

SB # 145

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SECRETARY OF STATE

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1994

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## ENROLLED

SENATE BILL NO. 145

(By Senator Manchin, et al)

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PASSED March 10, 1994  
In Effect from Passage

**E N R O L L E D**  
**Senate Bill No. 145**

(BY SENATORS MANCHIN, ANDERSON, GRUBB AND MINARD)

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[Passed March 10, 1994; in effect from passage.]

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AN ACT to amend and reenact sections one, three, twenty-four and twenty-nine, article nine, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating generally to the promulgation of administrative rules and regulations by the various executive or administrative agencies and the procedures relating thereof; the 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 legislative rules with various modifications presented to and recommended by the legislative rule-making review committee; authorizing the commissioner of agriculture to promulgate legislative rules relating to animal disease control, as modified; authorizing the commissioner of agriculture to promulgate legislative rule relating to auctioneers, as modified; authorizing the attorney general

to promulgate legislative rule relating to the West Virginia consumer goods rental protection act, as modified; authorizing the secretary of state to promulgate legislative rules relating to official election forms and vender authorization, as modified; and authorizing the board of accountancy to promulgate legislative rules relating to board rules and rules of professional conduct, as modified.

*Be it enacted by the Legislature of West Virginia:*

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

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

**§64-9-1. Commissioner of agriculture.**

- 1 (a) The legislative rules filed in the state register on the  
2 sixth day of April, one thousand nine hundred eighty-  
3 three, relating to the commissioner of agriculture  
4 (schedule of charges for inspection services: fruit), are  
5 authorized.
- 6 (b) The legislative rules filed in the state register on the  
7 third day of August, one thousand nine hundred eighty-  
8 three, relating to the commissioner of agriculture  
9 (licensing of auctioneers), are authorized.
- 10 (c) The legislative rules filed in the state register on the  
11 eighth day of February, one thousand nine hundred  
12 eighty-four, relating to the commissioner of agriculture  
13 (conduct of beef industry self-improvement assessment  
14 program referendum), are authorized.
- 15 (d) The legislative rules filed in the state register on the  
16 fourth day of June, one thousand nine hundred eighty-  
17 four, relating to the commissioner of agriculture (feeding  
18 untreated garbage to swine), are authorized.
- 19 (e) The legislative rules filed in the state register on the  
20 fourth day of June, one thousand nine hundred eighty-  
21 four, relating to the commissioner of agriculture

22 (registration, taxation and control of dogs), are autho-  
23 rized.

24 (f) The legislative rules filed in the state register on the  
25 first day of November, one thousand nine hundred  
26 eighty-four, relating to the commissioner of agriculture  
27 (public markets), are authorized.

28 (g) The legislative rules filed in the state register on the  
29 tenth day of September, one thousand nine hundred  
30 eighty-four, relating to the commissioner of agriculture  
31 (noxious weed rules), are authorized.

32 (h) The legislative rules filed in the state register on the  
33 fourth day of June, one thousand nine hundred eighty-  
34 four, relating to the commissioner of agriculture (animal  
35 disease control), are authorized.

36 (i) The legislative rules filed in the state register on the  
37 fifth day of January, one thousand nine hundred  
38 eighty-four, relating to the commissioner of agriculture  
39 (use of certain picloram products), are authorized.

40 (j) The legislative rules filed in the state register on the  
41 eighth day of March, one thousand nine hundred  
42 eighty-five, relating to the commissioner of agriculture  
43 (increasing certain fees by rules and regulations), are  
44 authorized.

45 (k) The legislative rules filed in the state register on the  
46 thirteenth day of January, one thousand nine hundred  
47 eighty-six, modified by the commissioner of agriculture  
48 to meet the objections of the legislative rule-making  
49 review committee and refiled in the state register on the  
50 thirty-first day of January, one thousand nine hundred  
51 eighty-six, relating to the commissioner of agriculture  
52 (licensing of livestock dealers), are authorized.

53 (l) The legislative rules filed in the state register on the  
54 eighteenth day of June, one thousand nine hundred  
55 eighty-six, modified by the commissioner of agriculture  
56 to meet the objections of the legislative rule-making  
57 review committee and refiled in the state register on the

58 fifth day of January, one thousand nine hundred  
59 eighty-seven, relating to the commissioner of agriculture  
60 (West Virginia pesticide use and application act), are  
61 authorized.

62 (m) The legislative rules filed in the state register on  
63 the eighteenth day of August, one thousand nine hundred  
64 eighty-six, modified by the director of the division of  
65 forestry of the department of agriculture to meet the  
66 objections of the legislative rule-making review  
67 committee and refiled in the state register on the fifth  
68 day of January, one thousand nine hundred eighty-seven,  
69 relating to the director of the division of forestry of the  
70 department of agriculture (ginseng), are authorized.

71 (n) The legislative rules filed in the state register on the  
72 tenth day of April, one thousand nine hundred eighty-  
73 seven, relating to the commissioner of agriculture  
74 (schedule of charges for inspection services: fruit), are  
75 authorized.

76 (o) The legislative rules filed in the state register on the  
77 thirteenth day of August, one thousand nine hundred  
78 eighty-seven, modified by the commissioner of agricul-  
79 ture to meet the objections of the legislative rule-making  
80 review committee and refiled in the state register on the  
81 eighth day of September, one thousand nine hundred  
82 eighty-seven, relating to the commissioner of agriculture  
83 (animal disease control), are authorized.

