June, one thousand
21 nine hundred ninety-eight, by adding one hundred
22 thousand dollars to the existing appropriation for
23 expenditure during fiscal year one thousand nine hundred
24 ninety-eight.

CHAPTER 6

(H. B. 5007—By Mr. Speaker, Mr. Kiss, and Delegates Martin,
Michael and Warner)

[Passed March 21, 1998; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public moneys out of the treasury from the balance of moneys remaining as an unappropriated balance in the state fund, general revenue, to the department of transportation — office of the secretary, account no. fund 0500, fiscal year 1998, organization 0801, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight.

WHEREAS, The governor submitted to the Legislature the executive budget document, dated January 14, 1998, which included a statement of the state fund, general revenue, setting forth therein the cash balance and investments as of July 1, 1997, and further included the estimate of revenues for the fiscal year 1997-98, less net appropriation balances forwarded and regular appropriations for fiscal year 1997-98; and

WHEREAS, It appears from the governor's executive budget document there now remains an unappropriated balance in the

state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, to account no. fund 0500, fiscal year 1998, organization 0801, be supplemented and amended by increasing the total appropriation by one million dollars in a new line item as follows:

1	TITLE II—APPROPRIATIONS.		
2	Sec. 1. Appropriations from general revenue.		
3	DEPARTMENT OF TRANSPORTATION		
4	<i>72—Department of Transportation—</i>		
5	<i>Office of the Secretary</i>		
6	(WV Code Chapter 5F)		
7	Account No.		
8	Fund <u>0500</u>	FY <u>1998</u>	Org <u>0801</u>
9			General
10		Act-	Revenue
11		ivity	Fund
12	5a Aeronautics Commission	818	\$1,000,000

13 Any unexpended balance remaining in the
 14 appropriation for the Aeronautics Commission (fund
 15 0500, activity 818) at the close of fiscal year 1997-1998 is
 16 hereby reappropriated for expenditure during the fiscal
 17 year 1998-99.

18 The purpose of this bill is to supplement this account
 19 in the budget act for the fiscal year ending the thirtieth
 20 day of June, one thousand nine hundred ninety-eight, by
 21 adding one million dollars to a new appropriation for the
 22 Aeronautics Commission for the purchase of property by
 23 the Benedum Airport Authority for the expansion of the
 24 Mid-Atlantic Aerospace Park for expenditure during the
 25 fiscal year one thousand nine hundred ninety-eight.

CHAPTER 7

(H. B. 5008—By Delegate Michael)

[Passed March 21, 1998; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation from the balance of moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, in the lottery net profits, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight.

WHEREAS, The governor has established that there now remains an unappropriated balance in the lottery net profits available for expenditure during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight; therefore

Be it enacted by the Legislature of West Virginia:

That chapter five, acts of the Legislature, regular session, one thousand nine hundred ninety-seven, known as the "Budget Bill", be supplemented and amended by adding new items of appropriations to Title II, section ten thereof as follows:

1 TITLE II—APPROPRIATIONS.

2 Section 10. Appropriations from
3 lottery net profit surplus.

4 282a—West Virginia Development Office
5 Tourism Commission

6 (WV Code Chapter 5B)

7 Fund 3067 FY 1998 Org 0304

8	Unclassified	096	\$	500,000
9	Hatfield-McCoy Regional			
10	Recreation Authority	824		750,000
11	Oglebay Park	825		200,000

12	Coal Heritage Area	826	<u>75,000</u>
13	Total		1,525,000
14	<i>282b—Department of Education and the Arts—</i>		
15	<i>Office of the Secretary</i>		
16	(WV Code Chapter 5F)		
17	Account No.		
18	Fund <u>3505</u> FY <u>1998</u> Org <u>0431</u>		
19	Educational Broadcasting Authority-		
20	600 Capitol Street	700	600,000
21	National Youth Science Camp	132	300,000
22	Coal and Energy Research Bureau . . .	827	300,000
23	Mingo County Board of Education		
24	Tax Assessment Error	693	623,869
25	Library Commission-Infomine		
26	Network	696	1,200,000
27	Culture and History-Culture Center		
28	Capital Outlay-Total	687	<u>1,100,000</u>
29	Total		4,123,869

30 The purpose of this supplementary appropriation bill
31 is to supplement this account in the budget bill for the
32 fiscal year ending the thirtieth day of June, one thousand
33 nine hundred ninety-eight, by providing for a new item of
34 appropriation to be established therein to appropriate one
35 million five hundred twenty-five thousand dollars to the
36 West Virginia Development Office-Division of Tourism
37 and by providing for a new item of appropriation to be
38 established therein to appropriate four million one
39 hundred twenty-three thousand eight hundred sixty-nine
40 dollars to the department of education and the arts, office
41 of the secretary, to be expended during the fiscal year one
42 thousand nine hundred ninety-eight.

CHAPTER 8

(S. B. 1000—By Senators Tomblin, Mr. President, and Buckalew)
[By Request of the Executive]

[Passed March 21, 1998; in effect July 1, 1998. Approved by the Governor.]

AN ACT to amend and reenact section two, article four, chapter eighteen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to salary increases for teachers.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

§18A-4-2. State minimum salaries for teachers.

1 (a) Each teacher shall receive the amount prescribed in
2 the "state minimum salary schedule I" as set forth in this
3 section, specific additional amounts prescribed in this
4 section or article, and any county supplement in effect in a
5 county pursuant to section five-a of this article during the
6 contract year.

7 STATE MINIMUM SALARY SCHEDULE I

8	Years	4th	3rd	2nd		AB
9	Exp.	Class	Class	Class	A.B.	+15
10	0	18,572	19,209	19,464	20,674	21,409
11	1	18,853	19,490	19,745	21,139	21,874
12	2	19,134	19,772	20,027	21,604	22,339
13	3	19,416	20,053	20,308	22,069	22,804
14	4	19,933	20,570	20,826	22,770	23,505
15	5	20,214	20,852	21,107	23,235	23,970
16	6	20,496	21,133	21,388	23,700	24,435