84 (p) The legislative rules filed in the state register on the  
85 fifteenth day of September, one thousand nine hundred  
86 eighty-eight, relating to the commissioner of agriculture  
87 (sale and distribution of commercial fertilizer), are  
88 authorized.

89 (q) The legislative rules filed in the state register on the  
90 fifteenth day of September, one thousand nine hundred  
91 eighty-eight, modified by the commissioner of agricul-  
92 ture to meet the objections of the legislative rule-making  
93 review committee and refiled in the state register on the  
94 twenty-sixth day of October, one thousand nine hundred

95 eighty-eight, relating to the commissioner of agriculture  
96 (animal disease control), are authorized.

97 (r) The legislative rules filed in the state register on the  
98 fifteenth day of May, one thousand nine hundred  
99 eighty-nine, modified by the commissioner of agriculture  
100 to meet the objections of the legislative rule-making  
101 review committee and refiled in the state register on the  
102 twenty-first day of August, one thousand nine hundred  
103 eighty-nine, relating to the commissioner of agriculture  
104 (production of milk and cream for manufacturing  
105 purposes), are authorized.

106 (s) The legislative rules filed in the state register on the  
107 seventh day of August, one thousand nine hundred  
108 eighty-nine, modified by the commissioner of agriculture  
109 to meet the objections of the legislative rule-making  
110 review committee and refiled in the state register on the  
111 twenty-third day of October, one thousand nine hundred  
112 eighty-nine, relating to the commissioner of agriculture  
113 (animal disease control), are authorized.

114 (t) The legislative rules filed in the state register on the  
115 tenth day of August, one thousand nine hundred ninety,  
116 modified by the commissioner of agriculture to meet the  
117 objections of the legislative rule-making review  
118 committee and refiled in the state register on the fifth  
119 day of October, one thousand nine hundred ninety,  
120 relating to the commissioner of agriculture (meat  
121 inspection), are authorized.

122 (u) The legislative rules filed in the state register on the  
123 tenth day of August, one thousand nine hundred ninety,  
124 modified by the commissioner of agriculture to meet the  
125 objections of the legislative rule-making review  
126 committee and refiled in the state register on the third  
127 day of October, one thousand nine hundred ninety,  
128 relating to the commissioner of agriculture (agricultural  
129 liming materials), are authorized.

130 (v) The legislative rules filed in the state register on the  
131 tenth day of August, one thousand nine hundred ninety,

132 modified by the commissioner of agriculture to meet the  
133 objections of the legislative rule-making review  
134 committee and refiled in the state register on the third  
135 day of October, one thousand nine hundred ninety,  
136 relating to the commissioner of agriculture (public  
137 markets), are authorized.

138 (w) The legislative rules filed in the state register on  
139 the nineteenth day of September, one thousand nine  
140 hundred ninety, modified by the commissioner of  
141 agriculture to meet the objections of the legislative  
142 rule-making review committee and refiled in the state  
143 register on the ninth day of November, one thousand  
144 nine hundred ninety, relating to the commissioner of  
145 agriculture (animal disease control), are authorized.

146 (x) The legislative rules filed in the state register on the  
147 eighth day of August, one thousand nine hundred  
148 ninety-one, modified by the commissioner of agriculture  
149 to meet the objections of the legislative rule-making  
150 review committee and refiled in the state register on the  
151 twenty-fourth day of September, one thousand nine  
152 hundred ninety-one, relating to the commissioner of  
153 agriculture (commercial feed), are authorized with the  
154 amendments set forth below:

155 On page two, after subsection 3.3., by adding a new  
156 subsection, designated subsection 3.4., to read as follows:

157 "3.4. The commissioner will not assess a tonnage fee on  
158 any commercial feed or feed ingredients used in the  
159 manufacture of poultry contract feed.";

160 On page five, after subsection 4.3.m., by adding a new  
161 subsection, designated subsection 4.3.n., to read as  
162 follows:

163 "4.3.n. The commissioner will consider poultry  
164 contract feed to be customer-formula feed.";

165 And,

166 On page eight, after subsection 5.5., by adding a new  
167 subsection, designated subsection 5.6., to read as follows:

168 “5.6. Poultry contract feed labels shall conform to the  
169 requirements of W. Va. Code §19-14-8(d), except that:

170 5.6.a. The name of the grower or feeder will substitute  
171 for the requirements for the name of the purchaser; and,

172 5.6.b. The net weight (avoir dupois) of the commercial  
173 feed and each feed ingredient used in the feed shall not  
174 be required to be listed.”

175 (y) The legislative rules filed in the state register on the  
176 fourth day of June, one thousand nine hundred ninety-  
177 one, modified by the commissioner of agriculture to meet  
178 the objections of the legislative rule-making review  
179 committee and refiled in the state register on the second  
180 day of August, one thousand nine hundred ninety-one,  
181 relating to the commissioner of agriculture (wood  
182 destroying insect treatment standards), are authorized.

183 (z) The legislative rules filed in the state register on the  
184 twentieth day of December, one thousand nine hundred  
185 ninety, modified by the commissioner of agriculture to  
186 meet the objections of the legislative rule-making review  
187 committee and refiled in the state register on the  
188 thirtieth day of April, one thousand nine hundred  
189 ninety-one, relating to the commissioner of agriculture  
190 (fee structure for the pesticide control act of 1990), are  
191 authorized.

192 (aa) The legislative rules filed in the state register on  
193 the eighth day of August, one thousand nine hundred  
194 ninety-one, modified by the commissioner of agriculture  
195 to meet the objections of the legislative rule-making  
196 review committee and refiled in the state register on the  
197 twelfth day of November, one thousand nine hundred  
198 ninety-one, relating to the commissioner of agriculture  
199 (animal disease control), are authorized.

200 (bb) The legislative rules filed in the state register on  
201 the eighth day of August, one thousand nine hundred  
202 ninety-one, modified by the commissioner of agriculture  
203 to meet the objections of the legislative rule-making  
204 review committee and refiled in the state register on the



205 tenth day of September, one thousand nine hundred  
206 ninety-one, relating to the commissioner of agriculture  
207 (West Virginia plant pest act), are authorized.

208 (cc) The legislative rules filed in the state register on  
209 the twenty-sixth day of July, one thousand nine hundred  
210 ninety-one, modified by the commissioner of agriculture  
211 to meet the objections of the legislative rule-making  
212 review committee and refiled in the state register on the  
213 sixteenth day of October, one thousand nine hundred  
214 ninety-one, relating to the commissioner of agriculture  
215 (licensing of pesticide businesses), are authorized.

216 (dd) The legislative rules filed in the state register on  
217 the eighth day of August, one thousand nine hundred  
218 ninety-one, modified by the commissioner of agriculture  
219 to meet the objections of the legislative rule-making  
220 review committee and refiled in the state register on the  
221 second day of October, one thousand nine hundred  
222 ninety-one, relating to the commissioner of agriculture  
223 (certified pesticide applicators), are authorized.

224 (ee) The legislative rules filed in the state register on  
225 the eighth day of August, one thousand nine hundred  
226 ninety-one, modified by the commissioner of agriculture  
227 to meet the objections of the legislative rule-making  
228 review committee and refiled in the state register on the  
229 twenty-fourth day of September, one thousand nine  
230 hundred ninety-one, relating to the commissioner of  
231 agriculture (assessment of civil penalties and procedures  
232 for consent agreements and negotiated settlements), are  
233 authorized.

234 (ff) The legislative rules filed in the state register on  
235 the eighth day of August, one thousand nine hundred  
236 ninety-one, modified by the commissioner of agriculture  
237 to meet the objections of the legislative rule-making  
238 review committee and refiled in the state register on the  
239 twenty-fourth day of September, one thousand nine  
240 hundred ninety-one, relating to the commissioner of  
241 agriculture (aerial application of herbicides to rights-  
242 of-way), are authorized.

243 (gg) The legislative rules filed in the state register on  
244 the eighth day of August, one thousand nine hundred  
245 ninety-one, modified by the commissioner of agriculture  
246 to meet the objections of the legislative rule-making  
247 review committee and refiled in the state register on the  
248 twenty-fourth day of September, one thousand nine  
249 hundred ninety-one, relating to the commissioner of  
250 agriculture (frozen desserts and imitation frozen  
251 desserts), are authorized, with the amendment set forth  
252 below:

253 On page twelve, by striking out all of section 15 and  
254 substituting a new section 15, to read as follows:

255 "61-4B-15. Enforcement policy.

256 15.1. The commissioner may assess a violation of W.  
257 Va. Code §19-11B-1 et seq. or of these rules against the  
258 manufacturer of product and/or the distributor of the  
259 mix used to manufacture the product.

260 15.2. The commissioner will assess any violations of W.  
261 Va. Code §19-11B-1 et seq. or of this rule to the  
262 distributor for mix sampled from unopened containers.  
263 The company will not be assessed additional cumulative  
264 notices of violations until the commissioner has  
265 determined that the firm has had adequate notice of the  
266 previous notice, generally 10 days from the mailing of  
267 the notice of violation.

268 15.3. Whenever one of the last five consecutive official  
269 product sample(s) taken on separate days within a one  
270 year period are found to be adulterated or misbranded,  
271 the commissioner shall send a written "First Notice" to  
272 the manufacturer or distributor whichever is appropri-  
273 ate. This notice shall notify the manufacturer or  
274 distributor of the violation of W. Va. Code §19-11B-1 et  
275 seq. or of these rules and the enforcement policy  
276 established by this section of the rule.

277 15.4. Whenever two of the last five consecutive official  
278 product sample(s) taken on separate days within a one  
279 year period are found to be adulterated or misbranded

280 the commissioner shall send a written "Second Notice"  
281 to the manufacturer or distributor whichever is  
282 appropriate.

283 15.4.a. The commissioner shall collect additional  
284 official product sample(s) within 21 days of the sending  
285 of a Second Notice to the manufacturer or distributor,  
286 but shall not collect product samples before the lapse of  
287 7 days from the sending of a Second Notice.

288 15.5. Whenever three of the last five consecutive  
289 official product sample(s) taken on separate days within  
290 a one year period are found to be adulterated or  
291 misbranded the commissioner shall send a written  
292 "Third Notice" to the manufacturer or distributor  
293 whichever is appropriate.

294 15.5.a. The commissioner shall collect additional  
295 official product sample(s) within 21 days of the sending  
296 of the Third Notice to the manufacturer or distributor,  
297 but shall not collect additional product samples before  
298 the lapse of 7 days from the date of sending of the notice.

299 15.6. The commissioner will issue a "Shut-down  
300 Order" for a period of 24 hours to a manufacturer or  
301 distributor when the record of the firm indicates that  
302 effective action has not been taken to correct the causes  
303 of the violations, for instance when three out of the last  
304 five samples from the same machine are violative. The  
305 "Shut-down Order" will normally be issued with the  
306 "Third Notice". The "Shut-down Order" will give the  
307 reasons for the order, state the portion of the manufac-  
308 turing or distributing operation that is prohibited from  
309 operating while the order is in effect, give conditions of  
310 the order, state the length of time that the Shut-down  
311 Order will be in effect and specify a time and place for a  
312 hearing to be held in this matter. Except that in the case  
313 where the public health, safety or welfare is at risk, the  
314 commissioner will issue an immediate Shut-down Order  
315 and give notice to the manufacturer or distributor under  
316 the provisions of subdivision 15.6.a. of this rule.