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17	7		21,414	21,670	24,165	24,900
18	8		21,696	21,951	24,630	25,365
19	9			22,232	25,095	25,830
20	10			22,513	25,561	26,296
21	11				26,026	26,761
22	12				26,491	27,226
23	13				26,956	27,691
24	14					
25	15					
26	16					
27	17					
28	18					
29	19					
30	Years		MA	MA	MA	Doc-
31	Exp.	M.A.	+15	+30	+45	torate
32	0	23,117	23,852	24,587	25,322	26,322
33	1	23,582	24,317	25,052	25,787	26,787
34	2	24,047	24,782	25,517	26,252	27,252
35	3	24,512	25,247	25,982	26,717	27,717
36	4	25,213	25,948	26,683	27,418	28,418
37	5	25,678	26,413	27,148	27,883	28,883
38	6	26,143	26,878	27,613	28,348	29,348
39	7	26,608	27,343	28,078	28,813	29,813
40	8	27,073	27,808	28,543	29,278	30,278
41	9	27,538	28,273	29,008	29,743	30,743
42	10	28,004	28,739	29,474	30,209	31,209
43	11	28,469	29,204	29,939	30,674	31,674
44	12	28,934	29,669	30,404	31,139	32,139
45	13	29,399	30,134	30,869	31,604	32,604
46	14	29,864	30,599	31,334	32,069	33,069

47	15	30,329	31,064	31,799	32,534	33,534
48	16	30,794	31,529	32,264	32,999	33,999
49	17			32,729	33,464	34,464
50	18			33,194	33,929	34,929
51	19			33,659	34,394	35,394

52 Subject to a recommendation by the governor for a
 53 pay raise through the delivery of an executive message to
 54 the Legislature and an appropriation by the Legislature
 55 for a pay raise, each teacher shall receive, effective the first
 56 day of July, one thousand nine hundred ninety-nine, and
 57 thereafter, the amount prescribed in "state minimum salary
 58 schedule II" as set forth in this section or article, and any
 59 county supplement in effect in a county pursuant to
 60 section five-a of this article during the contract year.

61 STATE MINIMUM SALARY SCHEDULE II

62	Years	4th	3rd	2nd		AB
63	Exp.	Class	Class	Class	A.B.	+15
64	0	19,328	19,965	20,220	21,430	22,165
65	1	19,609	20,246	20,501	21,895	22,630
66	2	19,890	20,528	20,783	22,360	23,095
67	3	20,172	20,809	21,064	22,825	23,560
68	4	20,689	21,326	21,582	23,526	24,261
69	5	20,970	21,608	21,863	23,991	24,726
70	6	21,252	21,889	22,144	24,456	25,191
71	7		22,170	22,426	24,921	25,656
72	8		22,452	22,707	25,386	26,121
73	9			22,988	25,851	26,586
74	10			23,269	26,317	27,052
75	11				26,782	27,517
76	12				27,247	27,982
77	13				27,712	28,447
78	14					
79	15					

80	16					
81	17					
82	18					
83	19					
84	Years		MA	MA	MA	Doc-
85	Exp.	MA	+15	+30	+45	torate
86	0	23,873	24,608	25,343	26,078	27,078
87	1	24,388	25,073	25,808	26,543	27,543
88	2	24,803	25,538	26,273	27,008	28,008
89	3	25,268	26,003	26,738	27,473	28,473
90	4	25,969	26,704	27,439	28,174	29,174
91	5	26,434	27,169	27,904	28,639	29,639
92	6	26,899	27,634	28,369	29,104	30,104
93	7	27,364	28,099	28,834	29,569	30,569
94	8	27,829	28,564	29,299	30,034	31,034
95	9	28,294	29,029	29,764	30,499	31,499
96	10	28,760	29,495	30,230	30,965	31,965
97	11	29,225	29,960	30,695	31,430	32,430
98	12	29,690	30,425	31,160	31,895	32,895
99	13	30,155	30,890	31,625	32,360	33,360
100	14	30,620	31,355	32,090	32,825	33,825
101	15	31,085	31,820	32,555	33,290	34,290
102	16	31,550	32,285	33,020	33,755	34,755
103	17			33,485	34,220	35,220
104	18			33,950	34,685	35,685
105	19			34,415	35,150	36,150

106 If "state minimum salary schedule II" becomes
 107 effective on the first day of July, one thousand nine
 108 hundred ninety-nine, and the governor recommends a pay
 109 raise through the delivery of an executive message to the
 110 Legislature and the Legislature appropriates money for a
 111 pay raise, each teacher shall receive, effective the first day

112 of July, two thousand, and thereafter, the amount
 113 prescribed in "state minimum salary schedule III" as set
 114 forth in this section or article, and any county supplement
 115 in effect in a county pursuant to section five-a of this
 116 article during the contract year.

117 **STATE MINIMUM SALARY SCHEDULE III**

118	Years	4th	3rd	2nd		AB
119	Exp.	Class	Class	Class	A.B.	+15
120	0	20,084	20,721	20,976	22,186	22,921
121	1	20,365	21,002	21,257	22,651	23,386
122	2	20,646	21,284	21,539	23,116	23,851
123	3	20,928	21,565	21,820	23,581	24,316
124	4	21,445	22,082	22,338	24,282	25,017
125	5	21,726	22,364	22,619	24,747	25,482
126	6	22,008	22,645	22,900	25,212	25,947
127	7		22,926	23,182	25,677	26,412
128	8		23,208	23,463	26,142	26,877
129	9			23,744	26,607	27,342
130	10			24,025	27,073	27,808
131	11				27,538	28,273
132	12				28,003	28,738
133	13				28,468	29,203
134	14					
135	15					
136	16					
137	17					
138	18					
139	19					

140 141	Years Exp.	M.A.	MA +15	MA +30	MA +45	Doc- torate
142	0	24,629	25,364	26,099	26,834	27,834
143	1	25,094	25,829	26,564	27,299	28,299
144	2	25,559	26,294	27,029	27,764	28,764
145	3	26,024	26,759	27,494	28,229	29,229
146	4	26,725	27,460	28,195	28,930	29,930
147	5	27,190	27,925	28,660	29,395	30,395
148	6	27,655	28,390	29,125	29,860	30,860
149	7	28,120	28,855	29,590	30,325	31,325
150	8	28,585	29,320	30,055	30,790	31,790
151	9	29,050	29,785	30,520	31,255	32,255
152	10	29,516	30,251	30,986	31,721	32,721
153	11	29,981	30,716	31,451	32,186	33,186
154	12	30,446	31,181	31,916	32,651	33,651
155	13	30,911	31,646	32,381	33,116	34,116
156	14	31,376	32,111	32,846	33,581	34,581
157	15	31,841	32,576	33,311	34,046	35,046
158	16	32,306	33,041	33,776	34,511	35,511
159	17			34,241	34,976	35,976
160	18			34,706	35,441	36,441
161	19			35,171	35,906	36,906

162 (b) Six hundred dollars shall be paid annually to each
 163 classroom teacher who has at least twenty years of
 164 teaching experience. The payments: (i) Shall be in
 165 addition to any amounts prescribed in the applicable state
 166 minimum salary schedule; (ii) shall be paid in equal
 167 monthly installments; and (iii) shall be considered a part
 168 of the state minimum salaries for teachers.