317 15.6.a. The commissioner will issue an immediate  
318 Shut-down Order without giving the manufacturer or  
319 distributor the opportunity to be heard where there is a  
320 hazard to the public health, safety or welfare. In these  
321 cases, the manufacturer or distributor will be given the  
322 opportunity to request a hearing before the commis-  
323 sioner after the notification of the order is received by  
324 the manufacturer or distributor. All Shut-down Orders  
325 issued due to noncompliance with subdivisions 8.1.c.,  
326 8.1.d. or 8.1.g. of this rule are considered to involve a risk  
327 to the public health, safety or welfare.

328 15.6.b. The manufacturer or distributor will be  
329 responsible for causing all operations covered by the  
330 Shut-down Order to cease and follow all other condi-  
331 tions of the order. At the end of the period of the order,  
332 the manufacturer or distributor may resume operations  
333 without further action by the commissioner.

334 15.7. If after a Shut-down Order has been issued the  
335 commissioner finds that effective corrective action has  
336 not been taken, he may issue a suspension of the Frozen  
337 Desserts Manufacturer Permit. The suspension shall  
338 state the time that the suspension will become effective,  
339 give the reasons for the suspension and specify a time  
340 and place for a hearing to be held in this matter. Except  
341 that in the case of a summary suspension the commis-  
342 sioner will give the manufacturer the opportunity to  
343 request a hearing in this matter subsequent to the  
344 notification of the suspension.

345 15.7.a. All suspensions due to nonconformance to  
346 subdivisions 8.1.c., 8.1.d. or 8.1.g. of this rule are  
347 summary suspensions.

348 15.7.b. A suspension of the Frozen Desserts Manufac-  
349 turer Permit remains in effect until the manufacturer  
350 submits and the commissioner accepts a written plan of  
351 correction and a request for a reinstatement of the  
352 permit.

353 15.7.c. The commissioner has seven days from the date

354 of receipt of this application to respond to a suspension  
355 in the case of violations of subdivisions 8.1.c., 8.1.d. or  
356 8.1.g. of this rule and fourteen days to respond for all  
357 other violations of W. Va. Code §19-11B-1 et seq. or  
358 these rules. The commissioner will accept or deny the  
359 application for a reinstatement of the permit and will  
360 give the terms and conditions under which the permit  
361 will be reinstated.

362 15.8. If the commissioner finds that after the firm has  
363 resumed production following a suspension of their  
364 Frozen Desserts Manufacturer Permit that effective  
365 corrective action has not been taken, then the commis-  
366 sioner will hold a hearing to determine if the Frozen  
367 Desserts Manufacturer Permit should be revoked.

368 15.9. Persons who manufacture a product on an  
369 intermittent or infrequent basis, so that the standard  
370 enforcement policy cannot apply, will enter into a  
371 consent agreement with the commissioner for correction  
372 of all items found to be not in conformance with W. Va.  
373 Code §19-11B-1 et seq. or these rules.

374 15.10. Whenever an antibiotic or pesticide residue test  
375 is found to be above tolerance, the commissioner shall  
376 notify the manufacturer and/or distributor immediately  
377 of this fact and shall begin an investigation to determine  
378 the cause of the residue. The commissioner shall require  
379 that any person found to be responsible for the residue  
380 shall correct the cause of the residue prior to the  
381 resumption of the manufacturing or distribution of the  
382 product.

383 15.11. A person who performs a recall by voluntarily  
384 removing product from sale and distribution in an  
385 effective manner so as to limit the potential harm to the  
386 health and well-being of the public may be eligible for  
387 exemptions from the normal enforcement policy. The  
388 commissioner shall consider the facts of each case when  
389 making a decision on an exemption.

390 15.12. The commissioner may apply the enforcement

391 policy in a liberal manner in cases where all official  
392 product sample results that involve a product in the form  
393 actually sold to the public have been found to be in  
394 conformance with W. Va. Code §19-11B-1 et seq. or these  
395 rules.

396 15.13. The commissioner may suspend the standard  
397 enforcement policy in cases where such action is  
398 necessary to protect the public health, safety or welfare.

399 15.14. Resamples will only be taken from machines  
400 that were shown to be producing violative product the  
401 previous visit, except for resamples needed to check that  
402 the nonviolative status is being maintained according to  
403 the following schedule:

404 15.14.a. After a first notice and one nonviolative  
405 sample, resamples will be taken between 5 to 6 months  
406 after the nonviolative sample.

407 15.14.b. After a second notice and one nonviolative  
408 sample, resamples will be taken between 3-4 months  
409 after the nonviolative sample.

410 15.14.c. Other resamples may be considered necessary  
411 to determine that the nonviolative status is being  
412 maintained.”

413 (hh) The legislative rules filed in the state register on  
414 the eighth day of August, one thousand nine hundred  
415 ninety-one, modified by the commissioner of agriculture  
416 to meet the objections of the legislative rule-making  
417 review committee and refiled in the state register on the  
418 twenty-fourth day of September, one thousand nine  
419 hundred ninety-one, relating to the commissioner of  
420 agriculture (West Virginia apiary law of 1991), are  
421 authorized.