CHAPTER 9

(H. B. 5001—By Mr. Speaker, Mr. Kiss, and Delegate Ashley)
[By Request of the Executive]

[Passed March 21, 1998; in effect July 1, 1998. Approved by the Governor.]

AN ACT to amend and reenact section eight-a, article four, chapter eighteen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to salary increases for service personnel.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

§18A-4-8a. Service personnel minimum monthly salaries.

1 (1) The minimum monthly pay for each service
2 employee whose employment is for a period of more than
3 three and one-half hours a day shall be at least the
4 amounts indicated in the "state minimum pay scale pay
5 grade I" and the minimum monthly pay for each service
6 employee whose employment is for a period of three and
7 one-half hours or less a day shall be at least one-half the
8 amount indicated in the "state minimum pay scale pay
9 grade I" set forth in this section.

10 STATE MINIMUM PAY SCALE PAY GRADE I

11		A	B	C	D	E	F	G	H
12	0	1,100	1,120	1,160	1,210	1,260	1,320	1,350	1,420
13	1	1,127	1,147	1,187	1,237	1,287	1,347	1,377	1,447
14	2	1,154	1,174	1,214	1,264	1,314	1,374	1,404	1,474
15	3	1,181	1,201	1,241	1,291	1,341	1,401	1,431	1,501
16	4	1,208	1,228	1,268	1,318	1,368	1,428	1,458	1,528

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17	5	1,235	1,255	1,295	1,345	1,395	1,455	1,485	1,555
18	6	1,262	1,282	1,322	1,372	1,422	1,482	1,512	1,582
19	7	1,289	1,309	1,349	1,399	1,449	1,509	1,539	1,609
20	8	1,316	1,336	1,376	1,426	1,476	1,536	1,566	1,636
21	9	1,343	1,363	1,403	1,453	1,503	1,563	1,593	1,663
22	10	1,370	1,390	1,430	1,480	1,530	1,590	1,620	1,690
23	11	1,397	1,417	1,457	1,507	1,557	1,617	1,647	1,717
24	12	1,424	1,444	1,484	1,534	1,584	1,644	1,674	1,744
25	13	1,451	1,471	1,511	1,561	1,611	1,671	1,701	1,771
26	14	1,478	1,498	1,538	1,588	1,638	1,698	1,728	1,798
27	15	1,505	1,525	1,565	1,615	1,665	1,725	1,755	1,825
28	16	1,532	1,552	1,592	1,642	1,692	1,752	1,782	1,852
29	17	1,559	1,579	1,619	1,669	1,719	1,779	1,809	1,879
30	18	1,586	1,606	1,646	1,696	1,746	1,806	1,836	1,906
31	19	1,613	1,633	1,673	1,723	1,773	1,833	1,863	1,933
32	20	1,640	1,660	1,700	1,750	1,800	1,860	1,890	1,960
33	21	1,667	1,687	1,727	1,777	1,827	1,887	1,917	1,987
34	22	1,694	1,714	1,754	1,804	1,854	1,914	1,944	2,014
35	23	1,721	1,741	1,781	1,831	1,881	1,941	1,971	2,041
36	24	1,748	1,768	1,808	1,858	1,908	1,968	1,998	2,068
37	25	1,775	1,795	1,835	1,885	1,935	1,995	2,025	2,095
38	26	1,802	1,822	1,862	1,912	1,962	2,022	2,052	2,122
39	27	1,829	1,849	1,889	1,939	1,989	2,049	2,079	2,149
40	28	1,856	1,876	1,916	1,966	2,016	2,076	2,106	2,176
41	29	1,883	1,903	1,943	1,993	2,043	2,103	2,133	2,203
42	30	1,910	1,930	1,970	2,020	2,070	2,130	2,160	2,230
43	31	1,937	1,957	1,997	2,047	2,097	2,157	2,187	2,257
44	32	1,964	1,984	2,024	2,074	2,124	2,184	2,214	2,284

45	33	1,991	2,011	2,051	2,101	2,151	2,211	2,241	2,311
46	34	2,018	2,038	2,078	2,128	2,178	2,238	2,268	2,338
47	35	2,045	2,065	2,105	2,155	2,205	2,265	2,295	2,365
48	36	2,072	2,092	2,132	2,182	2,232	2,292	2,322	2,392

49 Subject to a recommendation by the governor for a
 50 pay raise through the delivery of an executive message to
 51 the Legislature and an appropriation by the Legislature
 52 for a pay raise, effective the first day of July, one thousand
 53 nine hundred ninety-nine and thereafter, the minimum
 54 monthly pay for each service employee whose
 55 employment is for a period of more than three and one-
 56 half hours a day shall be at least the amounts indicated in
 57 the "state minimum pay scale pay grade II" and the
 58 minimum monthly pay for each service employee whose
 59 employment is for a period of three and one-half hours or
 60 less a day shall be at least one-half the amount indicated in
 61 the "state minimum pay scale pay grade II" set forth in
 62 this section.

63 STATE MINIMUM PAY SCALE PAY GRADE II

64	65	Years of		Pay Grade						
		Employment								
		A	B	C	D	E	F	G	H	
67	0	1,160	1,180	1,220	1,270	1,320	1,380	1,410	1,480	
68	1	1,188	1,208	1,248	1,298	1,348	1,408	1,438	1,508	
69	2	1,216	1,236	1,276	1,326	1,376	1,436	1,466	1,536	
70	3	1,244	1,264	1,304	1,354	1,404	1,464	1,494	1,564	
71	4	1,272	1,292	1,332	1,382	1,432	1,492	1,522	1,592	
72	5	1,300	1,320	1,360	1,410	1,460	1,520	1,550	1,620	
73	6	1,328	1,348	1,388	1,438	1,488	1,548	1,578	1,648	
74	7	1,356	1,376	1,416	1,466	1,516	1,576	1,606	1,676	
75	8	1,384	1,404	1,444	1,494	1,544	1,604	1,634	1,704	
76	9	1,412	1,432	1,472	1,522	1,572	1,632	1,662	1,732	
77	10	1,440	1,460	1,500	1,550	1,600	1,660	1,690	1,760	