422 (ii) The legislative rules filed in the state register on  
423 the eighth day of August, one thousand nine hundred  
424 ninety-one, modified by the commissioner of agriculture  
425 to meet the objections of the legislative rule-making  
426 review committee and refiled in the state register on the

427 twenty-fourth day of September, one thousand nine  
428 hundred ninety-one, relating to the commissioner of  
429 agriculture (disposal of dead poultry), are authorized  
430 with the amendments set forth below:

431 On page two, section two, by adding a new subsection  
432 to read as follows:

433 "2.8 "Disposal pit" means an opening dug in the  
434 ground to a minimum depth of six feet, containing a  
435 minimum capacity of 150 cubic feet, covered with a  
436 minimum of 12 inches of dirt, and provided with one or  
437 more openings for the introduction of poultry. The  
438 openings shall be a minimum size of eight inches square  
439 and equipped with tight lids. A disposal pit shall be  
440 located in a site which will prevent contamination of the  
441 groundwater or the surface water. This site should  
442 conform to the standards established in this rule."

443 On page two, subsection 3.1 after the word "incinera-  
444 tor," by adding the words "disposal pit,"

445 And,

446 On page two, by adding a new section, designated  
447 section 4, to read as follows:

448 "§61-1C-4. Standards for Site Location for Disposal  
449 Pits.

450 4.1 No part of a disposal pit system shall be located in  
451 a poorly drained or filled area, or in any area where  
452 seasonal flooding occurs.

453 4.2 No part of a disposal pit system shall be located  
454 within 10 feet of a building, foundation or property line.

455 4.3 No part of a disposal pit system shall be located  
456 within 50 feet of a public water supply line or within 10  
457 feet of a private water supply system.

458 4.4 A disposal pit shall be located at least 50 feet from  
459 a private well or groundwater supply.

460 4.5 There shall be a minimum of three feet between the

461 bottom of a disposal pit and seasonal groundwater or  
462 rock, shale or any other impermeable layer.

463 4.6 The evaluation of the site for installation of a  
464 disposal pit shall be based upon percolation test results.  
465 Percolation tests shall be performed in the following  
466 manner:

467 4.6.1 Location - At least two holes shall be placed over  
468 the selected site. The results of these two test holes will  
469 be averaged.

470 4.6.2 Holes shall be dug or bored from six to eight  
471 inches in diameter at the site where the disposal pit will  
472 be installed. The holes should be at least 24 inches in  
473 depth.

474 4.6.3 The bottom and sides of the holes shall be  
475 scratched with a sharp pointed instrument or wire brush  
476 to remove any smeared soil surfaces which interfere with  
477 the absorption of water into the soil.

478 4.6.4 Loose dirt shall be removed from the bottom of  
479 the test holes and two inches of coarse sand or fine  
480 gravel shall be placed into the holes to prevent sealing.

481 4.6.5 An eight or ten penny nail shall be placed in the  
482 wall of each hole exactly six inches above the level of  
483 sand or gravel.

484 4.6.6 The test hole shall be completely filled with  
485 water to ground level. Water in the hole shall be kept to  
486 a depth of at least 12 inches for a minimum period of  
487 four hours before beginning the percolation rate  
488 measurement.

489 4.7 Percolation rate measurement - Upon completion  
490 of the above, the water depth in the holes shall be  
491 adjusted to the level of the nail. The number of minutes  
492 it takes for this six inches of water (all the water) to be  
493 absorbed into the soil shall be accurately determined.  
494 This time in minutes, divided by six, gives the rate of fall  
495 per inch. The average rate of fall must be between five  
496 minutes and 60 minutes."



497 (jj) The legislative rules filed in the state register on the  
498 eighth day of August, one thousand nine hundred  
499 ninety-one, modified by the commissioner of agriculture  
500 to meet the objections of the legislative rule-making  
501 review committee and refiled in the state register on the  
502 twenty-fourth day of September, one thousand nine  
503 hundred ninety-one, relating to the commissioner of  
504 agriculture (licensing of livestock dealers), are autho-  
505 rized.

506 (kk) The legislative rules filed in the state register on  
507 the fifteenth day of September, one thousand nine  
508 hundred ninety-two, modified by the commissioner of  
509 agriculture to meet the objections of the legislative  
510 rule-making review committee and refiled in the state  
511 register on the eighteenth day of November, one  
512 thousand nine hundred ninety-two, relating to the  
513 commissioner of agriculture (commercial feed), are  
514 authorized.

515 (ll) The legislative rules filed in the state register on the  
516 fifteenth day of September, one thousand nine hundred  
517 ninety-two, modified by the commissioner of agriculture  
518 to meet the objections of the legislative rule-making  
519 review committee and refiled in the state register on the  
520 nineteenth day of February, one thousand nine hundred  
521 ninety-three, relating to the commissioner of agriculture  
522 (general groundwater protection rules for fertilizers and  
523 manures), are authorized.