78	11	1,468	1,488	1,528	1,578	1,628	1,688	1,718	1,788
79	12	1,496	1,516	1,556	1,606	1,656	1,716	1,746	1,816
80	13	1,524	1,544	1,584	1,634	1,684	1,744	1,774	1,844
81	14	1,552	1,572	1,612	1,662	1,712	1,772	1,802	1,872
82	15	1,580	1,600	1,640	1,690	1,740	1,800	1,830	1,900
83	16	1,608	1,628	1,668	1,718	1,768	1,828	1,858	1,928
84	17	1,636	1,656	1,696	1,746	1,796	1,856	1,886	1,956
85	18	1,664	1,684	1,724	1,774	1,824	1,884	1,914	1,984
86	19	1,692	1,712	1,752	1,802	1,852	1,912	1,942	2,012
87	20	1,720	1,740	1,780	1,830	1,880	1,940	1,970	2,040
88	21	1,748	1,768	1,808	1,858	1,908	1,968	1,998	2,068
89	22	1,776	1,796	1,836	1,886	1,936	1,996	2,026	2,096
90	23	1,804	1,824	1,864	1,914	1,964	2,024	2,054	2,124
91	24	1,832	1,852	1,892	1,942	1,992	2,052	2,082	2,152
92	25	1,860	1,880	1,920	1,970	2,020	2,080	2,110	2,180
93	26	1,888	1,908	1,948	1,998	2,048	2,108	2,138	2,208
94	27	1,916	1,936	1,976	2,026	2,076	2,136	2,166	2,236
95	28	1,944	1,964	2,004	2,054	2,104	2,164	2,194	2,264
96	29	1,972	1,992	2,032	2,082	2,132	2,192	2,222	2,292
97	30	2,000	2,020	2,060	2,110	2,160	2,220	2,250	2,320
98	31	2,028	2,048	2,088	2,138	2,188	2,248	2,278	2,348
99	32	2,056	2,076	2,116	2,166	2,216	2,276	2,306	2,376
100	33	2,084	2,104	2,144	2,194	2,244	2,304	2,334	2,404
101	34	2,112	2,132	2,172	2,222	2,272	2,332	2,362	2,432
102	35	2,140	2,160	2,200	2,250	2,300	2,360	2,390	2,460
103	36	2,168	2,188	2,228	2,278	2,328	2,388	2,418	2,488
104	If "state minimum pay scale pay grade II" becomes								
105	effective on the first day of July, one thousand nine								
106	hundred ninety-nine, and the governor recommends a pay								

107 raise through the delivery of an executive message to the
 108 Legislature and the Legislature appropriates money for a
 109 pay raise, the minimum monthly pay for each service
 110 employee whose employment is for a period of more than
 111 three and one-half hours a day shall be at least the
 112 amounts indicated in the "state minimum pay scale pay
 113 grade III" and the minimum monthly pay for each
 114 service employee whose employment is for a period of
 115 three and one-half hours or less a day shall be at least one-
 116 half the amount indicated in the "state minimum pay
 117 scale pay grade III" set forth in this section.

118 STATE MINIMUM PAY SCALE PAY GRADE III

119	Years of		Pay Grade						
120	Employment								
121	A	B	C	D	E	F	G	H	
122	0	1,220	1,240	1,280	1,330	1,380	1,440	1,470	1,540
123	1	1,249	1,269	1,309	1,359	1,409	1,469	1,499	1,569
124	2	1,278	1,298	1,338	1,388	1,438	1,498	1,528	1,598
125	3	1,307	1,327	1,367	1,417	1,467	1,527	1,557	1,627
126	4	1,336	1,356	1,396	1,446	1,496	1,556	1,586	1,656
127	5	1,365	1,385	1,425	1,475	1,525	1,585	1,615	1,685
128	6	1,394	1,414	1,454	1,504	1,554	1,614	1,644	1,714
129	7	1,423	1,443	1,483	1,533	1,583	1,643	1,673	1,743
130	8	1,452	1,472	1,512	1,562	1,612	1,672	1,702	1,772
131	9	1,481	1,501	1,541	1,591	1,641	1,701	1,731	1,801
132	10	1,510	1,530	1,570	1,620	1,670	1,730	1,760	1,830
133	11	1,539	1,559	1,599	1,649	1,699	1,759	1,789	1,859
134	12	1,568	1,588	1,628	1,678	1,728	1,788	1,818	1,888
135	13	1,597	1,617	1,657	1,707	1,757	1,817	1,847	1,917
136	14	1,626	1,646	1,686	1,736	1,786	1,846	1,876	1,946
137	15	1,655	1,675	1,715	1,765	1,815	1,875	1,905	1,975
138	16	1,684	1,704	1,744	1,794	1,844	1,904	1,934	2,004
139	17	1,713	1,733	1,773	1,823	1,873	1,933	1,963	2,033

140	18	1,742	1,762	1,802	1,852	1,902	1,962	1,992	2,062
141	19	1,771	1,791	1,831	1,881	1,931	1,991	2,021	2,091
142	20	1,800	1,820	1,860	1,910	1,960	2,020	2,050	2,120
143	21	1,829	1,849	1,889	1,939	1,989	2,049	2,079	2,149
144	22	1,858	1,878	1,918	1,968	2,018	2,078	2,108	2,178
145	23	1,887	1,907	1,947	1,997	2,047	2,107	2,137	2,207
146	24	1,916	1,936	1,976	2,026	2,076	2,136	2,166	2,236
147	25	1,945	1,965	2,005	2,055	2,105	2,165	2,195	2,265
148	26	1,974	1,994	2,034	2,084	2,134	2,194	2,224	2,294
149	27	2,003	2,023	2,063	2,113	2,163	2,223	2,253	2,323
150	28	2,032	2,052	2,092	2,142	2,192	2,252	2,282	2,352
151	29	2,061	2,081	2,121	2,171	2,221	2,281	2,311	2,381
152	30	2,090	2,110	2,150	2,200	2,250	2,310	2,340	2,410
153	31	2,119	2,139	2,179	2,229	2,279	2,339	2,369	2,439
154	32	2,148	2,168	2,208	2,258	2,308	2,368	2,398	2,468
155	33	2,177	2,197	2,237	2,287	2,337	2,397	2,427	2,497
156	34	2,206	2,226	2,266	2,316	2,366	2,426	2,456	2,526
157	35	2,235	2,255	2,295	2,345	2,395	2,455	2,485	2,555
158	36	2,264	2,284	2,324	2,374	2,424	2,484	2,514	2,584

159 **CLASS TITLE****PAY GRADE**

160	Accountant I	.....	D
161	Accountant II	.....	E
162	Accountant III	.....	F
163	Aide I	.....	A
164	Aide II	.....	B
165	Aide III	.....	C
166	Aide IV	.....	D
167	Audiovisual Technician	.....	C
168	Auditor	.....	G
169	Autism Mentor	.....	E

170	Braille or Sign Language Specialist	E
171	Bus Operator	D
172	Buyer	F
173	Cabinetmaker	G
174	Cafeteria Manager	D
175	Carpenter I	E
176	Carpenter II	F
177	Chief Mechanic	G
178	Clerk I	B
179	Clerk II	C
180	Computer Operator	E
181	Cook I	A
182	Cook II	B
183	Cook III	C
184	Crew Leader	F
185	Custodian I	A
186	Custodian II	B
187	Custodian III	C
188	Custodian IV	D
189	Director or Coordinator of Services	H
190	Draftsman	D
191	Electrician I	F
192	Electrician II	G
193	Electronic Technician I	F
194	Electronic Technician II	G
195	Executive Secretary	G
196	Food Services Supervisor	G
197	Foreman	G
198	General Maintenance	C

199	Glazier	D
200	Graphic Artist	D
201	Groundsman	B
202	Handyman	B
203	Heating and Air Conditioning Mechanic I	E
204	Heating and Air Conditioning Mechanic II	G
205	Heavy Equipment Operator	E
206	Inventory Supervisor	D
207	Key Punch Operator	B
208	Locksmith	G
209	Lubrication Man	C
210	Machinist	F
211	Mail Clerk	D
212	Maintenance Clerk	C
213	Mason	G
214	Mechanic	F
215	Mechanic Assistant	E
216	Office Equipment Repairman I	F
217	Office Equipment Repairman II	G
218	Painter	E
219	Paraprofessional	F
220	Plumber I	E
221	Plumber II	G
222	Printing Operator	B
223	Printing Supervisor	D
224	Programmer	H
225	Roofing/Sheet Metal Mechanic	F
226	Sanitation Plant Operator	F
227	School Bus Supervisor	E

228 Secretary I D
 229 Secretary II E
 230 Secretary III F
 231 Supervisor of Maintenance H
 232 Supervisor of Transportation H
 233 Switchboard Operator-Receptionist D
 234 Truck Driver D
 235 Warehouse Clerk C
 236 Watchman B
 237 Welder F

238 (2) An additional ten dollars per month shall be added
 239 to the minimum monthly pay of each service employee
 240 who holds a high school diploma or its equivalent.

241 (3) An additional ten dollars per month shall also be
 242 added to the minimum monthly pay of each service
 243 employee who holds twelve college hours or comparable
 244 credit obtained in a trade or vocational school as approved
 245 by the state board.

246 (4) When any part of a school service employee's daily
 247 shift of work is performed between the hours of six
 248 o'clock p.m. and five o'clock a.m. the following day, the
 249 employee shall be paid no less than an additional ten
 250 dollars per month and one half of the pay shall be paid
 251 with local funds.

252 (5) Any service employee required to work on any
 253 legal school holiday shall be paid at a rate one and one-
 254 half times the employee's usual hourly rate.

255 (6) Any full-time service personnel required to work
 256 in excess of their normal working day during any week
 257 which contains a school holiday for which they are paid
 258 shall be paid for the additional hours or fraction of the
 259 additional hours at a rate of one and one-half times their
 260 usual hourly rate and paid entirely from county board
 261 funds.

262 (7) No service employee may have his or her daily
263 work schedule changed during the school year without the
264 employee's written consent, and the employee's required
265 daily work hours may not be changed to prevent the
266 payment of time and one-half wages or the employment
267 of another employee.

268 (8) The minimum hourly rate of pay for extra duty
269 assignments as defined in section eight-b of this article
270 shall be no less than one seventh of the employee's daily
271 total salary for each hour the employee is involved in
272 performing the assignment and paid entirely from local
273 funds: *Provided*, That an alternative minimum hourly rate
274 of pay for performing extra duty assignments within a
275 particular category of employment may be utilized if the
276 alternate hourly rate of pay is approved both by the
277 county board and by the affirmative vote of a two-thirds
278 majority of the regular full-time employees within that
279 classification category of employment within that county:
280 *Provided, however*, That the vote shall be by secret ballot
281 if so requested by a service personnel employee within
282 that classification category within that county. The salary
283 for any fraction of an hour the employee is involved in
284 performing the assignment shall be prorated accordingly.
285 When performing extra duty assignments, employees who
286 are regularly employed on a one-half day salary basis
287 shall receive the same hourly extra duty assignment pay
288 computed as though the employee were employed on a
289 full-day salary basis.

290 (9) The minimum pay for any service personnel
291 employees engaged in the removal of asbestos material or
292 related duties required for asbestos removal shall be their
293 regular total daily rate of pay and no less than an
294 additional three dollars per hour or no less than five
295 dollars per hour for service personnel supervising asbestos
296 removal responsibilities for each hour these employees are
297 involved in asbestos related duties. Related duties required
298 for asbestos removal include, but are not limited to, travel,
299 preparation of the work site, removal of asbestos
300 decontamination of the work site, placing and removal of
301 equipment and removal of structures from the site. If any
302 member of an asbestos crew is engaged in asbestos related
303 duties outside of the employee's regular employment

304 county, the daily rate of pay shall be no less than the
305 minimum amount as established in the employee's regular
306 employment county for asbestos removal and an
307 additional thirty dollars per each day the employee is
308 engaged in asbestos removal and related duties. The
309 additional pay for asbestos removal and related duties
310 shall be payable entirely from county funds. Before
311 service personnel employees may be utilized in the
312 removal of asbestos material or related duties, they shall
313 have completed a federal Environmental Protection Act
314 approved training program and be licensed. The
315 employer shall provide all necessary protective equipment
316 and maintain all records required by the Environmental
317 Protection Act.

318 (10) For the purpose of qualifying for additional pay
319 as provided in section eight, article five of this chapter, an
320 aide shall be considered to be exercising the authority of a
321 supervisory aide and control over pupils if the aide is
322 required to supervise, control, direct, monitor, escort or
323 render service to a child or children when not under the
324 direct supervision of certificated professional personnel
325 within the classroom, library, hallway, lunchroom,
326 gymnasium, school building, school grounds or wherever
327 supervision is required. For purposes of this section,
328 "under the direct supervision of certificated professional
329 personnel" means that certificated professional personnel
330 is present, with and accompanying the aide.

LEGISLATURE OF WEST VIRGINIA

ACTS

SECOND EXTRAORDINARY SESSION, 1998

CHAPTER 1

(H. B. 101—By Mr. Speaker, Mr. Kiss, and Delegate Ashley)

[Passed July 14, 1998; in effect from passage. Approved by the Governor.]

AN ACT expiring funds to the unappropriated surplus balance in the state fund, general revenue, for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-nine, in the amount of seven million five hundred thousand dollars from the revenue shortfall reserve fund, fund 2038, organization 0201, and making a supplementary appropriation of public moneys out of the treasury from the unappropriated surplus balance for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-nine, to the governor's office, civil contingent fund, fund 0105, fiscal year 1999, organization 0100.