524 (mm) The legislative rules filed in the state register on  
525 the fifteenth day of September, one thousand nine  
526 hundred ninety-two, modified by the commissioner of  
527 agriculture to meet the objections of the legislative  
528 rule-making review committee and refiled in the state  
529 register on the nineteenth day of February, one thousand  
530 nine hundred ninety-three, relating to the commissioner  
531 of agriculture (primary and secondary containment of  
532 fertilizers), are authorized with the amendments set  
533 forth below:

534 "On page five, by striking out all of subsection 5.5 and

535 inserting in lieu thereof a new subsection 5.5 to read as  
536 follows: ‘The operator or his licensed representative  
537 shall sign and date each application under oath.’; and

538 On page eighteen, by striking out all of subsection 14.1  
539 and inserting in lieu thereof a new subsection 14.1 to  
540 read as follows:

541 ‘All moneys for the purpose of the enforcement and  
542 administration of this rule shall come from general  
543 revenue funds appropriated by the Legislature for that  
544 purpose. The net proceeds of civil penalties collected  
545 pursuant to W. Va. Code §20-5M-10a or any civil  
546 administrative penalties collected pursuant to W. Va.  
547 Code §20-5M-10c will be deposited in the groundwater  
548 remediation fund established in W. Va. Code §20-5M-1.  
549 et seq.’”.

550 (nn) The legislative rules filed in the state register on  
551 the fifteenth day of September, one thousand nine  
552 hundred ninety-two, modified by the commissioner of  
553 agriculture to meet the objections of the legislative  
554 rule-making review committee and refiled in the state  
555 register on the nineteenth day of February, one thousand  
556 nine hundred ninety-three, relating to the commissioner  
557 of agriculture (general groundwater protection rules for  
558 pesticides), are authorized.

559 (oo) The legislative rules filed in the state register on  
560 the fifteenth day of September, one thousand nine  
561 hundred ninety-two, modified by the commissioner of  
562 agriculture to meet the objections of the legislative  
563 rule-making review committee and refiled in the state  
564 register on the nineteenth day of February, one thousand  
565 nine hundred ninety-three, relating to the commissioner  
566 of agriculture (bulk pesticide operational rules), are  
567 authorized.

568 (pp) The legislative rules filed in the state register on  
569 the fifteenth day of September, one thousand nine  
570 hundred ninety-two, modified by the commissioner of  
571 agriculture to meet the objections of the legislative

572 rule-making review committee and refiled in the state  
573 register on the nineteenth day of February, one thousand  
574 nine hundred ninety-three, relating to the commissioner  
575 of agriculture (non-bulk pesticide rules for permanent  
576 operational areas), are authorized.

577 (qq) The legislative rules filed in the state register on  
578 the sixteenth day of April, one thousand nine hundred  
579 ninety-three, modified by the commissioner of agricul-  
580 ture to meet the objections of the legislative rule-making  
581 review committee and refiled in the state register on the  
582 twenty-sixth day of July, one thousand nine hundred  
583 ninety-three, relating to the commissioner of agriculture  
584 (animal disease control), are authorized.

585 (rr) The legislative rules filed in the state register on  
586 the third day of August, one thousand nine hundred  
587 ninety-three, modified by the commissioner of agricul-  
588 ture to meet the objections of the legislative rule-making  
589 review committee and refiled in the state register on the  
590 eighth day of October, one thousand nine hundred  
591 ninety-three, relating to the commissioner of agriculture  
592 (auctioneers), are authorized.

### **§64-9-3. Attorney general.**

1 (a) The legislative rules filed in the state register on the  
2 sixth day of December, one thousand nine hundred  
3 eighty-four, relating to the attorney general (third party  
4 dispute mechanisms), are authorized.

5 (b) The legislative rules filed in the state register on the  
6 ninth day of January, one thousand nine hundred  
7 eighty-five, relating to the attorney general (fair  
8 treatment of crime victims and witnesses), are autho-  
9 rized.

10 (c) The legislative rules filed in the state register on the  
11 nineteenth day of September, one thousand nine  
12 hundred eighty-six, modified by the attorney general to  
13 meet the objections of the legislative rule-making review  
14 committee and refiled in the state register on the first  
15 day of December, one thousand nine hundred eighty-six,

16 relating to the attorney general (prevention of unfair or  
17 deceptive acts or practices in home improvement and  
18 home construction transactions), are authorized. These  
19 rules were proposed by the attorney general pursuant to  
20 section one hundred three, article six and section one  
21 hundred two, article seven of chapter forty-six-a of this  
22 code with the following amendments:

23 “Amending the title to the proposed legislative rule  
24 wherever said title may appear, on lines three and four  
25 thereof, by striking the words ‘and home construction’.

26 On the index page following ‘3.’ by striking the words  
27 ‘and home construction’.”

28 On page 1, §1.2, line three, after the first word  
29 “transactions” on line three, by striking the comma and  
30 the words “and home construction transactions” and on  
31 line five, by striking the period and inserting the words  
32 “but shall not cover new construction of single-family  
33 dwellings or rebuilding all or substantially all of an  
34 existing or preexisting single-family dwelling.”

35 Page 2, section 2.2 by striking all of lines seven and  
36 eight and inserting in lieu thereof the following:

37 ‘unless: (a) it appears in printed or typed face larger  
38 than the largest type used in the written contract, apart’.

39 On page 2, section 2.4, by striking all of section 2.4 and  
40 inserting in lieu thereof a new section 2.4, to read as  
41 follows:

42 “2.4 ‘Home Construction’ means, for the purpose of  
43 this Rule, the repair, remodeling or the building of  
44 additions to existing single-family dwelling units,  
45 including single-family homes, condominium units or  
46 any other dwelling unit to be used by any person  
47 primarily for personal or family use, but shall not  
48 include new single-family home construction or the  
49 rebuilding of all or substantially all of an existing or  
50 preexisting single-family dwelling.”