WHEREAS, The Legislature finds that it anticipates that the funds available to assist flood victims and to fund other needed infrastructure and other community development projects throughout the state will fall short of that needed during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-nine; and

WHEREAS, The revenue shortfall reserve fund has a sufficient

balance available for appropriation in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-nine; and

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

Be it enacted by the Legislature of West Virginia:

That the balance of funds in the revenue shortfall reserve fund, fund 2038, organization 0201, be decreased by expiring the amount of seven million five hundred thousand dollars to the unappropriated surplus balance of the state fund, general revenue, and that the total appropriation for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-nine, to fund 0105, fiscal year 1999, organization 0100, be supplemented and amended by increasing the total appropriation by seven million five hundred thousand dollars as follows:

1 TITLE II—APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 8—Governor's Office—
4 Civil Contingent Fund

5 (WV Code Chapter 5)

6 Fund 0105 FY 1999 Org 0100

7	Act-	General
8	ivity	Revenue
9		Fund
10 1a Civil Contingent Fund—		
11 Surplus(R)	263	\$7,500,000

12 The purpose of this bill is to expire the sum of seven
13 million five hundred thousand dollars from the revenue
14 shortfall reserve fund, fund 2038, organization 0201, and
15 to supplement the governor's office, civil contingent fund,
16 fund 0105, fiscal year 1999, organization 0100, in the
17 budget act for the fiscal year ending the thirtieth day of
18 June, one thousand nine hundred ninety-nine, by adding
19 seven million five hundred thousand dollars to the
20 appropriation for Civil Contingent Fund-Surplus.

CHAPTER 2

(H. B. 102—By Mr. Speaker, Mr. Kiss, and Delegate Ashley)

[Passed July 14, 1998; in effect from passage. Approved by the Governor.]

AN ACT expiring funds to the unappropriated surplus balance in the state fund, general revenue, for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-nine, in the amount of seven million five hundred thousand dollars from the income tax refund reserve fund, fund 1313, organization 1300, and making a supplementary appropriation of public moneys out of the treasury from the unappropriated surplus balance for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-nine, to the governor's office, civil contingent fund, fund 0105, fiscal year 1999, organization 0100.

WHEREAS, The Legislature finds that it anticipates that the funds available to assist flood victims and to fund other needed infrastructure and other community development projects throughout the state will fall short of that needed during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-nine; and

WHEREAS, The income tax refund reserve fund has a sufficient balance available for appropriation in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-nine; and

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

Be it enacted by the Legislature of West Virginia:

That the balance of funds in the income tax refund reserve fund, fund 1313, organization 1300, be decreased by expiring the amount of seven million five hundred thousand dollars to the unappropriated surplus balance of the state fund, general revenue, and that the total appropriation for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-nine, to fund 0105, fiscal year 1999, organization 0100, be supplemented and amended by increasing the total appropriation by seven million five hundred thousand dollars as follows:

1 TITLE II—APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 8—Governor's Office—
4 Civil Contingent Fund

5 (WV Code Chapter 5)

6 Fund 0105 FY 1999 Org 0100

7		Act-	
8		ivity	General
9			Revenue
			Fund

10 1a Civil Contingent Fund—

11	Surplus(R)	263	\$7,500,000
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12 The purpose of this bill is to expire the sum of seven
13 million five hundred thousand dollars from the income
14 tax refund reserve fund, fund 1313, organization 1300,
15 and to supplement the governor's office, civil contingent
16 fund, fund 0105, fiscal year 1999, organization 0100, in
17 the budget act for the fiscal year ending the thirtieth day
18 of June, one thousand nine hundred ninety-nine, by
19 adding seven million five hundred thousand dollars to the
20 appropriation for Civil Contingent Fund-Surplus.

CHAPTER 3

(S. B. 1—By Senators Tomblin, Mr. President, and Buckalew)

[Passed July 14, 1998; in effect from passage. Approved by the Governor.]

AN ACT to amend chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article two-d, relating to security at the capitol complex; creating within the department of military affairs and public safety the state facilities protection division; authorizing appointment of director and providing qualifications; providing for duties of the division; authorizing legislative rules; and clarifying that current authority for supreme court and legislative security at the capitol complex is not terminated.

Be it enacted by the Legislature of West Virginia:

That chapter fifteen 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-d, to read as follows:

ARTICLE 2D. STATE FACILITIES PROTECTION DIVISION.

- §15-2D-1. Policy.
- §15-2D-2. Division created.
- §15-2D-3. Duties of division.
- §15-2D-4. Effect of article.

§15-2D-1. Policy.

- 1 The Legislature finds and declares that citizens, state
- 2 employees and visitors who park, attend functions or work
- 3 at the capitol complex should be safe and secure. The
- 4 Legislature further finds that it is in the public interest to
- 5 provide for the safety and security of individuals who visit
- 6 and work at the capitol complex and that this can best be
- 7 accomplished through a single division within the
- 8 department of military affairs and public safety.

§15-2D-2. Division created.

- 1 There is hereby created the state facilities protection
- 2 division within the department of military affairs and
- 3 public safety. The governor shall appoint, with the advice

4 and consent of the Senate, a qualified director who has
5 been a law-enforcement officer for at least ten years, has
6 successfully completed supervisory and management
7 training, has held a supervisory position in law
8 enforcement for at least three years and has completed the
9 professional training required for police officers at the
10 West Virginia state police academy or equivalent
11 professional law-enforcement training at another state,
12 federal or United States military institution. The director
13 is responsible for the control and supervision of each of
14 the division's offices. The director may appoint deputy
15 directors and assign them duties as may be necessary for
16 the efficient management and operation of the division.

§15-2D-3. Duties of division.

1 The state facilities protection division has the duty to:

2 (1) Gather information from a broad base of
3 employees and visitors as to their security needs and
4 develop a comprehensive plan to maintain and improve
5 security at the capitol complex;

6 (2) Establish qualifications and training requirements
7 for persons providing security at the capitol complex,
8 including law-enforcement officers, who shall have powers
9 of arrest, all powers and authority of law-enforcement
10 officials set forth in section three, article fourteen, chapter
11 eight of this code and the duty to enforce all applicable
12 provisions of this code within the capitol complex;

13 (3) Employ personnel or contract for services;

14 (4) Purchase necessary equipment to maintain security
15 at the capitol complex; and

16 (5) Establish, through rules proposed for legislative
17 approval in accordance with the provisions of article three,
18 chapter twenty-nine-a of this code, which rules shall, at
19 minimum, establish qualification, training and certification
20 procedures for security personnel, and guidelines and
21 protocols necessary to carry out the intent of this article.

§15-2D-4. Effect of article.