51 Page 3, section 2.6, on line two thereof, after the second

- 52 comma by inserting the word “replacement.”
- 53 Page 3, section 3, by striking the words “and home  
54 construction” from the section heading.
- 55 Page 3, section 3.1, lines one and two, by striking the  
56 words “or home construction.”
- 57 Page 4, section 3.1.4, on lines one and two thereof, by  
58 striking the words “or home construction.”
- 59 Page 4, section 3.1.8, on line two thereof, by striking  
60 the words “or home construction.”
- 61 Page 4, section 3.1.9, on lines two and three thereof, by  
62 striking the words “or home construction.”
- 63 Page 5, section 3.1.12, on lines one and two thereof, by  
64 striking the words “or home construction.”
- 65 Page 6, section 3.1.26, by striking all of section 3.1.26  
66 and renumbering the subsequent subsections.
- 67 Page 7, section 3.1.29, on lines one and two thereof, by  
68 striking the words “or home construction.”
- 69 Page 7, section 3.1.29, on line six thereof, following the  
70 word “contract” by inserting a period and striking the  
71 remainder of the section.
- 72 Page 7, following section 3.1.29 by adding a new  
73 section to be designated section 3.1.29, to read as follows:
- 74 “failed to file a certificate in the office of the Clerk of  
75 the County Commission in the county in which the  
76 principal place of business of the seller is located, setting  
77 forth the assumed name in or by which the business is  
78 being conducted in conformity with the provisions of  
79 Chapter 47, Article 8, Section 2 of the Code of West  
80 Virginia, 1931, as amended.”
- 81 Page 7, section 3.2, on lines two and three thereof, by  
82 striking the words, “or home solicitation sale of home  
83 construction” and the comma on line three.
- 84 Page 9, section 4.1, on line eight thereof, by deleting

85 the period and inserting the following:

86 'to the extent permitted by statute'.

87 Page 10, section 4.2, on line 9 thereof, by striking the  
88 period and inserting the following:

89 'to the extent permitted by statute'.

90 (d) The legislative rules filed in the state register on the  
91 twenty-third day of September, one thousand nine  
92 hundred eighty-six, modified by the attorney general to  
93 meet the objections of the legislative rule-making review  
94 committee and refiled in the state register on the first  
95 day of December, one thousand nine hundred eighty-six,  
96 relating to the attorney general (prevention of unfair or  
97 deceptive acts or practices in the sale of damaged goods  
98 or products), are authorized.

99 (e) The legislative rules filed in the state register on the  
100 twenty-third day of September, one thousand nine  
101 hundred eighty-seven, modified by the attorney general  
102 to meet the objections of the legislative rule-making  
103 review committee and refiled in the state register on the  
104 twenty-fifth day of November, one thousand nine  
105 hundred eighty-seven, relating to the attorney general  
106 (administration of preneed burial contracts), are  
107 authorized with the following amendments set forth  
108 below:

109 On page 9, section 8.2, by striking the words "within  
110 thirty days after the death of a contract beneficiary,"  
111 and inserting in lieu thereof the following: "On or before  
112 the first day of January and the first day of July of each  
113 year," and after the word "provided" by striking the  
114 comma and inserting in lieu thereof "after the death of  
115 any contract beneficiary during the previous six-month  
116 period,";

117 On page 12, section 9.7, by striking all of 9.7;

118 Beginning on page 15, by striking the entirety of  
119 section 15;

120 And,

121 Beginning on page 18, by striking the entirety of  
122 section 16, and by renumbering the remaining sections.

123 (f) The legislative rules filed in the state register on the  
124 eleventh day of August, one thousand nine hundred  
125 eighty-nine, modified by the attorney general to meet the  
126 objections of the legislative rule-making review  
127 committee and refiled in the state register on the  
128 twenty-sixth day of October, one thousand nine hundred  
129 eighty-nine, relating to the attorney general (allowing  
130 persons who are indirectly injured by violations of the  
131 West Virginia antitrust act to recover damages), are  
132 authorized.

133 (g) The legislative rules filed in the state register on the  
134 fourteenth day of August, one thousand nine hundred  
135 eighty-nine, modified by the attorney general to meet the  
136 objections of the legislative rule-making review  
137 committee and refiled in the state register on the  
138 fifteenth day of December, one thousand nine hundred  
139 eighty-nine, relating to the attorney general (health  
140 spas), are authorized.

141 (h) The legislative rules filed in the state register on the  
142 tenth day of August, one thousand nine hundred ninety,  
143 relating to the attorney general (authorizing the attorney  
144 general to require persons upon whom subpoenas are  
145 served to answer written questions under oath), are  
146 authorized.

147 (i) The legislative rules filed in the state register on the  
148 tenth day of August, one thousand nine hundred ninety,  
149 relating to the attorney general (obtaining assistance of  
150 public officials in investigations and the commencement  
151 of proceedings to compel compliance), are authorized.

152 (j) The legislative rules filed in the state register on the  
153 tenth day of August, one thousand nine hundred ninety,  
154 modified by the attorney general to meet the objections  
155 of the legislative rule-making review committee and  
156 refiled in the state register on the twentieth day of

157 November, one thousand nine hundred ninety, relating  
158 to the attorney general (limitation of action and recovery  
159 of investigative costs and a reasonable attorney's fee by  
160 the attorney general in an enforcement action), are  
161 authorized.

162 (k) The legislative rules filed in the state register on the  
163 tenth day of August, one thousand nine hundred ninety,  
164 modified by the attorney general to meet the objections  
165 of the legislative rule-making review committee and  
166 refiled in the state register on the twenty-third day of  
167 January, one thousand nine hundred ninety-one, relating  
168 to the attorney general (regulated business exemption  
169 under the West Virginia antitrust act), are authorized.