1 The provisions of this article shall not apply to the
2 West Virginia Senate, the West Virginia House of

3 Delegates, the West Virginia Legislature or the West
4 Virginia supreme court of appeals, or to any part of the
5 capitol complex under the supervision or control of the
6 West Virginia Senate, the West Virginia House of
7 Delegates, the West Virginia Legislature or the West
8 Virginia supreme court of appeals, unless agreed to by the
9 president of the West Virginia Senate, the speaker of the
10 West Virginia House of Delegates, or jointly by the
11 president of the West Virginia Senate and speaker of the
12 West Virginia House of Delegates, or by order of the West
13 Virginia supreme court of appeals, and then only to the
14 extent that the president of the West Virginia Senate, the
15 speaker of the West Virginia House of Delegates or the
16 West Virginia supreme court of appeals agrees to such
17 application, and then only to that part of the capitol
18 complex under the supervision or control of the respective
19 houses of the Legislature, individually or jointly, or of the
20 court.

CHAPTER 4

(H. B. 104—By Mr. Speaker, Mr. Kiss, and Delegate Ashley)

[Passed July 14, 1998; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one and one-a, article eleven, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating generally to the authority of municipalities to prescribe reasonable penalties in the form of fines, forfeitures and imprisonment; and providing for the assessment of additional costs against a defendant.

Be it enacted by the Legislature of West Virginia:

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

**ARTICLE 11. POWERS AND DUTIES WITH RESPECT TO
ORDINANCES AND ORDINANCE PRO-
CEDURES.**

§8-11-1. Ordinances to make municipal powers effective; penalties imposed under judgment of mayor or police court or municipal judge; right to injunctive relief; right to maintain action to collect fines; additional assessment of costs.

§8-11-1a. Disposition of criminal costs into state treasury account for regional jail and correctional facility development fund.

**§8-11-1. Ordinances to make municipal powers effective;
penalties imposed under judgment of mayor or
police court or municipal judge; right to injunctive
relief; right to maintain action to collect fines;
additional assessment of costs.**

1 (a) To carry into effect the powers and authority
2 conferred upon any municipality or its governing body
3 by the provisions of this chapter, or any past or future act
4 of the Legislature of this state, the governing body has
5 plenary power and authority to:

6 (1) Make and pass all needful ordinances, orders,
7 bylaws, acts, resolutions, rules and regulations not contrary
8 to the constitution and laws of this state; and

9 (2) Prescribe reasonable penalties for violation of its
10 ordinances, orders, bylaws, acts, resolutions, rules and
11 regulations, in the form of fines, forfeitures and
12 confinement in the county or regional jail or the place of
13 confinement in the municipality, if there is one, for a term
14 not exceeding thirty days.

15 (b) The fines, forfeitures and confinement shall be
16 recovered, imposed or enforced under the judgment of the
17 mayor of the municipality or the individual lawfully
18 exercising the mayor's functions, or the police court judge
19 or municipal court judge of a city, if there is one, and may
20 be suspended upon reasonable conditions as may be
21 imposed by the mayor, other authorized individual or
22 judge.

23 (c) Any municipality may also maintain a civil action
24 in the name of the municipality in the circuit court of the

25 county in which the municipality or the major portion of
26 the territory of the municipality is located to obtain an
27 injunction to compel compliance with, or to enjoin a
28 violation or threatened violation of, any ordinance of the
29 municipality, and the circuit court has jurisdiction to grant
30 the relief sought. A certified transcript of a judgment for
31 a fine rendered by a municipal court may be filed in the
32 office of the clerk of a circuit court and docketed in the
33 judgment lien book kept in the office of the clerk of the
34 county commission in the same manner and with the same
35 effect as the filing and docketing of a certified transcript
36 of judgment rendered by a magistrate court as provided
37 for in section two, article six, chapter fifty of this code.
38 The judgment shall include costs assessed against the
39 defendant.

40 (d) In addition to any other costs which may be
41 lawfully imposed, an additional cost shall be imposed in
42 an amount of not less than forty-two dollars for a traffic
43 offense constituting a moving violation, regardless of
44 whether the penalty for the violation provides for a period
45 of incarceration, and for any other offense for which the
46 ordinance prescribing the offense provides for a period of
47 incarceration.

48 (3) Of the forty-two dollars imposed as an additional
49 cost, two dollars are administrative costs to be retained by
50 the municipality, and forty dollars shall be paid into the
51 regional jail and correctional facility development fund in
52 the state treasury in accordance with section one-a of this
53 article.

54 (e) Execution shall be by fieri facias issued by the
55 clerk of the circuit court in the same manner as writs are
56 issued on judgments for a fine rendered by circuit courts
57 or other courts of record under the provisions of section
58 eleven, article four, chapter sixty-two of this code.

**§8-11-1a. Disposition of criminal costs into state treasury
account for regional jail and correctional facility
development fund.**

1 The clerk of each municipal court, or other person
2 designated to receive fines and costs, shall at the end of

3 each month pay into the regional jail and correctional
4 facility development fund in the state treasury an amount
5 equal to forty dollars of the costs collected in each
6 proceeding involving a traffic offense constituting a
7 moving violation, regardless of whether the penalty for
8 such violation provides for a period of incarceration, or
9 any other offense for which the ordinance prescribing the
10 offense provides for a period of incarceration: *Provided,*
11 That in a case where a defendant has failed to pay all costs
12 assessed against him or her, no payment shall be made to
13 the regional jail and correctional facility development
14 fund unless and until the defendant has paid all costs
15 which, when paid, are available for the use and benefit of
16 the municipality.

DISPOSITION OF BILLS ENACTED

The first column gives the number of the bill and the second column gives the chapter assigned to it.

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2299	241	4062	216	4283	185
2387	135	4068	249	4285	91
2388	171	4092	288	4288	205
2394	5	4096	67	4290	295
2395	315	4098	111	4293	139
2415	240	4101	70	4296	116
2430	311	4102	169	4299	164
2550	184	4105	226	4300	172
2569	247	4106	115	4303	293
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2656	232	4114	277	4308	299
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2726	113	4116	264	4310	151
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2817	124	4136	197	4330	88
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2882	301	4200	199	4334	327
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4003	250	4221	98	4346	262
4005	156	4227	239	4347	269
4007	297	4228	146	4349	275
4016	258	4234	114	4350	7
4021	227	4238	83	4353	10
4030	248	4241	214	4357	15
4031	137	4250	153	4358	17
4034	195	4252	84	4359	18
4035	225	4253	302	4365	25
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4390	57	4518	174	4631	331
4391	58	4529	90	4632	246
4392	59	4530	123	4664	221
4393	60	4537	238	4686	304
4395	52	4538	312	4687	308
4396	55	4545	178	4688	251
4414	206	4547	131	4690	274
4418	218	4548	245	4692	76
4429	92	4554	74	4693	142
4444	320	4558	192	4694	182
4447	180	4560	82	4697	127
4448	325	4564	87	4698	260
4451	209	4574	222	4702	95
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94	313	366	287	522	33
96	147	374	210	523	34
105	119	382	235	524	24
113	136	388	177	527	19
145	144	389	155	528	20
148	117	390	208	530	21
150	6	395	228	531	22
151	286	397	133	533	125
158	118	398	108	534	80
164	213	399	257	535	283
178	254	403	309	536	278
179	211	409	128	537	261
181	285	412	266	541	42
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194	191	416	281	565	132
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206	63	422	102	581	101
207	305	424	322	585	4
208	307	426	85	599	134
209	104	430	44	600	255
225	303	431	11	601	252
228	103	442	68	602	253
233	229	468	231	605	321
239	107	471	326	616	328
248	122	472	317	624	179
249	284	473	138	627	168
250	273	494	46	633	30
251	272	495	43	634	47
252	176	498	38	653	292
305	198	501	35	661	330
317	200	503	31	682	212
320	202	504	32	716	296
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727	236	757	100	773	81
734	89	760	77	778	223
741	23	761	78	780	39
742	37	764	163	781	62
744	1	765	203	783	45
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4	585	41	358	78	761
5	2394	42	541	79	752
6	150	43	495	80	534
7	4350	44	430	81	773
8	514	45	783	82	4560
9	4703	46	494	83	4238
10	4353	47	634	84	4252
11	431	48	785	85	426
12	755	49	784	86	185
13	511	50	4385	87	4564
14	509	51	4386	88	4330
15	4357	52	4395	89	734
16	4715	53	4387	90	4529
17	4358	54	4388	91	4285
18	4359	55	4396	92	4429
19	527	56	4389	93	2168
20	528	57	4390	94	4119
21	530	58	4391	95	4702
22	531	59	4392	96	548
23	741	60	4393	97	2895
24	524	61	4714	98	4221
25	4365	62	781	99	2698
26	4366	63	206	100	757
27	4367	64	205	101	581
28	519	65	4474	102	422
29	520	66	4055	103	228
30	633	67	4096	104	209
31	503	68	442	105	4307
32	504	69	4038	106	4254
33	522	70	4101	107	239
34	523	71	4040	108	398
35	501	72	4039	109	193
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116	4296	160	4314	204	4711
117	148	161	4118	205	4288
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119	105	163	764	207	4592
120	4121	164	4299	208	390
121	2823	165	4471	209	4451
122	248	166	4503	210	374
123	4530	167	4483	211	179
124	2817	168	627	212	682
125	533	169	4102	213	164
126	4306	170	4626	214	4241
127	4697	171	2388	215	4502
128	409	172	4300	216	4062
129	365	173	25	217	4501
130	551	174	4518	218	4418
131	4547	175	4113	219	4472
132	565	176	252	220	59
133	397	177	388	221	4664
134	599	178	4545	222	4574
135	2387	179	624	223	778
136	113	180	4447	224	2274
137	4031	181	772	225	4035
138	473	182	4694	226	4105
139	4293	183	4220	227	4021
140	4043	184	2550	228	395
141	4595	185	4283	229	233
142	4693	186	4259	230	4058
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146	4228	190	2135	234	4601
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248	4030	278	536	308	4687
249	4068	279	4255	309	403
250	4003	280	4256	310	4110
251	4688	281	416	311	2430
252	601	282	417	312	4538
253	602	283	535	313	94
254	178	284	249	314	4267
255	600	285	181	315	2395
256	2800	286	151	316	191
257	399	287	366	317	472
258	4016	288	4092	318	2625
259	362	289	4713	319	4120
260	4698	290	766	320	4444
261	537	291	4629	321	605
262	4346	292	653	322	424
263	413	293	4303	323	4508
264	4116	294	2794	324	64
265	4258	295	4290	325	4448
266	412	296	716	326	471
267	4115	297	4007	327	4334
268	4345	298	4619	328	616
269	4347	299	4308	329	4708
270	414	300	4326	330	661
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272	251	302	4253		
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The first column gives the number of the bill and the second column gives the chapter assigned to it.

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Members		
Appointment	323	1979
Terms	323	1979
Voting rights	323	1980
Powers	323	1980
Organization		
Declaration	323	1979
Public agencies		
Agreements	323	1976
Public Service Commission		
Submission to	323	1977
Funds, personnel, services		
Furnishing	323	1978
Regional Water Authorities		
Governing body		
Annual audit	323	1980
Meetings	323	1980
Members		
Appointment	323	1979
Terms	323	1979
Voting rights	323	1980
Powers	323	1980

WATER RESOURCES—(Continued):

Regional Water and Wastewater Authorities—(Continued):

Regional Water Authorities—(Continued):

Organization		
Declaration	323	1979
Public agencies		
Agreements	323	1976
Public Service Commission		
Submission to	323	1977
Funds, personnel, services		
Furnishing	323	1978
Revenue bonds	323	1983
Collection	323	1986
Covenants	323	1986
Legal investments	323	1989
Rates and charges	323	1988
Refunding	323	1988
Sinking fund	323	1986
Statutory mortgage lien	323	1987
Taxation		
Exemption	323	1988
Trust indenture	323	1985

WEIRTON:

Certain roads

Gross weight limitations		
Increase	331	2003

FIRST EXTRAORDINARY SESSION

1998

APPROPRIATIONS:

Supplemental

Administration, Department of	2	2017
Governor's Office, Unclassified	1	2015
Tax Division	4	2024
Tourism, Education and the Arts	7	2028
Transportation (Aeronautics Commission)	6	2027
Transportation (Port Authority)	5	2025
University System, Health, Human Services,		
Military Affairs, Public Safety	3	

EDUCATION:

Service Personnel

Salaries

Class Titles	9	2041
Increase	9	2036
Pay Scale Pay Grade I	9	2036
Pay Scale Pay Grade II	9	2038
Pay Scale Pay Grade III	9	2040

Teachers

Salaries

Increase	8	2030
Schedule I	8	2030
Schedule II	8	2032
Schedule III	8	2034

**SECOND EXTRAORDINARY SESSION
1998**

APPROPRIATIONS:

Supplemental

Governor's Office, Civil Contingent Fund	1	2048
Governor's Office, Civil Contingent Fund	2	2050

CAPITOL SECURITY:

State Facilities Protection Division

Article establishing

Effect	3	2052
Creation	3	2051
Duties	3	2052
Policy	3	2051

MUNICIPAL FINES:

Defendants

Additional costs

Assessment	4	2054
Payment	4	2055

Regional Jail and Correctional Facility Development Fund

Fines

Payment of portion	4	2055
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