170 (l) The legislative rules filed in the state register on the  
171 tenth day of August, one thousand nine hundred ninety,  
172 modified by the attorney general to meet the objections  
173 of the legislative rule-making review committee and  
174 refiled in the state register on the twenty-second day of  
175 January, one thousand nine hundred ninety-one, relating  
176 to the attorney general (defining the term "federal  
177 antitrust laws" and prohibiting tying and reciprocity),  
178 are authorized.

179 (m) The legislative rules filed in the state register on  
180 the sixteenth day of August, one thousand nine hundred  
181 ninety-three, modified by the attorney general to meet  
182 the objections of the legislative rule-making review  
183 committee and refiled in the state register on the  
184 twenty-fourth day of January, one thousand nine  
185 hundred ninety-four, relating to the attorney general  
186 (West Virginia consumer goods rental protection act), are  
187 authorized.

**§64-9-24. Secretary of state.**

1 (a) The legislative rules filed in the state register on the  
2 fifteenth day of April, one thousand nine hundred  
3 eighty-five, modified by the secretary of state to meet the  
4 objections of the legislative rule-making review  
5 committee and refiled in the state register on the eighth



6 day of October, one thousand nine hundred eighty-five,  
7 relating to the secretary of state (standard size and  
8 format for rules and related documents filed in the  
9 secretary of state's office), are authorized.

10 (b) The legislative rules filed in the state register on the  
11 seventeenth day of August, one thousand nine hundred  
12 eighty-seven, modified by the secretary of state to meet  
13 the objections of the legislative rule-making review  
14 committee and refiled in the state register on the  
15 twenty-third day of September, one thousand nine  
16 hundred eighty-seven, relating to the secretary of state  
17 (standard size and format for rules and procedures for  
18 publication of the state register or parts of the state  
19 register), are authorized.

20 (c) The legislative rules filed in the state register on the  
21 first day of September, one thousand nine hundred  
22 eighty-nine, modified by the secretary of state to meet  
23 the objections of the legislative rule-making review  
24 committee and refiled in the state register on the  
25 twentieth day of November, one thousand nine hundred  
26 eighty-nine, relating to the secretary of state (West  
27 Virginia farm product lien central filing system), are  
28 authorized.

29 (d) The legislative rules filed in the state register on the  
30 thirteenth day of August, one thousand nine hundred  
31 ninety, relating to the secretary of state (guidelines for  
32 the use of nicknames and other designations on the  
33 ballot), are authorized.

34 (e) The legislative rules filed in the state register on the  
35 fourteenth day of November, one thousand nine hundred  
36 ninety, relating to the secretary of state (absentee voting  
37 by military voters who are members of reserve units  
38 called to active duty), are authorized.

39 (f) The legislative rules filed in the state register on the  
40 seventh day of October, one thousand nine hundred  
41 ninety-one, modified by the secretary of state to meet the  
42 objections of the legislative rule-making review

43 committee and refiled in the state register on the  
44 twenty-eighth day of May, one thousand nine hundred  
45 ninety-two, relating to the secretary of state (filing fee  
46 for credit service organizations), are authorized.

47 (g) The legislative rules filed in the state register on the  
48 seventh day of October, one thousand nine hundred  
49 ninety-one, modified by the secretary of state to meet the  
50 objections of the legislative rule-making review  
51 committee and refiled in the state register on the  
52 twenty-eighth day of May, one thousand nine hundred  
53 ninety-two, relating to the secretary of state (combined  
54 voter registration and driver licensing programs), are  
55 authorized.

56 (h) The legislative rules filed in the state register on the  
57 sixteenth day of August, one thousand nine hundred  
58 ninety-three, modified by the secretary of state to meet  
59 the objections of the legislative rule-making review  
60 committee and refiled in the state register on the  
61 twenty-third day of November, one thousand nine  
62 hundred ninety-three, relating to the secretary of state  
63 (official election forms and vendor authorization), are  
64 authorized.

**§64-9-29. Board of accountancy.**

1 (a) The legislative rules filed in the state register on the  
2 fifth day of December, one thousand nine hundred  
3 ninety, modified by the board of accountancy to meet the  
4 objections of the legislative rule-making review  
5 committee and refiled in the state register on the fourth  
6 day of June, one thousand nine hundred ninety-one,  
7 relating to the board of accountancy (professional  
8 conduct), are authorized.

9 (b) The legislative rules filed in the state register on the  
10 twelfth day of August, one thousand nine hundred  
11 ninety-three, modified by the board of accountancy to  
12 meet the objections of the legislative rule-making review  
13 committee and refiled in the state register on the  
14 twenty-seventh day of October, one thousand nine

15 hundred ninety-three, relating to the board of accoun-  
16 tancy (board rules and rules of professional conduct), are  
17 authorized.

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

*[Handwritten Signature]*  
.....  
Chairman Senate Committee

*[Handwritten Signature]*  
.....  
Chairman House Committee

Originated in the Senate.

In effect from passage.

*[Handwritten Signature]*  
.....  
Clerk of the Senate

*[Handwritten Signature]*  
.....  
Clerk of the House of Delegates

*[Handwritten Signature]*  
.....  
President of the Senate

*[Handwritten Signature]*  
.....  
Speaker House of Delegates

The within *is approved* ..... this the *30th* .....  
day of *March* ..... 1994.

*[Handwritten Signature]*  
.....  
Governor

PRESENTED TO THE

GOVERNOR

Date 3/25/94

Time 9:46 am